

APPROVED

PLANNING COMMISSION
PUBLIC HEARING MINUTES

Monday, November 14, 2011
Multimedia Room – Mulvey Municipal Center

Members Present: Marilyn Ozols, Chair; Phil Bassett, Sec.; Carole Ketelsen; Eric Reeve, Marie Farrell (alt. seated), Robert Furno (alt.) and Lisbeth Waldron (alt.)

Also Present: Meg Parulis, Town Planner; Heidi Wallace, Recording Secretary, Thomas Elliot, Eric Anderson, Peter and Beverly Schirmeier, Atty. Ed Cassella,

Chairman Ozols opened the public hearing at 7:01 p.m. in the Multimedia Room of Mulvey Municipal Center.

1. P2011-002-R Malabar Estates Re-Subdivision - Open Space Modification and Lot Line Revision - Malabar Estates (Lot 7), 76 Malabar Drive, Parcel ID's 109/016 & 109/015, Applicants: Westbrook Land Conservation Trust and P. Schirmeier

Ms. Ozols explained that this was a public hearing for a resubdivision, by definition, because it involves committed open space. The public hearing was noticed in the Hartford Courant.

Thomas Elliot, representative for the Westbrook Land Trust, explained that this was a joint application by Peter Schirmeier, who is the owner of the house lot, and the Westbrook Land Conservation Trust, owner of the Open Space parcel. Mr. Elliot referenced a letter dated 8/31/11 submitted with this application. Mr. Elliot explained that Malabar subdivision was established in 1967, which had a problem with the road layout. The first resubdivision involved the lots on the north and south side of the road because the actual road was not constructed within the road right of way.

The open space, with a 50 foot right of way from Malabar Rd., was deeded to the Land Trust in 1977. The house was built in 1978, Mr. Schirmeier subsequently bought the lot and house after it was constructed. There was a family room and a porch added in 1980 and 1986, with building permits. It was not until August 2010, after the GIS mapping went on-line, that a problem was discovered. Mr. Schirmeier hired a surveyor from Anderson Engineering, the same firm that did the original survey, so there was some continuity of information. The surveyor confirmed that the online mapping was correct. Eric Anderson, of Anderson Engineering and Surveying Associates of Guilford, stated that his firm marked out the building lots in the 1970's, and discovered that the road had been constructed between 25 and 50 feet away from where it belonged. A resubdivision was applied for in 1977. Earlier this year, Mr. Anderson returned to the site and discovered that the Schirmeier house was located partially on Open Space land owned by the Land Trust. Several different scenarios were considered to make the lot conforming. The Westbrook Land Conservation Trust worked with Mr. Anderson to come up with a solution that met Zoning & Health requirements for side line, rear line and sanitary system by moving the lot line. Mr. Elliot explained that the property line proposed by Mr. Anderson was reviewed with the Westbrook Land Conservation Trust, and the parties negotiated to come up with a property transfer agreement.

The total area of the 23- lot subdivision, including the open space, is 57.13 acres which does not include the roads. The open space provided in the subdivision was 4.22 acres or only 7.39%, which is less than the currently required minimum of 10% open space. Lot 9 was conveyed to Westbrook Land Conservation Trust. The property, conveyed by Charles and Lillian Messerschmidt, consisting of 2.01 acres, became part of the combined open space. the area of total open space available to meet subdivision requirements for the proposed transfer of land to Lot 7, including the remaining portion of open space, would equal 5.81 acres for 10.17%. This represents an increase in committed open space for the Malabar subdivision to over the 10% guideline. The Westbrook Land Conservation Trust holds this open space, as well as the portion committed from the Town.

Mr. Elliot stated that it would be agreeable to commit both parcels as part of the restricted open space for the Malabar subdivision, which would provide 5.81 acres or 10.17%. Ms. Ozols pointed out that the newest revision of the plans shows Lot 9 labeled as open space as opposed to a building lot. Ms. Parulis stated that there could be some difficulty in interpreting the map, especially for someone such as the assessor or the Town's digital mapping professionals. The applicants need to distinguish that the old property line, going through the house, is being

replaced with a new property line. The current plan could be mistakenly interpreted, and it could appear that another small lot was being created.

Attorney Ed Cassella, who represented the Schirmeiers, stated that upon conveyance, they will make certain that the properties are merged together, showing the portion that is being conveyed together with the former lot 7 shown on the old maps. This will be reflected on the deed as well. Mr. Elliot continued that there were two proposed deeds submitted to the Commission for review: the transfer of land from the combination with Lot 7; and a deed restriction for Lot 9 to restrict that as a portion of the open space. Those documents will require review by the Planning Commission counsel.

Mr. Bassett requested that a note be placed on the dotted line stating that it represented the old property line, and is no longer valid. Ms. Ozols stated that a modification that should be noted is that a monument will be located at every turning point on the irregularly-shaped portion of the lot. Because it is an irregularly shaped intrusion into Land Trust property, Ms. Ozols wanted to make certain that in the future the line can be located. Ms. Ketelsen expressed concern over the loss of part of the right-of-way and access to the lower lot. Mr. Elliot explained that the total width of that access was originally 50 feet, which is wider than is customary. Mr. Elliot explained that normally open space access required 25 feet, and a trail or access required less than 50 feet. From the Westbrook Land Conservation Trust standpoint, there is access to the property from two sides.

Ms. Ozols opened the meeting for comments from the public. Lisa Donadio, from 224 Stevenstown Road, questioned how this proposal would affect her property. Mr. Elliot explained that her property bordered the back side of the open space, which will remain open space, and her property boundary will not be changed with the Land Conservation Trust Open Space. The only change proposed is within the boundaries of the Land Trust and Mr. Schirmeier's lot, and does not affect any other abutting lots.

Mr. Schirmeier stated that his only concern was that he would not be able to sell the house in the future because he does not have access, and that 90% of the house is on other land. He asked for support from the Planning Commission. Mr. Elliot explained that the two parties worked together to rectify a situation that was done inadvertently and without any intent back in the 1970's, before Mr. Schirmeier owned the property in 1978. The two parties were proposing to correct the situation and still meet the interest of the Town subdivision open space, the Westbrook Land Conservation Trust, and Mr. and Mrs. Schirmeier.

Mr. Furno asked whether the total area of the open space includes the right of way. Mr. Elliot responded that it included all the remaining portion of the right of way, the remainder of the original open space, plus the total amount of what is deemed as Lot 9. Mr. Furno asked what was involved in maintaining the right of way of the western right of way. Mr. Elliot replied that the access is not maintained because it is in wetland, is under water, and functions as undisturbed buffer. There are no improved trails or public access in that location. Mr. Furno raised concern about the irregularly-shaped lot, and worried that this may set a precedent. Ms. Ozols stated that this was a unique and difficult circumstance, and the parties have spent a year in negotiations trying to figure out how to fix a problem that they discovered long after it occurred.

Ms. Ozols asked if there were any further questions or comments from the public or the Commission members. Hearing none, the public hearing was closed at 7:27 p.m.

Respectfully submitted,

Heidi K. Wallace
Acting Recording Secretary