

**AMESBURY PLANNING BOARD  
AMESBURY CITY HALL  
62 FRIEND STREET  
May 13, 2013**

Meeting is called to order at 7: 17 P.M.

**MEMBERS PRESENT:** Howard Dalton, Chair, Ted Semesnyei, Karen Solstad, David Frick,  
Stephen Dunford, Ara Sanentz.

**MEMBERS ABSENT:** David Dragonas

**ALSO PRESENT:** Nipun Jain, City Planner, Paul Bibaud, Recording Secretary.

**MINUTES:**

Dec. 17, 2012 Motion by Karen Solstad to approve, seconded by Ted Semesnyei. Five in favor, Howard Dalton who abstained.

Jan. 14, 2013 Motion by Stephen Dunford to approve with amendments, seconded by Ara Sanentz. Five in favor, Howard Dalton abstained.

Mar. 25, 2013 Continued.

Apr. 22, 2013 Continued.

**SIGN APPLICATION:**

**SmartMart Auto – 41 Hillside Ave.**

**Nipun Jain:** When the application was submitted originally, the board had questions about the submittals re: the size of the letters and what had been originally approved for this site and how come these signs are the way they are and put in place before being approved. After research, we had a similar situation the last time around, as far as amount of information available on the signage. The board had spent a lot of time talking to the prior business owner about what to put on the sign or not. As per sign regulations, the requirement is that no more than 50 % of the total sign surface can be used for signage. Without having the dimensions on this, it appears visually that both the wall sign and the free standing sign is more than 50 %, which makes it non-conforming and not in compliance. Last time, the applicant got over that by removing some ancillary information and phone numbers. There are also some flags, which according to the building inspector, are not legal. Owner comes to podium.

**Najib Daaboul:** Owner of Smart Mart Auto at 41 Hillside Avenue. The sign maker was Rick Farren. I understand about the sign issues, but the prior owner's sign had more coverage than my sign. If I knew the problem before, it would've been easier to avoid.

**Howard Dalton:** But when you replace a sign, it has to come into compliance with the zoning. That's the problem.

**Nipun Jain:** Part of the challenge on the free standing sign was that it is a non-conforming sign. It's only 20 square feet. The board may allow up to 40 square feet if there are multiple tenants in the building. So part of the discussion at that time in allowing what was there was looking at if the sign had some visual relief. That's why the board did not ask them to go get a finding from the ZBA, because they had provided some visual relief, as far as not so much information on the signage. Do you have photographs of the previous sign?

**Mr. Daaboul:** No. I could probably be able to get some.

**David Frick:** Are you familiar with what the regulations are, as far as what signage you can have there and how many square feet?

**Mr. Daaboul:** I took down more than I put up, so I figured when I took over, the business was already current. I figured I'm putting less than what was there. It was a lot neater. The appearance was improved. So I figured less signage would be alright. I don't know what the regulations are. This business transition happened in early October, 2012.

**Ted Semesnyei:** Was the previous owner ever made aware that he was in non-compliance?

**Nipun Jain:** I can't speak to that, I can only speak to the fact of what the board approved, which was a free standing sign face replacement, then on the building, there were probably two signs that were approved instead of one large sign. What the previous owner had was one single face with 3 or 4 items on it as far as ancillary services, and the other one was the name of the business. In this application, what you have is, on the building sign, all of that information is now put on that. Part of the discussion was, it doesn't serve any purpose, the purpose of the sign bylaw is to make signs readable, less cluttered, simple. That is why it was broken up into two pieces.

**Mr. Daaboul:** The other thing is, when I put up the sign, Denis Nadeau (building inspector) came by. We were putting up that sign and no one ever said anything about needing a permit. Right then, someone should've brought it to my attention. I was only made aware of it probably two months after everything was set up that I needed a permit.

**Nipun Jain:** In speaking to Denis, we had asked him the question of why is this application before us after the signs had been put up. He informed us that he thought that the business owner had already received approval. When he found out that no approval had been granted for this particular business, he asked Mr. Daaboul to submit an application.

**David Frick:** Unfortunately, we can't allow somebody to set a precedent of not following the sign bylaws, because then other people would do the same thing. Ignorance of the law is no excuse. I would suggest that you use 5 % of the building front for signage, and 50% of that space can have stuff on there on the total sign. The free standing is 20 square feet, it appears that one is 36 square feet, and 50% of that sign surface can be used for lettering / characters. I suggest you go back and redesign this, then bring it back in front of us.

**Nipun Jain:** I would say either the applicant can withdraw the application, or the board can deny it based on the fact it does not comply.

**Howard Dalton:** We can't waive the zoning, because we have no power to do that. You'd have to go to the zoning board of appeals to get a variance to keep these signs.

**Mr. Daaboul:** The free standing sign has been there for years. I'm not changing the dimensions. I changed the front of it. I made this bad reputation property look 100 times better.

**Nipun Jain:** That's fine and your opinion, but what the board is saying is yes, it is an existing sign, you're doing a face replacement, you can do that...but it can be no more than 50% of its face area. So if you're using a 36 square foot free standing sign total area, then no more than 18 square feet of that area can be used for letters.

**Mr. Daaboul:** I understand, but the guy before me and the guy before him had more lettering than me.

**Howard Dalton:** At this point, what went before is not being discussed. We're allowing the 36 square feet, but only 18 square feet can be for lettering.

**David Frick:** At this point, we have to ask whether or not you want to withdraw your application and start from scratch or we just have to move forward and deny it. That's all we can do.

**Mr. Daaboul:** I'm definitely going to have to appeal it, if that's the way I have to do it.

**Howard Dalton:** Or bring the sign guy in and we can all meet.

**David Frick:** It sounds like he wants us to deny it so he can appeal. Is that correct?

**Mr. Daaboul:** If you don't approve it, yeah. The sign that is on there, it cost \$3,000 to put up. I'm not willing to spend another \$3,000 to have it remade. It would be easier for me to appeal it and leave that sign there. If I appeal this, what is the process?

**Nipun Jain:** You'd have to talk to the building inspector about it. If the person is not willing to entertain any options...

**Howard Dalton:** At this point, the signs are in non-compliance, so we'll have to deny.

**Ara Sanentz: Motion** to deny the sign application for both signs, free standing and building signs, the lettering and the size and lettering on the building sign for Smart Mart Auto at 41 Hillside Avenue as non-conforming regarding area of lettering on the signs are greater than 50% of surface area. Motion is seconded by David Frick.

**Mr. Daaboul:** I asked Denis when he showed up when I was installing the signs. I asked if everything was ok? He goes "as long as you're not changing the structure of anything, you should be alright. Now if someone brought that to my attention, it would've been a lot less costly.

**Nipun Jain:** Your sign maker should have brought it to your attention. He should have read the sign bylaw and found out what is allowed. If the bylaw says that only 50% of the surface area can be used, then that is what he should've told you. If you asked him "no, this is what I want on the sign," then he will do it. It's his fault, not Denis' fault.

**Howard Dalton:** You have two options. You can appeal the decision, and they may or may not allow it. Or you can eliminate some wording on the signs.

**Mr. Daaboul:** What would make you guys want to get this approved? I'm willing to work with you, but it sounds like I have to take these down and build other signs, that I have no choice.

**Howard Dalton:** I would go back on your sign maker. Its part of his job to know the bylaws are read and that what he produces for signs meet regulations. Is this a plywood sign or plastic that is silk screened.

**Mr. Daaboul:** Plastic.

**Howard Dalton:** I would get on the agenda for the zoning board of appeals, to make sure you get on the June agenda.

**Karen Solstad:** I would like to **amend the motion** to include that there was insufficient information on the application to determine the maximum size for the sign on the building.

**Ara Sanentz:** I agree. I make a motion as per Karen.

Vote on the motion as amended was unanimous.

**Nipun Jain:** OK, the next step would be that the board sends this decision to Denis, who as zoning compliance officer will revoke the permit for the signs. Mr. Daaboul would then appeal to the ZBA, the revocation of the building permit for the signs.

## **CONTINUED PUBLIC HEARINGS:**

### **SITE PLAN REVIEW – SUMMIT AT BAILEY'S POND**

**Nipun Jain:** Update on where we were: we had the Planning Board engineering review consultant finish their review, it was discussed on April 22. At that time, the members sitting on this hearing said we want to discuss one aspect of the project which had been put on hold thus far, which was the architectural design. We set up a subcommittee meeting which included Karen Solstad and Ted Semesnyei. We met last Tuesday. I can summarize our discussion with the applicant. The other aspect is, I spoke with Sean Malone early today about the hearing. At this time, on March 11, we had 4 members sitting on this hearing. On April 22, of those four

members, only three were present. We thought at the time that we could not have that missing person sign the waiver and certification and come up to speed with the proceedings of that hearing. But I think that can be done and that person can do it. But that would still mean only four members sitting on that hearing. I suggested to Sean that staff is not of the opinion that there is any more evidence or deliberation needed on this project, that we have all we need. But in the past, the Planning Board has always posted a new hearing as a procedural step, so that all of the members can take a vote on it. After that, I spoke with the applicant's attorney, Jeff Rolloff, and also spoke with city counsel John Goldrosen of Kopelman and Page, and they too spoke among themselves as well. I believe Mr. Rolloff's point of view was that they would like to move forward with the current situation, because they were concerned that the Planning Board might ask for more information at the next meeting at the new hearing. I told them that that is not our intent or intent of the Planning Board. But that is where it stands. The hearing has not been closed yet. I also explained to the applicant and attorney that the Planning Board standard operating procedure on such involved projects is, once they believe all of the information that they need to deliberate has been received, they ask staff to work on a draft decision and then once they have that in hand, they finish deliberations, close the hearing, and then issue a final decision. It's not like they close the hearing and then get into deliberation.

**Howard Dalton:** Are we involved in just the site plan?

**Nipun Jain:** Yes.

**Stephen Dunford:** Which ones are currently eligible to vote?

**Nipun Jain:** Right now, eligible voters are David Frick, Ted Semesnyei, Karen Solstad. Howard Dalton was, but had to leave the meeting.

**Howard Dalton:** Nothing is going to happen until the June 10, 2013 meeting. If we re-advertise, then you have the strength of the full board to vote on it. If you don't re-advertise, then I catch up to speed on the hearing I missed, then you'll need a unanimous vote of the four members present that can vote on it.

**Sean Malone, Oak Consulting Group:** The applicant wishes to move forward with all the information presented to date with the four members on the June 10 meeting. We'd like to close the hearing tonight.

**Nipun Jain:** That's what the chair was just saying, Sean. In order to move forward with what you are asking, the chair would have to have that certification signed and delivered to the clerk, prior to closing, because in order to act on the project, they can't act on it without those four members sitting.

**Sean Malone:** Our counsel (Jeff) advised us that it is required prior to the vote, not prior to closing.

**David Frick:** If we're not going to vote until next month anyway, and we're not sure, why wouldn't we just keep the meeting open until then? What's the problem with doing that? I also don't think it is up to the applicant to decide when to close the public hearing or not. That is up to the Planning Board to decide that.

**Howard Dalton:** If our counsel is recommending that we keep it open until I review the Mullen rule, then that is what we're going to do. The same goes for advertising it.

**Nipun Jain:** Because this was only discussed today, there wasn't enough time for our counsel to look at it or study case law. So if they find that you can still move forward with the four members, fine. Even if it is posted, we don't have to open that hearing. But if you don't do it now, then if that is the way we have to go, then we won't be able to open and close on June 10. It is in two parts. 1. That the hearing gets continued to June 10, where we stand with four members, and we move on that. But if the other option that Mr. Dalton suggests; 2. That we post

the advertisement, we have a fall back, in case the city counsel comes back and says no, you have to have the full board for that matter. I also told Sean that we wouldn't be asking for any fees.

**Karen Solstad:** So the question is just advertising the June 10 hearing. I would like to move forward this evening with information from the discussion we had, that you could share with the board, when we met to talk about the architectural design review.

**Howard Dalton:** We can't really input any information because you only have three sitting members, so this meeting is more to discuss future steps.

**Nipun Jain:** I can present what we discussed, but you wouldn't be able to discuss it.

**David Frick:** What about the other members of the board that are not part of the four yet? Can they go back and read the minutes as well, during that period, so that they can partake in this?

**Nipun Jain:** I would have to go back and check. Mullen rule is only if they miss one meeting.

**Ara Sanantz: Motion** to continue the public hearing to June 10, and to advertise it. Motion is seconded by Ted Semesnyei. Vote was unanimous.

**Karen Solstad:** Is there any other information on this that should be shared with the Planning Board about any other permits or board's actions? I know we've continued this hearing.

**Nipun Jain:** I can give it as an update. Conservation Commission has issued a decision with conditions and the final order will be issued at their early June meeting. They have closed the public hearing. They asked the agent to write the order. So June 3, 2013 is when they are issuing that order. We'll have their order for our June 10 meeting. But we also have the information from the applicant in response to the comments of the Conservation Commission's consultant. To summarize what happened tonight: The meeting was supposed to be either moving towards closure of the evidence portion of the hearing, and for the board to start deliberation. But because of the number of people that need to be present on the continued hearing, we lacked quorum on that. So the board could not deliberate or take any action on the matter. It's a Site Plan Review. The board's requirement is that four members be able to vote on it. We only had three members sitting on the hearing. So one member can sign the Mullen Rule waiver and get back on it, but can only do that after signing the Mullen Rule waiver step has been taken.

## **ADMINISTRATIVE:**

### **206 LIONS MOUTH ROAD**

**Nipun Jain:** The board had started to include a form that, prior to requesting occupancy permits from the building inspector, that they get sign offs from all the departments. The challenge is, practically speaking, you cannot have all the conditions met, and to hold up occupancy is kind of difficult. What I try to do is, make sure that the intent of the Planning Board's decision and some of the more important aspects of the project are at least done, so it doesn't become an issue. Once the occupancy is issued, the property is transferred, and if there are any issues associated with that particular lot that need to be addressed, and it is not addressed, then the developer can easily say "I don't even control the property now. You should have brought it to my attention long ago."

So we released pretty much all lots for sale, and the planning office has signed off on all lots for occupancy except for lot 9. The reason we're holding on to lot 9 is because it appears, from the board's perspective, they're not satisfied with the trail situation. I didn't want to sign off on lot 9 because that is adjacent to the trail. If you look at the plan, you see it is difficult to identify where the property line for lot 9 abuts the supposed trail. With that in mind, I went to the site with Denis Nadeau (building inspector), Peter Manor (town engineer), and John Lopez (Conservation

Commission agent) to identify the trail and to decide how to create a sense of privacy through either landscaping or basic fencing. Denis suggested a split rail fence. As far as getting to the trail from Quimby Lane, as Karen Solstad has pointed out, there seems to be a steep slope, and that's not very accessible, even for experienced trail walkers. One suggestion there was to have 4 foot landings with railroad ties making pads to step from one to the next. The pads might have grass to hold it together, and to not allow erosion into the constructed wetlands. Four foot high pads would get you to the trail where it is fairly level. Then where the trail should be, Buzz Couillard should at least clear out the brush, tree trunks, etc. to make it a walkable path. What we really couldn't conclude was whether there should be stone dust or something else there. Mulch would wash away and be a waste of money and effort. If you leave it, the trail would grow back in no time. So stone dust is the minimum of what you'd have to do. Or, you could stake it every eight feet, so people know where the trail runs. We've looked at what would work. Every time we release a lot for occupancy, we lose more leverage. As work gets completed associated with the subdivision, whether its landscaping, sidewalks, or roadway, Mr. Couillard can come in and request release of the bond, and the board would have no ability to hold that bond because he has not complied with any particular conditions. That's part of the update. I wanted to hear if there was anything that the Planning Board wanted me to take back or tell the developer, i.e. that I'm not going to sign off on the occupancy for lot 9 until A,B, or C have or have not been done. Buzz was supposed to have completed all improvements prior to release of lots for occupancy. Technically, with the trail not complete to the satisfaction of the board, that would be my position in denying release of lot 9 for occupancy, until the trail is satisfactory. Since this is an informal update, you can't take a vote, because it wouldn't be fair, since the developer is not present.

**Ara Sanentz:** Can you draw up a letter, signed by all four who went on that site visit and have it for us for the next meeting?

**Nipun Jain:** I will, yes.

#### **PLANNED PRODUCTION STRATEGY:**

**Nipun Jain:** We had a healthy debate in February. I got comments from Ted Semesnyei and Karen Solstad. The comments were global, they were not isolated, so it is taking longer that originally anticipated. We need to finish it so that we can meet the state's deadline. We had a hearing, discussed some thoughts, now finished product is needed. I hope to sit down with Ted Semesnyei to capture what the board wants to say, and get the finished product in enough time so everyone can go through it electronically prior to our next meeting on June 10.

**Stephen Dunford:** Ted, we should have a meeting.

**Nipun Jain:** We can send e-mails around to coordinate that. The more assistance I can get in wrapping it up, the better.

**Motion** to adjourn by Stephen Dunford. Motion is seconded by Ara Sanentz. Unanimous.

**Meeting is adjourned 8:55 P.M.**