

The Board consisted of:

Jeffrey P. Klofft, Chairman
Elizabeth A. Taylor, Clerk
Nancy G. Rubenstein
Stephen A. Garanin, Associate
Benjamin D. Stevenson, Associate

The meeting was called to order by the Chairman, Mr. Klofft. The first item of business, a continuation of the public hearing for Omnipoint Communications, 578 Boston Post Road, Case 06-36 was rescheduled to June 19, 2007 for lack of a quorum of the members sitting for the previous hearings.

The Villages at Old County Road – 05-28 – Request for Determination that Proposed Changes be deemed insubstantial

Present: Attorney Joshua M. Fox, Ben Stevens, Applicant

The Board was in receipt of the following:

- Letter dated April 24, 2007 from Attorney Fox with supporting documentation for proposed change
- Letter dated May 2, 2007 from Attorney Fox extending the 20-day requirement for determination by the Board
- Letter dated May 10, 2007 from the Design Review Board
- Letter dated May 11, 2007 from the Planning Board
- Memo dated May 15, 2007 from Bruce Saluk & Associates, Engineer, to Ben Stevens (submitted at this meeting)

Mr. Fox noted that the ZBA granted a comprehensive permit for a 37-unit project. The intent of this modification is to increase 6 of the single-car garage units to 2-car garage units. The end results are small changes to the footprints and locations, a net decrease in the impervious surface of the project and no further encroachments into the setbacks.

The sole reason for this request is for marketability. Mr. Fox said Mr. Stevens has done due diligence and feels that he is at a severe competitive disadvantage in the market – that someone paying in excess of \$500K is going to expect a 2-car garage.

Mr. Fox said the Design Review Board reviewed this modification and had no objections, but recommended some additional mitigation efforts should be required. Additionally, the Planning Board had no objections as noted in their memo.

Mr. Fox said the mechanism for requesting approval is set forth in 760CMR 3103.3 which permits the ZBA to approve an “insubstantial” change to a comprehensive permit without holding a public hearing.

Mr. Fox said there is not a lot of case law as to what “insubstantial” is. There is a list in CMR which deals with what ordinarily might be an insubstantial change. He read from that list.

Mr. Fox felt that what was being asked for is minor in nature. He said Mr. Stevens has been working with the DRB and will continue to do so with respect to this matter.

Mr. Stevens presented the plan and described the changes proposed. He said the changes would affect units 1 through 18. He said every other project in Sudbury, and every project in Southborough, Hudson, and new Wayland Commons are all 2-car garages. He said anyone looking in this area at this type of project is looking at a 2-car garage. He said there is a definite softening in the market between now and when the project was started which will make selling one-car garages difficult. The net increase in square footage with this proposed change would be less than 1%.

Units 3,4,9,12,15 & 16 would have one 16-foot door instead of one 9-foot door, Units 1,8,13, & 18 would have one 16-foot door instead of 2 doors, and the footprint of Units 1,3,4,8,9,12,13,15,16 & 18 will change slightly as shown on the Unit Specifics sheet submitted with this request.

Mr. Stevens said at a minimum, he is within the setbacks for the original plan. Some units have been pulled in. He pointed out which units have changed. Parking areas and landscape areas have not changed. He submitted a letter from Bruce Saluk & Associates dated May 15, 2007 which states that the impervious areas would actually decrease by about 400 s.f.

The modification was reviewed by the DRB. There were some instances where they liked the 2-car version. Some of the 2-car garages are now turned to the side which they supported. They did have some suggestions with the center units in terms of design which he agreed to change.

Mr. Garanin said there is 40 feet of garage door width for the unit clusters which he felt was a lot of garage door. He said this is what the Board tried to eliminate with the initial application. He asked whether there was some type of door that would look less like a door to keep the look of a building.

Mr. Stevens said none of the units involved face the main entrance to the development. He said the DRB had the same concerns; however, their concern was not with seeing the doors since these doors will be decorative – raised panel with glass inserts. They did like the diversity in the size of the doors which breaks it up. In addition, the DRB felt that with the entrances on the side one sees a nice detail. They were less concerned about the end units than some of the middle units to avoid a repeating pattern.

Ms. Taylor asked whether there was any case law which would support this request. Mr. Fox said there was none – it was up to the Board’s discretion.

Ms. Rubenstein said the DRB's letter recommends further mitigation efforts and her understanding was that they would want to see more work done on this.

Ms. Stevens said they came up with some suggestions at their meeting; however, they have not been incorporated into the modification plan. He would be willing to do that and present the plan but would also be willing to go back to them one more time before coming back to the ZBA.

He noted that Condition 16 of the Comprehensive Permit states that he cannot get a building permit until the DRB has fully inspected a stamped plan. Even if this Board votes it insubstantial, he still has to go back to the DRB.

Mr. Klofft had a question with regard to the driveways as a result of the changes. Mr. Stevens said they will shorter by about 2 ½ feet but will still be adequate for car lengths.

Discussion followed on process. Mr. Fox said if the Board felt more comfortable, the applicant would grant an extension to allow Mr. Stevens to go back to the DRB, make the final changes and then return to the ZBA for a vote.

A poll of the Board indicated that they felt the changes insubstantial, but they would like to see the results of Mr. Stevens' meeting with the DRB, get their comments, and review the plans before voting.

The meeting was continued to May 30, 2007, 7:15PM in the Lower Town Hall.

Jeffrey P. Klofft, Chairman

Elizabeth A. Taylor, Clerk

Nancy G. Rubenstein

Stephen A. Garanin

Benjamin D. Stevenson, Associate

