



Town of Tyngsborough
Planning Board
25 Bryants Lane,
Tyngsborough, Massachusetts 01879-1003
Office: (978) 649-2300 ext. 115

MINUTES
March 18, 2010
APPROVED

Attachments:

1. Meeting Agenda
2. Citizen's Petition to Change Zoning from R1 to B2 (194 Frost Rd.)
3. Citizen's Petition to Change Zoning from R1 to B2 (198 Frost Rd.)
4. National Flood Insurance Act Zoning By-Law Amendment Warrant Article (Charles Zaroulis, Esq.), dated 2/2/10.
5. Town of Tyngsborough Zoning By-Law 2.13.00 & 2.14.00 (as amended)
6. Rong Hua Shen & Ai Hua Pu – Letter requesting special permit extension for 161-163 Westford Rd., dated 3/16/10.
7. Scott Eriksen, Esq. – Letter of continuance for Wilson Way Cell Tower, dated 3/17/10.

Members Present: Steve Nocco, Chairman
Tom Delmore, Vice Chairman
Jim Miller
Bill Gramer, Associate Member
Jesse Johnson, P.E.: David E. Ross Associates
Pamela Berman, Administrative Assistant

Members Absent: Steve O'Neill
Caryn DeCarteret

7:00pm - Meeting called to order by Chairman S. Nocco

7:02pm - **Tyngsborough Zoning Map Amendment Citizen's Petition to Change Zoning from R1 to B2 (194 Frost Rd.)**

T. Delmore: Motion to waive the reading of the legal ad.

J. Miller: 2nd the motion

In Favor: 3 **Opposed:** 0 **Abstain:** 1 **Absent:** 2

Passes: 3-0-1-2

Attorney Peter Nicosia appeared before the Board to discuss the proposed zoning amendment for this address. The parcel contains what is commonly known as The Pines Restaurant and is currently zoned R-1. Attorney Nicosia explained that the property as is stands is a pre-existing non-conforming condition as it is a business, and the proposed change would bring it into conformance.

J. Miller: Motion to close the public portion of the hearing.

T. Delmore: 2nd the motion

In Favor: 3 Opposed: 0 Abstain: 1 Absent: 2

Passes: 3-0-1-2

J. Miller: Motion to recommend for Annual Town Meeting to support the Citizen's petition to amend the zoning map and re-zone from R1 to B2 a certain parcel of land in Tyngsborough, Massachusetts, containing 1 acre more or less, and identified as Tyngsborough Tax Assessor's Map 18, Block 46A. Said land is known as 194 Frost Road, Tyngsborough, Massachusetts and is more specifically identified in a deed dated May 14, 2003 and recorded in Book 15239, Page 011 in the Middlesex North District Registry of Deeds.

T. Delmore: 2nd the motion

Roll Call Vote:

Jim Miller: Yes

Tom Delmore: Yes

Steve Nocco: Yes

William Gramer: Abstain

Absent: Caryn DeCarteret, Steve O'Neill

In Favor: 3 Opposed: 0 Abstain: 1 Absent: 2

Passes: 3-0-1-2

7:10pm - Tyngsborough Zoning Map Amendment Citizen's Petition to Change Zoning from R1 to B2 (198 Frost Rd.)

T. Delmore: Motion to waive the reading of the legal ad.

J. Miller: 2nd the motion

In Favor: 3 Opposed: 0 Abstain: 1 Absent: 2

Passes: 3-0-1-2

Attorney Peter Nicosia appeared before the Board to discuss the proposed zoning amendment for this address. The parcel contains a combination business and single family home and is currently zoned R-1. Attorney Nicosia explained that the property as is stands is a pre-existing non-conforming condition as it does have a combined use, and the proposed change would bring it into conformance.

T. Delmore: Motion to close the public portion of the hearing

J. Miller: 2nd the motion

In Favor: 3 Opposed: 0 Abstain: 1 Absent: 2

Passes: 3-0-1-2

T. Delmore: Motion to recommend for Annual Town Meeting to support the Citizen's petitions to change the zoning classification from R1 to B2 a certain parcel of land in Tyngsborough, MA, containing .707 acres more or less, and identified as Tyngsborough Tax Assessor's Map 18, Block 47. Said land is known as 198 Frost Road, Tyngsborough, Massachusetts and is more specifically identified in a deed dated January 30, 2006 and recorded in Book 19775, Page 001 in the Middlesex North District Registry of Deeds.

J. Miller: 2nd the motion

Roll Call Vote:

Jim Miller: Yes

Tom Delmore: Yes

Steve Nocco: Yes

William Gramer: Abstain

Absent: Steve O'Neill, Caryn DeCarteret

In Favor: 3 Opposed: 0 Abstain: 1 Absent: 2

Passes: 3-0-1-2

7:20pm - Tyngsborough Zoning By-Law Amendment Planning Board Petition to amend Zoning By-Law Sections 2.13.00 (Flood Plan and Floodway Districts) and 2.14.00 (Wetlands District)

J. Miller: Motion to waive the reading of the legal ad.

T. Delmore: 2nd the motion

In Favor: 3 Opposed: 0 Abstain: 1 Absent: 2

Passes: 3-0-1-2

The Federal Emergency Management Agency (FEMA) has recently re-evaluated flood hazards in the town and has compiled the final flood elevation determinations. These elevations are incorporated into the Flood Insurance Rate Maps (FIRM) which identify the Special Flood Hazard Areas in the community.

In order for Tyngsborough to remain eligible for the National Flood Insurance Program (NFIP), the new Flood Insurance Rate Maps must be adopted by the town and incorporated into the zoning by-law regulations. Failure to enact the necessary floodplain management regulations will result in Tyngsborough being suspended from participation in the NFIP and subject to the prohibitions contained in the Flood Disaster Protection Act of 1973.

The Tyngsborough Planning Board, with cooperation from Town Counsel and state FEMA officials, has developed the necessary amendments for the zoning by-law.

Tyngsborough's Flood Insurance Rate Maps will become effective on June 4, 2010. At that time, the final printed and digital FIRM panels will be provided to the town. Further information regarding these maps will be forthcoming.

T. Delmore: Motion to recommend for Annual Town Meeting to support the Planning Board's petition to amend the Zoning By-law Sections 2.13.00 and 2.14.00 as follows:

1. In Section 2.13.00, delete the language and substitute the following:

2.13.00 Flood Plain and Floodway Districts.

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Tyngsborough designated as Zone A and AE, on the Middlesex County Flood Insurance Rate Map(FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Middlesex County FIRM that are wholly or partially within the Town of Tyngsborough are panel numbers 25017C0104E, 25017C0108E, 25017C0109E, 25017C0111E, 25017C0112E, 25017C0113E, 25017C0114E, 25017C0116E, 25017C0117E, 250174C0118E, 25017C0119E, 25017C0128E, 25017C0136E and 25017C0226E, dated June 4, 2020. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the Middlesex County FIRM and further defined by the Middlesex County Flood Insurance Study (FIS) report dated June 4, 2010. The Middlesex County FIRM and FIS are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner, Town Engineer, and the Conservation Commission Director.

2. Amend Section 2.13.20, by adding the following:

In the event the field survey does not agree with the Middlesex County FIRM, the applicant must apply to FEMA requesting that the Middlesex County FIRM be amended.

3. Delete Section 2.13.21.

4. Delete the language in Section 2.13.23 and substitute the following:

The floodway boundaries within the Town of Tyngsborough shall be as determined and shown on the Middlesex County FIRM as described in detail in section 2.13.00, Dated June 4, 2010.

5. Amend Section 2.13.41 by adding the following:

Floodway Data.

In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the Town during the occurrence of the base flood discharge.

In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Middlesex County FIRMs, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the Town during the occurrence of the base flood discharge.

6. Add a new section, 2.14.50, as follows:

2.14.50 Notification of Water Course Alteration.

In a riverine situation, the Conservation Director shall notify the following of any alteration or relocation of a watercourse:

Adjacent Communities

NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, suite 600-700
Boston, MA 02114-2104

NFIP Program Specialist
Federal Emergency Management Agency, Region 1
99 High Street, 6th Floor
Boston, MA 02110

The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit, shall be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 120 G, "Flood Resistant Construction and Construction in Coastal Dunes);

Wetlands Protection Regulations, Department of Environmental Protection (“DEP”) (currently 310 CMR 10.00);

Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);

Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5).

J. Miller: 2nd the motion

Roll Call Vote:

Jim Miller: Yes

Tom Delmore: Yes

Steve Nocco: Yes

William Gramer: Abstain

Absent: Steve O’Neill, Caryn DeCarteret

In Favor: 3 **Opposed:** 0 **Abstain:** 1 **Absent:** 2

Passes: 3-0-1-2

7:30pm 161 – 163 Westford Road Special Permit Extension Request – Frank Shen.

Applicants Rong Hua Shen and Ai Hua Pu appeared before the Board to request a two year extension to their current Special Permit for 161 – 163 Westford Road. The Shen’s project involves the construction of a mixed-use retail plaza that contains a total of approximately 10,566 square feet. Mr. Shen said that this project was put on hold due to the down-turn in the economy. The current special permit was extended in 2008 and will expire on April 8, 2010. The Board felt that if another extension was requested, a new site plan would have to be submitted for Board review and approval.

T. Delmore: Motion to extend the Special Permit for 161 – 163 Westford Road until April 8, 2012 with the condition that any future permit extension requests be accompanied by a new site plan review and approval.

J. Miller: 2nd the motion

In Favor: 4 **Opposed:** 0 **Absent:** 2

Passes: 4-0-2

7:40pm Wilson Way Telecommunications Tower Special Permit

The applicant submitted a letter requesting a continuance since the applicant’s RF Consultant, has not completed the review of the Town’s consultant (David Maxson) report.

J. Miller: Motion to continue this hearing until April 1, 2010 at 7pm

T. Delmore: 2nd the motion

In Favor: 4 **Opposed:** 0 **Absent:** 2

Passes: 4-0-2

Discussion

- ✚ The Board discussed the necessity to amend the fee schedule for the Planning Board. The Board requested that Pam Berman pull together some research that showed what the fee schedules are for the Planning Boards of the surrounding towns. It is apparent that Tyngsborough's current fee schedule does not accurately cover the Board's expenses with regards to the permit application process, professional review requirements, and legal and administrative requirements. This information will enable the Board to make a more informed decision on the new fee structure and bring it in line with the surrounding communities.

- ✚ Pam reported to the Board that she has contacted NMCOG to explore the possibility of them aiding the Board with the street and zoning map revisions. She indicated that this avenue might be a viable option that could save the town some money, and she will update the Board when more information is available.

Administrative

T. Delmore: Motion to approve the minutes for 3/4/10.

J. Miller: 2nd the Motion

In Favor: 4 Opposed: 0 Absent: 2

Passes: 4-0-2

7:45pm

T. Delmore: Motion to adjourn

J. Miller: 2nd the motion

In Favor: 4 Opposed: 0 Absent: 2

Passes: 4-0-2

Minutes respectfully submitted by
Pamela Berman
Planning Board Administrative Assistant