

# November 6, 2002

MEMBERS PRESENT: Mrs. Averill, Mr. Bender, Mr. Byerly, Mr. Charles

ALTERNATES PRESENT: Mr. Rimsky, Mrs. Roberts, Mr. Sabin

MEMBER ABSENT: Mr. Buck

STAFF PRESENT: Mrs. Hill, Mrs. Luckey

ALSO PRESENT: Atty. Fairbairn, Atty. Kelly, Ms. Schneider, Ms. Uruburu, Press

Mr. Bender called the meeting to order at 7:34 p.m. He seated Members Averill, Bender, Byerly, and Charles and Alternate Rimsky for Mr. Buck.

Consideration of the Minutes

MOTION: To accept the 10/1/02 Regular Meeting Minutes as presented. By Mr. Charles, seconded by Mrs. Averill, and passed 5-0.

MOTION: To accept the 10/15/02 Special Meeting Minutes as presented. By Mr. Byerly, seconded by Mr. Rimsky, and passed 5-0.

MOTION: To include subsequent business not already posted on the agenda. By Mrs. Averill, seconded by Mr. Byerly, and passed 5-0.

Other Business

## **Nassar, Urubura, Schneider/121 West Church Hill Road/Request to Modify Subdivision Conservation Easement**

Atty. Fairbairn represented the property owners and Atty. Kelly represented the purchasers of Lot #2.

Mrs. Roberts arrived at this point.

Atty. Kelly had previously submitted the 10/30/02 letter requesting a modification of the conservation easement and this had been circulated prior to the meeting. He proposed to add the following wording to paragraph 4 of the easement: "The right of the owner of Lot #2 to cut, trim, top, plant, or otherwise maintain the trees and vegetation in that portion of Conservation Easement Area C which is not closer than one hundred fifty (150') feet from any portion of the property line adjoining West Church Hill Road." This revision, he said would accomplish the goals set by the Commission to preserve the streetscape and the rural character of West Church Hill Road, but would permit the owner to selectively clear for a view to the northwest. He also asked the Commission for relief from the provision requiring the owners to give notice of and get approval for maintenance work within this portion of the easement area. He presented a sketch map showing the area for which he was seeking relief and added that no clear cutting would be permitted there.

Mr. Bender noted he had discussed this matter previously with Atty. Kelly and the proposed language was the result. He said he found nothing objectionable to the request to add this paragraph to item 4, but he thought the Commission might want to discuss the request to waive the notification requirement.

Mrs. Roberts read the section of the 10/1/02 minutes pertaining to the purpose of the conservation easement. She objected to the proposed change because the Commission had purposely reviewed the easement as it was originally written and thought that it was well drafted and would accomplish Planning's goals for open space preservation in this area. She asked what would happen if future owners

also wanted revisions and thought if changes to conservation easements were allowed, it would jeopardize Planning's intentions for open space preservation.

Mr. Byerly voiced his concern about maintenance of the easements in the future. He thought minor trimming in this area would be OK, but thought it should be monitored.

Mr. Bender asked the Commissioners to consider how they would have voted if the original proposal was submitted in this form.

Mrs. Roberts stated she would have had a problem with allowing the topping of trees. She noted the Commission's goal in this case was to preserve rural character and to prevent the clearing of the under story to make a "New York forest," which could result in erosion problems on the steep slopes.

Atty. Fairbairn noted no structures would be permitted in this area, the amount of vegetation that could be cut would still be limited, and this area could not be viewed from the road.

Mr. Charles was not sure the proposed language would adequately protect the open space. He particularly objected to elimination of the notice requirement because without it he did not see how the land use standards for open space would be maintained. He was also concerned that future owners might want additional revisions, which he felt would further undermine the Commission's goals.

Atty. Fairbairn thought it was not important who might own the land in the future, but that what was important was what could be done in the easement area, which he said would remain basically unchanged.

Mr. Sabin noted that if seated he would have recused himself as he had been asked by the buyers to look at this property. He thought both the goals of the Commission and the property owners could be met. He said that any work in the area in question would not be seen from the road as there is a rapid 6 to 8 ft. rise off West Church Hill Road, then a stone wall, and then another rise. He thought if trees were selectively cut in this area and the under story left in tact for natural cover there would be no negative impact.

Mr. Charles asked what would happen to the under story when the tree cover was removed. Mr. Sabin said there would be some damage, but it would recover.

Mr. Sabin noted the Planning Commission was inexperienced in administering conservation easements and so their alteration would become necessary at times on a case by case basis. In this case he recommended the boundaries of the easement areas remain as originally approved, but the property owners be permitted to selectively clear for views. He thought it was not realistic to expect that property owners would not want views.

Mr. Rimsky noted the approved conservation easement preserves open space as required by the Subdivision Regulations, but also protects the value of the adjoining lot. He, too, thought the original wording had been well thought out. If a revision were allowed, he said, the Commission should still insist on prior notification and the right to monitor the work done.

Atty. Kelly agreed to withdraw his request that the notification requirement be eliminated.

Mr. Bender also recommended in the second line of paragraph 4.i the words, "and vegetation" be deleted. He explained that doing so would protect the under story growth.

Atty. Kelly read the first paragraph on page 1 of the easement re: its purpose and said the property owner's use of this area had to be consistent with the purpose of the easement.

Mr. Charles noted a property owner's perception of what activities were OK in the easement area might differ from the Commission's intent. He thought over the next month the Commission should study whether the request for modification was reasonable.

Atty. Kelly argued the Commission had no legal right to require a conservation easement; per state statutes it could only require open space where no building could take place.

There was a brief discussion regarding whether Mr. Bader, Tree Warden, or the Conservation Commission should be asked or Steep Rock should be contracted to monitor this conservation easement. Mr. Sabin thought proposals for maintenance work should come back to the Planning Commission because it could check what was proposed against the record and then direct whoever would monitor the work. Atty. Kelly noted the Commission would receive 30 days notice and so would have time to find someone to do the monitoring.

MOTION: That the Washington Planning Commission approve an addition to the conservation easement dated 10/1/02 between Nassar, Uruburu, and Schneider and the Town of Washington of subparagraph h to paragraph 4, which shall read as follows: *"The right of the owner of Lot #2 to cut, trim, top, plant, or otherwise maintain but not to clear cut the trees in that portion of Conservation Easement Area C, which is not closer than one hundred fifty (150') feet from any portion of the property line adjoining West Church Hill Road."* By Mr. Bender, seconded by Mr. Rimsky, and passed 4-0-1. Mr. Charles abstained.

It was noted no revision was necessary to keep the original notification and monitoring requirement in place.

**Plan of Conservation and Development:** The next Special Meeting will be held on Tuesday, November 19, 2002 from 4:00 to 6:00 p.m. in the Land Use Meeting Room. Discussion of booklet #5 on Development will continue and the Zoning Commission is again welcome to attend. Mr. Bender asked whether the Commissioners had any comments about the letters he and Mrs. Luckey had sent to Mr. Chalder expressing their concerns that issues they had raised had not been brought up for discussion. Mr. Sabin agreed a study of the old Town Garage site was needed and noted it had been included in the early negotiations with Mr. Chalder. Mr. Rimsky also thought this matter should be taken up now as there were many parties interested in using this property. Mr. Charles noted the discussion on village centers had begun at the last meeting, but asked since the Commission was now falling behind schedule, if it should consider taking up the consideration of village centers in greater detail after the Plan has been adopted. Mr. Rimsky expressed his disappointment that there had not been more public discussion. Mr. Bender noted the public session on Conservation had been delayed until more of the issues brought up in that chapter have been resolved. Although he understood the reason, Mr. Rimsky thought the result was that the public had no sense of the progress the Commission was making. Mrs. Roberts noted the other Land Use Commissions had been involved and that had provided constructive input. Mr. Boling's 10/22/02 letter regarding transfer of development rights was discussed. Mr. Sabin asked since the Town's density is based on the capacity of the soil to handle on site sewerage, if a higher density is approved, is this contrary to or does it undermine the Town's soil based zoning regulations. Mr. Charles thought it was not contrary to soil based zoning if the overall density of the entire Town was considered and any plans proposed were approved by the Health Department. He said transfer of development rights would be a useful tool to allow greater density in the village centers. It was the consensus it would be helpful if Mr. Boling supplied the Commission with more information on transfer of development rights such as examples of smaller towns where it has been used successfully.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill  
Land Use Coordinator