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From: "Lynne Eckardt" <midfarm@bestweb.net>

Date: Tue Jun 22, 2004 12:18 pm

Subject: Southeast ZBA Recap

Hello All,

Let me first apologize for the length of this recap. The meeting was over 4 hours long so it's difficult to write a 'Reader's Digest' version. There were four items on the agenda which may be of interest to CRSE members. And look on the bright side...I'm sparing you the shed/deck variances.

As always these notes are not official (Official minutes will be available in two weeks) and the comments that follow are my own observations.

NB This meeting didn't end until past midnight so I am feeling particularly crabby. For those of you with 'delicate sensibilities' I would highly recommend you skip the more caustic-than-usual commentary at the end. Also as a new 'feature' I will be cutting to the chase (although some of the nail biting suspense will be lost) and give you the voting results right after each agenda item. A real time saver!

Highlights: The shed/deck items on the agenda were dealt with quickly and efficiently.
Lowlights: Underground MTBE 'plume' migrating towards the Croton River (Item 5). The never-ending, surreal 'who's on first/who's doing the math' quality of item # 2. AKA Fox Ridge Motor Inn.

1.BREWSTER TRANSIT MIX: Fields Lane:
Variance granted on shed: 6-0
Variance granted on outside storage (60,000+ square feet) : 6-0

The applicant was seeking a variance a shed and outdoor storage space. The shed needed an approximately 5 ft. variance while the outdoor storage needed 60,000+ square feet.

The general feeling was that since the applicant had the room to construct a structure large enough to allow an acre and a half of outdoor storage it

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allows a variance to be passed. Another mitigating factor was that there are only 3 days worth of materials stored on site and to decrease this further would cause economic hardship to the business.

2. FOX RIDGE MOTOR INN: Route 121 and Route 6:
Variance on appeal of denial 9 ('Terraces' as footprint)) 6-0
Area Variance denied on 16 square ft.: 6-0

Basically the applicant wanted 'terraces' (which were railroad tie structures containing plants) to be considered part of the original footprint. This would have allowed a 'slightly larger' motel to be constructed on site. If this was to be denied the applicant was seeking a 16' area variance.

If the applicant stays with in the existing footprint he does not have to go before the Planning Board. Any deviation and he must.

5. CARMEL AUTO SALES (DBA BREWSTER HONDA) 941 Route 22:
Public Hearing held open. (July 19th)

The applicant (tenant) was asking for permission to use a 3 acre parcel for 'vehicle storage' along the banks of the Croton River. Donald Rossi represented the applicant stating that the area was in the process of being changed from NB1 to NB 2 where 'automotive repair service' was available by 'special permit' by the Town Board.

In discussing the application the Board made note that there was already vehicle storage on site as there was a 'cease and desist' order issued. There was some debate as to whether or not the violation must be mitigated before the Board hears the case for a variance.

Members of the audience asked good questions and made valid observations. Village Trustee, Mike Santos, gave the Board a recent letter stating that an underground 'plume' of MTBE was moving towards the Croton River, thus towards village wells. The source of the MTBE is unknown.

The owner of a nearby building was concerned that his parking lot would be affected.

It was mentioned that all vehicles should be considered 'impervious'. It was also pointed out that various Boards (particularly Planning) state over and over again that violations must be rectified before going before any Board. There appeared to be some confusion over this.

9. ROSS ALLEN, Welfare Road (AKA 'High Meadow Farm')
Public Hearing held open (July 19th)

The applicant was asking for a waiver to the resource protection plan (section 138-21).

The property was purchased by Ross Allen in January of 2003. The previous owner had approvals for a 4 lot 'cluster' development. When the Town Engineer re-calculated the resource protection plan it was discovered that only 3.51 houses could be built. The RP Plan clearly states that this number may not be rounded up and to 'use the lowest number'. The attorney (Robert Lusardi) and engineer (Harry Nichols) argued that some of the calculations used are 'subjective' (not the wetlands but rather the slope calculations) but even so they admitted that according to the RP Plan the site would only allow for 3.9 houses.

COMMENTS:

Whew, anyone still with me on this.

BREWSTER TRANSIT MIX: This may be the closing chapter on our 'long local nightmare' of various violations, quality of life issues, site improvements needed and variances sought. Hopefully the drainage will be improved dramatically when detention basins are installed. One ZBA member noted that the road is really a mess after any heavy rains.

The departure of BTM from various Board agendas will be like getting rid of an unwanted house guest.

FOX RIDGE MOTOR INN:

Yikes! This was a living nightmare. Over an hour of so many different figures bandied about I finally decided that I couldn't use any of them in the recap. At one point the applicant was even suggesting figures where the new motel was actually smaller than the old motel. It was here that Chairman Colello finally reached the breaking point. Members of the audience, always quick on the uptake, had reached theirs' about 45 minutes earlier.

I still believe that 'taking the footprint' and running is the best option left to the applicant. Especially in light of so many stringent regs passed over the years. But still, I can see how after passing a 60,000+ sq. ft. variance on the item before, when this applicant was asking for 16 sq. ft., would rankle. Remember though, that Brewster Transit Mix still has to go through some more of the planning process.

BREWSTER HONDA:

Number one: It was disturbing to hear that the MTBE plume is migrating and that the cause is still unknown.

Second: The various Boards in town need to get their act together on whether or not violations need to be rectified before any Board appearance. Dear God, how difficult could this be? A broadcast e-mail- oh right, we still don't have an updated website let alone e-mail addresses for our public officials. Oh well, an inter-office memo would even cover it. By the way, thank you to Ann Fanizzi for stepping up to the plate and backing me on the confused 'Town Policy'.

Number three: Vehicles create an impervious surface. Attorney, Don Rossi, had 'fun' asking me the rhetorical question of what 'statute' I was referring to when I mentioned this. Gee, Don, not being an attorney I wouldn't know... But what I do know is that metal sheds water and that cars are made of metal. Voila: Impervious! And a recent NYTimes story that used vehicles when calculating the total area of impervious surface in the US concurs.

ROSS ALLAN:

The ever affable engineer, Harry Nichols, did his damndest to convince the Board that 'slope grades' were subjective. And once again we were treated to the 'economic hardship' that the applicant would have to endure if only allowed 3 houses.

I have two words for Mr. Allen: Lucent Technology. I shrewdly purchased Lucent when it was close to its all time high. Now I could barely go out to dinner on what remains of my investment. And clearly I'm not a broker.

However, Mr. Allan has been in the development game for years. And now he'd like a 'free pass' because his investment isn't working out quite as planned. Even though it clearly states in the Resource Protection Plan that you MUST use the lower number, and even though the project engineer's calculations are 3.9 the applicant still feels entitled to a variance.

Suck it up Mr. Allen. I'm guessing that there's still a profit to be made here.

And what I do know is this. If a variance is granted on this project the Resource Protection Plan will be undermined. It also sets a dangerous precedent as far as litigation against the town when other applicants may be denied. And, gentlemen of the Board, is this really a road we want to go down?

Finally, I do think that this is a very thoughtful Board although I don't always agree with their decisions. They are all unfailingly polite (particularly Mr. Costello). Now, if you could just have picked up the pace a bit last night you wouldn't have to put up with me on the 19th and I could get some sleep.

And for those of you still awake please feel free to e-mail me with any questions that you may have.

With Best Regards,
Lynne Eckardt

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