

TOWN OF OXFORD PLANNING & ZONING COMMISSION

S.B. Church Memorial Town Hall
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RECESSED PUBLIC HEARING MINUTES

Tuesday, September 19, 2017 - 7:00 PM
Main Meeting Room, S.B. Church Memorial Town Hall

Oxford Planning & Zoning Commission **Public Hearing** on applications:

1. **Z-17-071 [RESA] – Riverview Subdivision – Riverview Road – Owner: Lars Realty, LLC – Applicant: Cocchiola Paving, Inc.** (Re-subdivision of Parcel "D")
2. **Z-17-072 [RESA] – Riverview Subdivision – Riverview Road – Owner: Lars Realty, LLC – Applicant: Cocchiola Paving, Inc.** (Excavation Permit – 16,000 cubic yards)

CALL TO ORDER

Chairman Arnie Jensen opened the recessed Public Hearing at 7:00 PM.

PLEDGE OF ALLEGIANCE

ROLL CALL/SEATING OF ALTERNATES

Present: Tanya Carver, John Kerwin, Jeff Luff, Arnie Jensen, Pete Zbras
Also Present: Steven S. Macary, ZEO, Jessica Pennell and Town Counsel, Kevin Condon.
Absent: Harold Cosgrove, Pat Cocchiarella, Bob Costigan and Todd Romagna.

Chairman Arnie Jensen seated Alternate Commissioner John Kerwin and Alternate Commissioner Pete Zbras.

CORRESPONDENCE

Vice Chairman Jeff Luff read a letter dated 9/12/2017 from Jim Galligan, Nafis & Young Engineers.

PRESENTATION BY THE APPLICANT

Mark Shipman, Attorney for the applicant stated that they have nothing further to add, they have made their presentation.

COMMENTS & QUESTIONS FROM THE CHAIRMAN & COMMISSION MEMBERS

Chairman Arnie Jensen stated that at the last hearing, there was discussion regarding proof of the applicant planting trees.

Mike Horbal, Engineer for the applicant stated that they do not have the receipt for the trees that were planted.

Chairman Arnie Jensen questioned why the application was approved on 4/3/08 and the stipulated judgement is dated 4/7/08. He directed the question to Kevin Condon.

Kevin Condon, Town Counsel stated that he doesn't believe it is appropriate for him to answer questions at this time, the Commission should put any questions they have in writing and he can answer them during deliberations or in an executive session.

Attorney Shipman stated that the Commission acted on 4/3/08 and the judgement wasn't filed with the court until 4/7/08.

Commissioners noted that the stipulated judgement was an agreement between the parties, not an order imposed by the court.

Chairman Arnie Jensen questioned the Reforestation Plan that was introduced by a member of the public.

Attorney Shipman stated that the applicant agreed to plant trees as they had represented during the hearings for the application (in 2008). He stated that it wasn't formally part of the stipulated judgement.

Commissioner Tanya Carver questioned the 35% slope waiver. She stated that she hasn't seen anything in the stipulated judgment that approves the waiver or is still applicable. She also stated that as the public has stated, and since she is on the committee that is updating the POCD, she did find that the zoning regulations were changed to protect the land in the area that is the subject of this application.

Attorney Shipman noted that it is not specific in the judgement, but if you look at the original application, the waiver was part of the application. The stipulated judgement states that the application is approved, and that includes the waiver.

Commissioner Tanya Carver stated that the piece of property here, that is in front of the Commission, the stipulated judgement says that it has to come here for an approval. She stated that "Parcel D" is not part of the application before, because the stipulated judgement says that this particular piece cannot be built on unless the applicant comes back to the Commission for approval. She commented that it is a question for our Town Counsel to see, since it states that in the judgement that this particular piece cannot be built without coming back to the Commission. She questioned if that would mean that the other conditions apply to this particular piece.

Attorney Shipman stated that what Commissioner Carver is referring to is, (bb) in the stipulated judgement. He stated that the application is approved and that it does not state that they have to come back to the Commission, it says that they have to file a notice with the Town of Oxford's Zoning Enforcement Officer, then at the discretion of the Commission, may require

an application to modify the special permit. He stated that the applicant chose, not to file a notice but to file an application with the Commission. He explained that the original subdivision is approved, and this is not a new subdivision, it is a lot split in an already approved subdivision.

Alternate Commissioner John Kerwin questioned if “Parcel D” is an approved lot, then why is the applicant here?

Attorney Shipman stated that he believes they can build on it as a right, but they are asking to divide it into 2 lots.

Alternate Commissioner John Kerwin stated that it is not a buildable lot, it's a parcel. He then went on to ask if they would still be using 624 Roosevelt Drive for access for the excavation.

Attorney Shipman stated that they will be using Riverview Road as the access, there is no other access at this time.

Alternate Commissioner John Kerwin stated that there was another access last time.

Michael Horbal, Engineer for the applicant, asked Attorney Shipman where the legal access for the 2 lots is located.

Attorney Shipman explained that the answer is; before Riverview Road was built, they used the entrance at 624 Roosevelt Drive.

Alternate Commissioner John Kerwin questioned if there has been any consideration for the sight lines for trucks for Riverview?

Mr. Horbal stated that the applicant received approval from the CT DOT with the original subdivision approval.

Alternate Commissioner John Kerwin questioned if the approval was for this application.

Mr. Horbal stated that it was for the original subdivision.

Alternate Commissioner John Kerwin questioned why they didn't use that access, they used 624.

Mr. Horbal answered that the access was convenient.

Alternate Commissioner John Kerwin questioned if there were any concerns about sight lines going around that corner.

Attorney Shipman reiterated that Riverview Road wasn't completed at that time and they used 634 Roosevelt Drive because it had direct access. He explained that it was a temporary access and was never intended to be final access, Riverview Road was intended to be the final access, and the only access that will be used for this application.

Alternate Commissioner John Kerwin questioned if the applicant filed applications with DOT with this, because they will have the same problems.

Attorney Shipman stated that they don't need DOT approval because the access is already there and has been approved.

Mr. Horbal stated that Riverview Road is already a town accepted road.

Alternate Commissioner John Kerwin asked him if there are any safety concerns.

Mr. Horbal stated that there are no safety concerns that need to be addressed with this application.

Attorney Shipman stated that there is no new situation that is created by this application.

Mr. Horbal stated that they are not changing the intersection or the sight lines and there are no other DOT comments or requirements to meet.

Alternate Commissioner John Kerwin stated that in the past they had a number of trucks pulling out onto Route 34 and there were requirements. He commented that there were a number of signs in the area and it doesn't seem to be a concern anymore. He stated that they will still have trucks pulling out onto Route 34.

Attorney Shipman stated that he isn't sure what Alternate Commission Kerwin means, but if he is asking if there can be signage at the intersection, he doesn't think that is a problem and if that is a condition of approval then the applicant will comply.

Vice Chairman Jeff Luff stated that Route 34 is a state highway and the Commission has no authority. He commented that this dirt road has nothing to do with the current application.

Attorney Shipman stated that the dirt road has nothing to do with this application.

Alternate Commissioner John Kerwin stated that the issue is that they had the same access, there was a dirt road, which is now Riverview Road and there was also 624 which was the adjacent driveway. He stated that at the time they were required to drive down what is now Riverview Road which was a dirt road that cut across to the driveway. He stated that at that time he remembers reading that there were some safety concerns and they wanted the trucks entering on the straight away and there were a number of signs on 34 indicating that trucks were entering.

Mr. Horbal stated that Alternate Commissioner John Kerwin is correct, there were safety concerns at that time which the state addressed in their requirements to the applicants. He stated that they were concerned with the sight lines southbound.

Alternate Commissioner John Kerwin interjected that it was southbound and westbound.

Mr. Horbal explained it was the sight lines when going toward Derby, and once the applicant had cleared the trees, it improved the sight lines on the riverside. He commented that they also improved the grading on the other side of the road by clearing and grading the banks back so the driveway of 624 Roosevelt Drive at the intersection of Punkup could be seen. He stated that at that point the DOT requirements were satisfied.

Vice Chairman Jeff Luff stated that based upon the replanting, he drove up there and he didn't see any real attempt at replanting. He commented that somehow or another he would like it addressed in whatever decision the Commission makes. He stated that to him, the invoices are irrelevant, if there wasn't a 75% survival rate, the trees have to be replanted.

Attorney Shipman stated that the Commission can incorporate the Re-forestation Plan into the approval.

Alternate Commissioner John Kerwin stated that the applicant is present and can tell the Commission if he has the invoices.

Anthony Cocchiola stated that all the invoices were already given to the Commission.

Attorney Shipman stated that he believes they submitted the invoices to the Inland Wetlands Commission.

Chairman Arnie Jensen offered the floor to the public, and asked that the public's comments are new comments, as this is the third public hearing on this application.

COMMENTS & QUESTIONS FROM THE PUBLIC

Richard Kopf, 585 Roosevelt Drive stated that he would like to give a quick synopsis again. He commented that this has been a 15 year ordeal and that the Commission is going to be asking the Attorney to go through this and figure out what is going on, so he will give a brief summary.

Mr. Kopf explained that in 2002 Lars Realty and Cocchiola bought 49 acres on Route 34 and came to the Commission with a permit to excavate 317,000 cubic yards, the application was denied because there is no allowance for a sand and gravel pit in the Residential district. The applicant came back with a subdivision and the last proposal resulted in an approval for 197,000 cubic yards of excavation and the original application was for a 5 lots, Parcel D being one of them. He noted that there were many issues with the application and at the Public Hearing it was denied. He commented that the applicant sued and the Commission drafted a motion to approve on a Thursday night, Friday Town Hall was closed, and showed up in court with the stipulated judgement on Monday. He stated that the motion to approve when they went into executive session to approve on Thursday night was for a 4 lot subdivision (refer to 1, 5 and 6 of the approval), they dropped "Parcel D", which then became an unapproved lot.

Mr. Kopf went on, the mention in the motion of the 35% slope to approve says that everything "over here" would need approval. He quoted, "Large portions of the proposed Lot 4, as well as, the parcels designated as "remaining land of Lars Realty", would require this waiver. He stated that it doesn't say anything about approving a 35% slope waiver for "Parcel D" or "E". He noted that he is worried about the precedent; if you say that "Parcel D" has a preexisting 35% waiver, then "Parcel E" is going to be grandfathered into it as well. He noted that he is referring to Map 1 of 15. He stated that he is concerned with the fact that none of the conditions of the first approval were ever met.

Mr. Kopf stated that this should be an entirely new application asking for another waiver in addition to the two that they are asking for now. He commented that part of the land is unbuildable and they shouldn't be able to excavate further. He also noted that he doesn't see a hardship, they have profited significantly from that land.

Karen Kopf, 585 Roosevelt Drive stated that you can't buy beauty and the beauty is being taken away and there is nothing that can be done to replace what's been done there. She commented that she has lived there for 35 years and never saw anyone plant a tree. She commented that the school bus issue was never considered. She stated that she doesn't know how the town or police would take care of that.

Bill Duesing, 593 Roosevelt Drive stated that there is the stipulated judgement and there are also the minutes from the meeting referred to findings of fact that the Commission made. He stated that #1, of the stipulated judgement states that it is a 4 lot subdivision, #5, the land is used for a 4 lot subdivision, #6, refers to the waiver, it is referring to excavation in the 4 lot subdivision. He then shared photos from Google Earth that showed that "Parcel D" is covered with trees and is not in unstable condition. He stated that there was enough unstable conditions for the Commission to approve the 4 lot subdivision. He presented pictures of the unstable areas (in progress).

Commissioner Carver requested that Mr. Duesing write his name, address and the date the photos were taken and submit them for the record. He presented a photo that showed "Parcel D" intact and stated that they applicants were going to clear the area without Town approvals. He stated that they were supposed to plant 250-700 trees and referred to the Reforestation Plan. He commented that the applicant has not respected the Town or the neighbors.

Cynthia Campbell, 595 Roosevelt Drive had a prepared statement that she read aloud to the Commission (ATTACHMENT A).

Attorney Shipman responded to the public comments. He stated that Mr. Kopf referenced information that dated back to 2002 and all of that is assumed in the final approval. He stated that it may be part of the historical record, but it is not germane to this application. He explained that the only thing germane to this application is what was or was not approved as part of the stipulated judgement. He noted that the map approval had 5 years and the infrastructure was completed, he also noted the state statute that was enacted that extends the approvals of subdivisions. He stated that all the original filings were subsumed in the judgement. He noted that he did ask that the Commission take administrative notice of all the prior proceedings of the previous Commission actions. He stated that his statement can also be applied to Mr. Duesing's comments. He explained that reading the minutes of prior meetings doesn't change what was approved. He then addressed Mrs. Campbell's argument; he commented that first, the waiver is part of the subdivision regulations, not the special permit. He stated that the applicant has not asked for a modification of the special permit, the special permit runs with the land and is permanent. He went on; the regulations that were read as new regulations do not apply to existing subdivisions, so the subdivision regulations that were enforced at the time of the approval are the regulations that prevail over the approval. He stated that he doesn't know why Mrs. Campbell is indicating that no map was filed, the maps have been filed on the land records.

He referenced the comments regarding the Commission's action in 2008 and stated that he does not know. He stated that the approval is of the subdivision and the lot that they are seeking to re-subdivide is part of that subdivision. He stated that he would hope that if there are questions, the Commission would consult the Town Attorney because that is the only way that he believes people will be satisfied.

Richard Kopf, 585 Roosevelt Drive stated that the 35% slope rule predates the original approval. He also stated that "Parcel D" is not an approved lot, so it is not part of a subdivision.

Cynthia Campbell, 595 Roosevelt Drive stated that the applicants were asked to do a traffic study last time. She requested that this Commission request a traffic study.

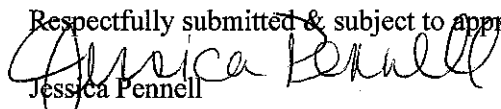
Attorney Shipman stated that it is a public road with public access to a state highway, for which they have approval. He stated that it allows trucks to enter and exit Riverview Road.

COMMENTS FROM THE CHAIRMAN & COMMISSION MEMBERS

RECESS/CLOSE

MOTION BY Commissioner Carver to CLOSE the Public Hearing at 8:07 PM. Second by Vice Chairman Luff. All Ayes.


Respectfully submitted & subject to approval,



Jessica Pennell

Planning & Zoning Commission

Administrative Secretary

17 NOV -9 PM 4:51
TOWN OF OXFORD, CT

TOWN CLERK

Oxford Planning & Zoning Commissioners
S.B. Church Memorial Town Hall
486 Oxford Road
Oxford, CT 06478-1298

September 18, 2017

REGARDING:

1. Application **Z-17-071 (RESA)** - Riverview Subdivision - Riverview Road - Owner- Lars Realty, LLC- Applicant Cocchiola Paving, Inc. (Re-subdivision of Parcel "D")
2. Application **Z-17-072 (RESA)** - Riverview Subdivision - Riverview Road - Owner Lars Realty, LLC- Applicant - Cocchiola Paving, Inc. (Excavation Permit - 16,000 cubic yards)

Dear Commissioners,

I put to you that the Oxford Planning & Zoning Commission is not adequately prepared to vote on the above applications because of the following:

- A. At the bottom of page 2 of these aforementioned current applications a footnote reads, "Waiver of 35 [sic] foot slopes approved in prior approval."
 - 1) The applicant's representatives have not adequately provided supporting documentation into the record of the current Public Hearing to date, for these 2 applications **Z-17-071** and **Z-17-072**, regarding the applicant's right to continue to use a previous permit **Z-06-239** (Subdivision & Waiver) that was granted in 2008.
 - a. A copy of the above 2008 permit **Z-06-239** (Subdivision & Waiver) is missing from the record of this current Public Hearing, to date.
 - b. The expiration date of the above 2008 permit **Z-06-239** (Subdivision & Waiver) has not been acknowledged in the record of this current Public Hearing, to date.
 - c. The Map showing the limits of activity for the permit **Z-06-239** (Subdivision & Waiver) is missing from the set of Re-Subdivision Maps that have been presented for this current Public Hearing, to date, regarding **Z-17-071 (RESA)** and **Z-17-072 (RESA)**.
 - 2) The reason given by the previous Oxford Planning & Zoning Commission as to the granting of this waiver is missing from the record of this current Public Hearing, to date, and is presented here:

PLANNING & ZONING COMMISSION

MINUTES

April 3, 2008

Z-06-239 Lars & Cocchiola 262 Roosevelt Drive

The Oxford Planning and Zoning Commission has agreed to settle the outstanding appeal, Cocchiola Paving, Inc. v. Oxford Planning and Zoning Commission, AAN-CV 07 4008356S...

...the Commission makes the following findings of fact:

1. The Commission has received subdivision and special exception applications from Lars Realty, LLC ("Lars") and Anthony Cocchiola, ("Cocchiola") (jointly and severally, the "Applicants"), for a 5-lot subdivision at 262 Roosevelt Drive, involving 49.6 acres of land along Roosevelt Drive/Route 34. The Applicant has now agreed to only seek a 4-lot subdivision for this site.

...

6. The Applicants acknowledge that the subdivision application requires a waiver from the requirement of Article 6, Section 11.1.3 of the Subdivision Regulation, which states: Land that has slopes in excess of 35% within a minimum contiguous area of 5,000 square feet, also within a minimum square area of 50 feet by 50 feet shall not be disturbed from its natural state. Large portions of proposed Lot 4 as well as the two parcels designated as "Remaining Land of Lars Realty, LLC" would require this waiver. The Subdivision Regulations state that: "Waivers may be granted if conditions unique to a parcel make it unreasonable or impractical for such parcel to be in full compliance with these regulations. No waiver shall be granted if in the Commissions' judgment such waiver would have an adverse effect on adjacent property or on public safety." It is the finding of the Commission that it would be unreasonable and impractical to obligate the Applicants to excavate only in a manner consistent with the Regulations, as there is already existing unstable excavation on the property and implementation of the Applicants' plan would result in a more stable outcome than allowing the property to remain in its present state. Additionally, the Commission finds that the granting of this waiver would not have an adverse impact on adjacent property.

- 3) **OLD REGULATIONS:** Reference to relevant sections of the Zoning Regulations in place at the time of permitting of the waiver are missing from the record of this current Public Hearing, to date. They are as follows:
- a. ARTICLE 14 - EARTH REGRADING/EXCAVATION: SECTION 3 Approval of Major Regrading/Excavation. 3.15 "That the relevant conditions of Article 10, Special Exceptions, have been complied with."
 - b. ARTICLE 10 - SPECIAL EXCEPTION: SECTION 1 Approval of Major Regrading/Excavation; 1.5 Regrading in Conjunction with Site Plans; C. "Not more than 5,000 cubic yards of material are to be removed from the site. The Commission may waive the requirement to obtain a special exception for major regrading for site plans that require more than 5,000 cubic yards to [sic] material to be excavated from the site, if they determine that all other conditions of this Article are to be met, and that the proposed excavation activity will have no negative impacts upon the natural environment, nearby properties or traffic circulation."

This space intentionally left blank.

- 4) **NEW REGULATIONS:** Six years after the **Z-06-239** (Subdivision & Waiver) was permitted, Oxford's Planning and Zoning Regulations were changed with amendments through 3/25/2014. The current relevant Regulations are as follows:

Section 3.20 – Treatment of Slopes

The steeply sloped areas of Oxford are integral to the character of the community. Development of these areas presents special challenges that must be addressed through the following requirements.

3.20.2 Land that has slopes in excess of 35% within a minimum contiguous area of 5,000 square feet, also within a minimum square area of 50 feet by 50 feet shall not be disturbed from its natural state. These restrictions shall not apply to land within lots legally in existence at the time of adoption of these regulations or lots within subdivisions for which applications have been filed and accepted at the time of the adoption of these regulations or lots within the Commercial, Industrial or Corporate Business Park zones.

ARTICLE 10 – SPECIAL EXCEPTIONS

Section 10.1

Any request for a Special Exceptions shall be a written request detailing the nature of the Special Exception and shall be accompanied by the appropriate hearing fee, an acceptable site plan or plot plan drawn to scale showing proposals for satisfying the requirements of this Article, and any other information the Commission may deem necessary. All other applicable provisions of this Article shall otherwise apply to such applications. The Commission may require that any application for a Special Exception submit an Environmental Impact Analysis which includes the following information:

10.1.1 How the proposed development is consistent with the objectives and policies of the Town Plan of Conservation & Development.

10.1.2 The impact of the proposed use on traffic, including the impact on public roads. For high traffic generators involving the construction of more than 50 dwelling units, 100 parking spaces, 25,00 square feet of gross floor area, or any age restricted housing development, the study should be prepared by a Traffic Engineer and shall include at a minimum, data and information concerning the following:

- existing & potential impact of the proposed development upon daily traffic (ADT) on town roads and state highways;
- peak hour traffic;
- adequacy of right of way and travel way widths;
- proposed traffic generation and distribution of proposed development;
- location of road cuts and driveways within 300 feet of the development;
- pedestrian circulation including safety considerations; and
- site lines of all intersections likely to be significantly impacted by the proposed development.

If the Commission determines that the proposed project is likely to cause adverse impacts upon the pedestrian or traffic circulations, or render any transportation facility inadequate for projected use, whether on town roads adjacent to, on site or off site; the Commission may require that the developer make improvements to mitigate the impacts of the proposed development.

10.1.4 The extent to which any sensitive environmental features on the site may be disturbed and what measures shall be taken to mitigate these impacts. Consideration shall be given to steep slopes, groundwater, wetlands, drainage ways, vegetation and any other land feature considered to be significant.

- B. At the bottom of page 3 of these 2 aforementioned current applications is a footnote that reads, "The Project Narrative Letter is written to serve the re-subdivision application and the excavation application."
- 1) In looking at the Project Narrative Letter dated May 24, 2017 and submitted by Michael Horbal, the applicant's engineer for the project, there is no mention of this waiver for the purposes of informing all members of the Oxford Planning & Zoning Commission, their expert advisors and the public, concerned with the formulation of the decision to be made by the Commissioners themselves
- C. The aforementioned Project Narrative Letter states that: "...all excavation and removal will be conducted under the same approval conditions required for the first section of the Riverview Subdivision".
- 1) Missing from the record of this current Public Hearing, to date, is a copy of the April 7, 2008 DOCKET NO. AAN-CV 07 4008356S conditions referred to in this Project Narrative Letter.
- a. This DOCKET NO. AAN-CV 07 4008356S's particular condition "bb." on page 6 was read into the record at the Public Hearing on September 5, 2017 by the applicant's legal counsel, Attorney Shipman and is as follows: "STIPULATED JUDGEMENT ... 2. The following conditions of approval shall apply: ... bb. Land labeled as "Remaining Land of Lars Realty, LLC" on the final Survey shall not be altered, nor shall any structures be placed upon it, without the Applicants filing a notice with the Town of Oxford's Zoning Enforcement Officer. At the discretion of the Commission, these activities may require an application to modify this special permit."
- b. This reading of the one condition into the record, that is the major point of contention as to being in violation of or in compliance with the Oxford Planning & Zoning Regulations, is, as of this date, not adequate information for preparation by any Commission member to understand the implications of this information, without having seen a copy of or been distributed a copy of this 2008 Stipulated Judgement.
- 2) What is referred to in this DOCKET as "the final Survey" with land labeled as "Remaining Land of Lars Realty," is missing from the record of this current Public Hearing, to date.
- D. The aforementioned Project Narrative Letter states that: "The two building lots (No. 5 & 6) will be accessed by a common driveway... The common driveway is proposed to minimize wetland disturbance by not crossing Five Mile Brook at Punkup Road and minimizing the area of an intermittent watercourse crossing the two driveways."

- 1) In this Project Narrative Letter there is no reason given as to why the applicant is not accessing the two building lots (No. 5 & 6) via the existing 50' Right of Way in favor of Lars Realty, LLC. on land owned now or formerly by Anthony Cocchiola, and crossing Five Mile Brook at Punkup Rad by using the existing bridge on East Hill Road.

Sincerely,

Cynthia Campbell
595 Roosevelt Drive
Oxford, CT 06478-2702