

**ROXBURY ZONING COMMISSION
ROXBURY, CONNECTICUT 06783**

**Regular Meeting
Monday, August 10, 2009**

MINUTES

Members Present: Robert Falconer, James Conway, Elaine Urban, Gary Coburn and Mary Elizabeth Peck

Alternates Present: Stewart Kellerman and William Weed

Staff Present: Mary Barton and Karen Eddy

Others Present: Mr. Tracy, Mr. & Mrs. Stuart, Mr. & Mrs. Holroyd, Ms. David, Ms. Keys, Mr. & Mrs. Adler, Mrs. McVey-Camilleri of Voices

Call to Order: Chairman, Robert Falconer, called the Regular Meeting to order at 7:40 p.m.

Seating of Members: Chairman Falconer seated regular members Robert Falconer, James Conway, Gary Coburn, Elaine Urban and Mary Elizabeth Peck.

Approval of Minutes - Public Hearing of July 13, 2009:

MOTION: To approve the minutes of the Public Hearing of July 13, 2009 as written.

MOTION BY: Gary Coburn, seconded by James Conway. Approved 5-0.

Approval of Minutes - Regular Meeting of July 13, 2009:

- Page 5, para.1, last sentence - Mr. Kellerman noted that the last sentence should include “in consultation with Mary Barton”.

Chairman Falconer recalled that a public hearing date had been set regarding a newly proposed regulation on Electrical Supply Meter Pod and/or Utility Box (Section 5.3.1.i). He concluded that since there was not a clear recollection as to whether a hearing date had been set, it would be done later in the meeting.

MOTION: To approve the minutes of the Regular Meeting of July 13, 2009 as amended.

MOTION BY: James Conway, seconded by Gary Coburn. Approved 5-0.

High Meadow Riding Club – Special Permit Application -Exercise ring for horses

Chairman Falconer noted several documents that were prepared by Mary Barton and distributed to the Commission. Mrs. Barton explained that the document regarding “A Notice of Intervention” (see attached) had been discussed with and approved by Attorney McTaggart. Following his reading of the entire document, Chairman Falconer asked for comments from Commission members. Mr. Conway felt it was very complete. Mr. Falconer felt the list of documents was comprehensive. He indicated that the Commission agreed with the document.

Mr. Falconer began discussion of the “draft motion” prepared by Mrs. Barton. He noted that it was intended to provide a framework for the Zoning Commission and that it could be changed as the Commission deemed appropriate. It was also noted that the Commission would not have to make a decision regarding this special permit until September 15, 2009 (65 days).

Mrs. Barton explained that the first paragraph describes “the meadow”. The next section talks about the Notice of Intervention, which was given to the Homeowners Association. Next is a list of all the documents that were reviewed by the Commission related to this application. The last section discusses possible conditions of approval that were taken from the minutes of previous meetings with the exception of the Bond (#8) and the liability insurance (#9), which are part of the regulations.

Chairman Falconer read the first four paragraphs of the draft motion. He noted that the list of documents had previously been read (as part of the Notice of Intervention).

Chairman Falconer read: “It is therefore resolved that the Zoning Commission approve the Special Permit Application of Robert and Shelly Holroyd D/b/a High Meadow Riding Club LLC subject to the following modifications:

The following modifications listed as part of the draft motion were reviewed/discussed:

- 1) Lighting: The equestrian exercise ring will be limited to day light hours. The installation of exterior light fixtures in order to use the equestrian exercise ring at night is not permitted. **APPROVED.**
- 2) The use of the equestrian exercise ring is limited to private use and not commercial use. Private use is defined by the Commission as the use of the equestrian exercise ring by family and friends who do not have a business relationship with the Holroyd’s or the High Meadow Riding Club LLC. **APPROVED**
- 3) Trees shall be located on site to screen the equestrian exercise ring from the abutting neighbors. Discussion follows. **REMOVED**

Discussion of #3 - Mr. Falconer noted that the plantings would be located between the Holroyd’s house and the exercise ring. He pointed out existing plantings and proposed planting on the site plan.

Mr. Coburn noted that Mr. Holroyd had planted trees but a number of them had died. Mrs. Barton noted that the white birches were kept at the request of Mr. Goldfarb and she did not see the need to plant additional trees.

Mr. Conway said he felt the number of trees currently on the site was adequate.

Mrs. Urban mentioned that there was speculation that the stonewall between Goldfarb’s and the riding ring had been removed. Mrs. Barton confirmed that removal of the wall had been the subject of litigation between the parties. She did not include it as a possible modification because it was no longer there. Mrs. Urban felt it was an issue because it had provided a buffer/barrier between the two properties.

Mrs. Barton read the following excerpt from the June 8, 2009 minutes: “Mr. Falconer asked about a row of trees that might obstruct a view of the exercise ring. Mr. Holroyd explained that he had cleared some of those trees to create a better view and at the request of Mr. Goldfarb left all the white birches. Mr. Tracy said there is a view from the Holroyd’s porch down into the

meadow. Mr. Holroyd said he planted over 300 evergreens but that a large number did not survive.”

Mr. Coburn wondered if a permanent buffer possibly of evergreens should be required to screen the ring from the abutting properties. Mr. Falconer asked if that was what Mrs. Goldfarb would want or would an open view be preferred.

Mr. Conway saw no need for additional screening as the area along the property line would grow up and provide a natural buffer.

Mrs. Urban questioned whether the stonewall had been addressed outside of the commission? Mr. Coburn noted that it was against the regulations to remove a stonewall without a permit and wondered if it should be replaced. Mr. Falconer added stonewall (#13) as another modification to consider.

Mr. Falconer noted that item #3 (Trees) would be removed from the list of modifications.

- 4) There shall not be any horse trailers parked or unloaded on High Meadow Lane in order to utilize the equestrian exercise ring. **CHANGED**

This modification was changed to read: There shall not be any vehicles parked or unloaded on the parcel known as “the Meadow”.

- 5) There shall not be any structures constructed as an accessory use to the equestrian exercise ring in the parcel known as “the Meadow”. **CHANGED**

This modification was changed to read: There shall not be any structures constructed in the parcel known as “the Meadow”.

- 6) The equestrian exercise ring may not be used by people who rent stalls from the Holroyd’s. Discussion follows. **REMOVED.**

Discussion of #6 - Mr. Conway did not see a problem with boarders using the ring. Mr. Falconer was concerned that it would become a commercial enterprise. Mr. Coburn expressed concern about the horses getting exercise. Mr. Falconer noted that #2 restricts the ring to private use. Mr. Conway argued that all horse facility in the area have indoor and outdoor rings and that is part of boarding horses. Mr. Falconer argued that this property is restricted by a conservation easement.

Mr. Conway thought that question of use had been settled in court. Mr. Falconer explained that although the Holroyd’s own the property, they couldn’t do whatever they want on it.

Mr. Coburn felt that if #2 were followed there would be no need for #6 because the Holroyd’s and/or friends could exercise any horses (including boarders).

It was decided that section 6 was covered in section 2 and could be removed.

- 7) Landscaping as shown on the submitted Site Analysis Plan shall be planted. The berm will be graded and planted to provide a visual blocking of the equestrian exercise ring. Plantings will be done on the north side of the meadow and ring and ground cover will be used on the rest of the berm. **APPROVED.**

- 8) A cash, savings account or surety bond shall be submitted..... on the submitted Site Analysis Plan. Discussion follows: **REMOVED**.

Discussion of #8 - Mrs. Barton noted that since the ring is 95% complete, the bonding would only apply to the landscaping. Mr. Falconer said in this case the owners have a vested interest in the property and saw no need for this section.

- 9) The applicant pursuant to Section 9.9.1 of the Zoning Regulations shall obtain and maintain liability insurance..... **REMOVED**.

Discussion of #9 - It was decided that since the work is almost complete, this items was not necessary.

- 10) The permit pursuant to Section 9.9.4 of the Zoning Regulations shall be valid for a period of two years if the Commission finds that no violations have occurred.
APPROVED.

- 11) After the completion of the equestrian riding ring the permittee must perform storm-water runoff grab samples as recommended by Sean Hayden of the Northwest Conservation District. These storm water grab samples are to be analyzed for the standard list of compounds of concern required by the State of CT Storm-water General Permit. Discussion follows. **REMOVED**

Discussion of #11 - Mrs. Urban agreed with Mr. Hayden's recommendation. Ms. Peck thought it might be a good idea but would tie it to the two-year renewal of the permit. Mrs. Barton suggested that it could be done quarterly and might alleviate concerns about impact to the ground water. She felt that Mr. Hayden did not really have an issue with it. Mr. Coburn questioned whether it should be done by Wetlands, but did not see the harm in doing it. He noted that there has been a lot of rain and no complaints have been received.

Mr. Conway questioned the accuracy of such a test. Mr. Falconer felt that any water- soluble materials would have been washed away by now and did not feel that runoff grabs would be prudent.

It was decided that this item would be removed.

- 12) A final As-Built **will be** prepared by a Land Surveyor licensed by the State of CT of the equestrian exercise ring and any other improvements as shown on the Site Analysis Plan submitted with the application. **APPROVED**

Discussion of #12 – Mrs. Barton explained that a final As-Built insures that everything including the landscaping would be done and it provides a record for the file. She would require the As-Built before a final sign-off was given.

- 13) Stonewall – **REMOVED**

Discussion of #13 - Mrs. Barton reviewed photos from the file that had been submitted by Mr. Marcus on April 13, 2009. Aerial photos were also reviewed. Mrs. Urban expressed concern that the regulations had been violated by removing the stonewall without a permit. She questioned

whether the Commission should consider approval of something that is in violation. She felt that removal of the stonewall had nothing to do with the riding ring.

Mr. Falconer reiterated that the excavation of the riding ring had also been done without a permit. He said he did not have a problem with the stonewall. He was not sure if the stonewall had been used to create the berm.

Ms. Peck said she did not have a problem with the stonewall.

Mr. Coburn did not feel it was an historic stonewall, but rather a piled wall as a result of clearing the field. He agreed that it should not have been removed, nor should excavation of the ring have been done. He questioned whether a fine should be imposed in lieu of rebuilding it. He also questioned whether the applicant had endured enough loss due to litigation.

Mr. Falconer reminded the Commission that an after-the-fact application fee of \$340 could be applied.

Mr. Coburn said he did not have a problem with the stonewall as he did not feel it was historic.

Mr. Falconer noted that #13 Stonewall would be removed from the list of modifications.

Discussion of Item #2 (USE) continued - Mr. Falconer noted that in the Town Attorney's letter regarding open space, the parcel designated "the meadow" is restricted to recreation and agricultural use." Mr. Falconer expressed concern about turning this riding ring on "the meadow" into a commercial enterprise.

Mr. Conway felt that this is an agricultural use because the ring is involved with the boarding of horses. He explained that the State looks at the boarding of horses as an agricultural enterprise just like milking cows.

Mr. Falconer said he sees it as a business, not an agricultural enterprise. If it was on the applicant's property and not designated as open space with restrictions, he would not have a problem with it.

Mrs. Urban felt there is a discrepancy with the proposal that was presented. She reiterated that the application presented was for "private use". If that has changed, she sees that as a concern.

Mrs. Holroyd began to address the Commission and Mr. Falconer asked her to keep her comments to herself.

Mr. Falconer agreed with Mrs. Urban that the application was for a private use.

Mrs. Urban explained that she did not have a problem with the use of the parcel or with the exercise of horses on the parcel.

Mrs. Barton read a portion of the statement of use, which said "for private use". She also read from the April 13, 2009 minutes in which the agent (Attorney Tracy) for the applicant volunteered that the application was for private use. Mrs. Barton clarified that this was put in the draft motion because it was part of the statement of use.

Mrs. Urban said that if “for private use” were removed, there would have to be a whole new application. She noted that everyone who attended the public hearings heard it vocalized. Mrs. Urban did not feel that # 2 should be changed.

Mr. Coburn agreed with #2. His interpretation of #2 is that the Holroyd’s can exercise any of the horses that are boarded there.

Mr. Falconer said that somebody who strictly has a business relationship (with the Holroyd’s) should not be allowed to ride a horse on that meadow.

Ms. Peck agreed with #2 and would prefer not to see a commercial venture allowed.

Mr. Conway noted that the applicant is High Meadow Riding Club, LLC. He expressed concern that “private use” is being confused between the Holroyd’s and the Riding Club.

Mr. Falconer argued that it doesn’t matter who the applicant is, the use should not be commercial. This is not an example of private property that is unrestricted.

Mr. Conway argued that this is agricultural use like planting and selling corn.

Mrs. Urban agreed that it is an agricultural use. She continued that if the Holroyd’s had said they were establishing a commercial enterprise for their business, then the Commission would have known that’s what it was voting on. Instead, the record shows that it was presented for the private use of their daughter, family and friends. Mrs. Urban noted that the Commission debated a number of times the distinction between private use and commercial use and decided that private use does not entail a commercial enterprise.

Mr. Conway said he feels strongly that its agriculture and it could have been waived in the beginning. He explained that at one time the boarding of horses was not allowed because it was commercial, but that changed throughout the state and it was allowed under agriculture.

Mr. Falconer said he would agree if it was on their personal property and it didn’t have conservation restrictions on it. You could ride horses on it, but not put up a for-rent sign and do business on it.

Mr. Conway said it is an agriculture and recreational use, which is allowed.

The following changes were made to the draft motion: Remove #3, modify #4 and 5, remove #6, #8, #9, #11 and #13.

MOTION: To issue a special permit to Robert and Shelly Holroyd doing business as High Meadow Riding Club LLC subject to the following modifications:

- 1) Lighting: The equestrian exercise ring will be limited to daylight hours. The installation of exterior light fixtures in order to use the equestrian exercise ring at night is not permitted.
- 2) The use of the equestrian exercise ring is limited to private use and not commercial use. Private use is defined by the Commission as the use of the equestrian exercise ring by family and friends who do not have a business relationship with the Holroyd’s or the High Meadow Riding Club LLC.

- 3) There shall not be any parking of vehicles on the parcel known as “the Meadow”.
- 4) There shall not be any structures constructed on the parcel known as “the Meadow”
- 5) Landscaping as shown on the submitted Site Analysis Plan shall be planted. The berm will be graded and planted to provide a visual blocking of the equestrian exercise ring. Plantings will be done on the north side of the meadow and ring and ground cover will be used on the rest of the berm.
- 6) The permit pursuant to Section 9.9.4 of the Zoning Regulations shall be valid for a period of two years if the Commission finds that no violations have occurred.
- 7) A final As-Built Plan prepared by a Land Surveyor licensed in the State of CT of the equestrian exercise ring and any other improvements as shown on the Site Analysis Plan shall be submitted to the Zoning Enforcement Officer prior to the issuance of the Certificate of Zoning Compliance.

MOTION BY: Elaine Urban, seconded by James Conway. Approved 5-0.

Attorney Tracy asked if the parking restriction would apply to vehicles used for landscaping, etc. Mr. Falconer said it would not include vehicles involved in the construction.

Mrs. Holroyd began to address the Commission and was told by Mr. Falconer that this was not a public hearing and she could not make any further statements.

Stuart/160 Baker Road – Special Permit Application for a Bed and Breakfast

Chairman Falconer noted that the Public Hearing had been continued.

Winthrop/239 Good Hill Road – Special Permit - Home Enterprise application

Mrs. Eddy noted that a letter of withdrawal had been submitted. Mrs. Barton informed the Commission that the application had been withdrawn because the applicant did not want to provide an A-2 Survey and has rented warehouse space elsewhere. The applicant also requested that the fee from the first application be put toward a revised application for a barn. Mrs. Barton said she was not aware of a provision in the regulations to move fees and it was at the applicant’s own instigation. She informed the applicant that an A-2 would be needed to complete the revised application for the barn.

Building Lot Requirements — Mrs. Urban requested that discussion be tabled.

Utility Cabinets – Clarify Regulations

Mr. Falconer noted that a motion was needed to schedule a public hearing on the proposed amendment. Mrs. Barton said she asked to be included in a meeting with the Town Attorney, the First Selectman and CL& P to discuss the proposed regulation to determine if they would agree to honor it.

MOTION: To schedule a Public Hearing on September 14, 2009 to discuss a proposed addition to the Zoning Regulations concerning Utility Cabinets - Section 5.3.1.i.

MOTION BY: James Conway, seconded by Gary Coburn. Approved 5-0.

ZEO Report

Mrs. Barton submitted her staff report for July. She explained that Mr. Steers had done an addition on his house without a permit. He has been given ample opportunity to correct the situation and was warned that if he did not, a notice of violation would be necessary. Mr. St.

James, his neighbor, has been complaining about him. In cases where it is chronic, Mrs. Barton said she would like to start using the after-the-fact fee as a tool to correct flagrant violators.

Mrs. Barton noted that she had been reviewing the file on Fran Hodges. His recycling drop-off permit with DEP is up for renewal in 2010. According to neighbors, Mr. Hodge has acquired another container company, which may constitute an expansion of his business. Mr. Falconer said that the ZBA approval stands in place of the Zoning decision. Mrs. Barton said he's locked in time to what ZBA approved, but unfortunately they did not require an A-2 survey showing the location of each use on the site. He recently brought a roll-off container of recyclables to the transfer station. He had apparently been storing it on site and that is not allowed. His DEP permit only allows him to pick up and drop off but does not allow him to store material on site or it is considered a transfer station. Mrs. Barton said her next step would be to have DEP get involved. Since it is coming up on eight years at which time he has to provide a plan, she intends to send him a letter. The other issue is the parking on the street by employees, which could be dangerous in the winter.

Mrs. Barton noted that 32 High Meadow Lane refers to the Holroyd's, who had started work on an accessory apartment above the garage without permits. She is not planning to charge the an after-the-fact fee, but will send a letter stating that the next time they start work without permits they will be charged.

Mr. Conway asked about the status on Szymanski. Mrs. Barton said he has kept us busy with FOI requests. She has told the neighbors that she's working on it, but only has a limited number of hours.

Mrs. Barton noted that Mr. Lasky has filed for a permit to widen his driveway to satisfy his neighbor Mr. Sherman, which will put it closer to Mr. Birkins line.

Mrs. Barton noted that people have been calling about the cell tower on Transylvania. She was informed that the Siting Council would consider the Town's regulations and they would hold a community meeting. Mrs. Henry has asked her to review the regulations to be able to present the Town's issues, but no application has been received as yet. She noted a letter that was included in the meeting packet from the Ottery Group that reviews tower sites for effect on historic properties on the Federal Registry.

Mr. Falconer asked about the status of the nonconforming building next to the existing cell tower. Mrs. Barton said it was on her list to do. She noted that Mrs. Henry has asked about erecting an eight foot fence to screen the transfer station from the road which would require a variance if it exceeds six feet.

Mrs. Barton discussed deer fence, which to be effective should be 8' high. She offered to get language and bring it back to the Commission for further discussion at next month's meeting.

Restaurants as permitted uses by Special Permit

Mrs. Barton noted that she had met with Bonnie Bradley who has requested that the Commission amend the restaurant regulation. Mr. Kellerman and Mr. Coburn offered proposed amendment to Section 4.7.5 of the regulations as well as definitions. Mr. Falconer felt that drive-thru type restaurants should be prohibited. Mrs. Barton noted that seating limits would be based on the septic system. Mr. Falconer noted that the biggest limitation would be the serving of alcohol and that question was voted down twice in town meetings. Mr. Falconer asked Mr. Kellerman and

Coburn to form a subcommittee to work on this amendment. Mr. Kellerman asked Mrs. Barton to combine both of their proposals and email it back to them.

Limiting the number of enterprises allowed on properties in Zone D

Mr. Falconer asked if the Commission wished to consider this. Right now there is no limit on the number allowed. He asked if the size of the parcel should be considered.

Chairman's Report

Mr. Falconer noted that he had nothing to report.

Communications:

Mr. Falconer confirmed the Commission's receipt of the communication items.

Mrs. Barton noted the Cell Town application for the Perkins Road, Southbury site. Members were invited to review it.

Mrs. Eddy noted that the Commission has been invited to a meeting with the Board of Selectman on Monday, August 17th at 7:30 p.m. Combining the Planning and Zoning Commissions will be addressed. Mr. Falconer asked that all members attend this meeting.

MOTION: To adjourn the meeting at 9:25 p.m.

MOTION BY: By Gary Coburn, seconded by Mary Elizabeth Peck and unanimously approved.

Respectfully submitted,

Karen Eddy

Karen Eddy
Land Use Administrator

CC: Barbara Henry, Peter Hurlbut, Russell Dirienzo, Robert Lowe, Robert Munson, Gary Steinman, Gail McTaggart

Minutes are subject to approval by the Roxbury Zoning Commission