

**Town of Milton  
Planning & Zoning Meeting  
Milton Library, 121 Union Street  
Tuesday, October 16, 2012  
6:30 pm**

**Minutes are not Verbatim  
Transcriptionist: Helene Rodgville**

1. Call Meeting to Order
2. Roll Call of Members

Bob Heinrich	Present
Lynn Ekelund	Present
Don Mazzeo	Present
3. Additions/Corrections to the Agenda

Don Mazzeo: Do we have any additions or corrections to the Agenda as it has been posted?
4. Approval of agenda

Don Mazzeo: Seeing none I'll accept a motion to accept.  
Bob Heinrich: Motion to accept.  
Lynn Ekelund: Second.  
Don Mazzeo: All in favor say aye. Opposed. Agenda has been approved.
5. Approval of minutes of August 21, 2012

Don Mazzeo: Are there any questions, concerns or statements regarding those minutes?  
Lynn Ekelund: Move to approve minutes of August 21, 2012.  
Bob Heinrich: Second  
Don Mazzeo: All in favor say aye. Opposed. Motion is carried.
6. Business
  - a. **Rezoning application**

Discussion and possible vote on an application from Raymond and Katherine Sachs for the rezoning of the properties located at 302 and 304 Atlantic Street from an R-2 Zoning (Residential) to an R-3 Zoning (Residential). The parcels are further identified by Sussex County Tax Map and Parcel # 2-35-20.08-88.00, 88.02, 89.00 and 89.02

Don Mazzeo: That being said, let it be entered for the record that this is a continuation of an application that was prepared back, I believe, in July of this past year. In fact it was on July 14<sup>th</sup>.

Bob Heinrich: 2011.

Don Mazzeo: I'm sorry, 2011. It went back further than I thought. Thank you for the correction. July 14, 2011.

Lynn Ekelund: I have a question on that, when you refer to it as a continuation, I was at the July whatever, 2011 meeting and it was my understanding that that application had been withdrawn. How does one go from a withdrawal to a continuation?

Don Mazzeo: I will defer that to our in-house attorney.

Seth Thompson: Basically, because the Commission didn't take any action on the application, you're not looking at... They didn't need to reapply. They, in essence, revived their prior application. I think in the prior meeting we discussed the applicant was going to consider changing the application to a Conditional Use. Obviously that's at their election, because again, the Commission didn't take any action. So my understanding is that rather than applying for a Conditional Use, they would like to essentially resubmit their application for the rezoning.

Lynn Ekelund: How long is an application in force? My question and let me just take a hypothetical. If, for example, we go through this meeting and Mr. Sachs decides to withdraw his application again, in thirteen, fourteen months can he come back and reapply without charge? Is there any expiration date to an application?

Seth Thompson: Our Code doesn't speak to any sort of expiration date on an application.

Lynn Ekelund: So this could be Ground Hog Day?

Seth Thompson: Well, the way the Code refers to the time period, it's really time constraints put on the town, not necessarily on the applicant, that Planning and Zoning needs to act within a certain amount of time and if there isn't a recommendation made, then the Council can act without a recommendation from Planning and Zoning. Our Code doesn't speak to any sort of time period, as far as how long the application can be pending. Very often, when there are implicit readings in terms of a reasonable time period, that all the parties need to act within a reasonable time period. The other element that you're getting into is that at some point there's in essence a waiver. The person has filed, but knowing that they have that filing out there, they've chosen not to act on it and therefore, they've kind of sat on their rights, so to speak. Typically, when the Court looks to a waiver, they would look to the amount of the time period for an equivalent Statute of Limitations. I know this is all getting fairly heavy in terms of law, but that might be one or two years, or sometimes three years, if it's a contract action.

Lynn Ekelund: Ground Hog Day. Thank you, Seth.

Don Mazzeo: I have a follow up to that if I could ask. If the Commission, at the conclusion of the previous meeting regarding this application had said that we recommend that this applicant be dismissed without

prejudice, would that have concluded that application and then required the applicant to come back and reapply?

Seth Thompson: Well, to be clear, I think it was withdrawn. The minutes reflected that it was withdrawn, so it's not like the ball was in the town's court, so to speak; it's as if there wasn't a ball, to follow with that analogy; but rather than having the applicant go through the process of having to fill back out the same application, for the same item, we, in essence, looked at as a revival of the prior application?

Bob Heinrich: Could I just ask further to that? I'm quoting Mr. Sachs here from that meeting. "We are agreed that we would withdraw the R-3 application and we will subsequently make an application for an R-2 Conditional Use." That was in the minutes of that meeting. So, I'm wondering why we're considering looking at the R-3 rezoning again?

Seth Thompson: The applicant is going to have to speak to why he went one way vs. the other, that's ultimately the applicant's decision. It would be a very different scenario if there had been some action on the part of the Commission. Again, it was withdrawn voluntarily by the applicant last time. It wasn't something where the Commission voted to recommend that it be denied, that sort of thing.

Don Mazzeo: Basically, then, without any particular action on the part of the Commission, this application is still in effect, active; from the perspective of not having taken any action the application is active.

Seth Thompson: That's right. It's as if you should look at it for the first time tonight. Because, again, there wasn't any action on it before.

Don Mazzeo: Okay, then based on that piece of information alone, I would then ask if there's a representative of the applicant here this evening to present himself to the microphone. Please sit, don't get up. Identify yourself and then present to the Commission as if this was a new application, particularly in light of the fact that there is a member here tonight, even though he's gone over all of the data and seen all of the records, thus far, but go through your application as if, indeed, it is a new application to this Commission; first time ever having been here.

Raymond Sachs: I'm the property owner of 302, 304 Atlantic Street, here in Milton. We are making application for a zoning change from R-2 to R-3 for essentially two major reasons. The first is that the town has made a decision to change property that is adjacent to ours from Residential to Light Industrial. We, therefore, are facing a different situation in terms of the desirability of the property that we have. The second item is we have spent some time looking into what the market is and we believe that by going to R-3 zoning, the housing that we would develop would meet a price point that largely is not available here in new construction, for Milton. So those are the two reasons.

Bob Heinrich: Mr. Chairman, again, I wasn't at the meeting but I have read the minutes and understand the situation. It seemed to me the biggest issue

at the last meeting was the R-3 rezoning and what it would permit to be built on that once the R-3 was granted, if it was granted. I read apartment buildings are considered suitable for R-3 and some other things that might have been considered to be objectionable by the citizenry and so I guess I'm wondering what is actually being intended for building there?

Raymond Sachs: I presented to Robin Davis and I've thought that the members of the Committee would have a diagram illustrating what we intend.

Bob Heinrich: We do.

Don Mazzeo: To your point, Bob, yes there is a set of plans that were conceptual, but for the purposes of this hearing, this particular meeting is only to discuss the zoning of that property. Disregard, if you will, anything that could or may be put there, based on documentation presented by the applicant. That is strictly a conceptual plan. It has nothing to do whatsoever with this particular application as a zone change.

Bob Heinrich: I understand, but, if it's approved for R-3, concepts don't mean anything. I mean, you could still go ahead and build what you want.

Seth Thompson: I think you guys are both saying the same thing.

Bob Heinrich: Oh. Okay. Sorry about that. I understand.

Don Mazzeo: The paper that was presented is not necessarily what he can or will, should this get changed to an R-3.

Bob Heinrich: I understand.

Lynn Ekelund: For example, Bob, he has a For Sale sign on his property and it says Sale 8 Buildable Lots R-2 Zoning and he has a basic drawing of a concept that says, Optional Idea. If we were to grant R-3 he could change this to whatever – 12 Buildable Lots R-3 Zoning, Optional Idea and anyone that purchased the property could say well we don't want to do that. We want to do whatever is permitted by the town for R-3.

Bob Heinrich: I understand. I understand.

Seth Thompson: I don't know if it helps the Commission, but it's in Code Section 220-14, that's where we lay out our different permitted uses for R-2 and then 220-15 is our R-3. When you look at permitted principle uses in R-2 you have detached single family dwellings, semi-detached single family dwellings and that's a defined term, meaning a building containing one dwelling unit and having one party wall and one side yard. But then it says governmental uses, public parks and non-commercial recreational uses. So, then you would have to compare that to what's in R-3, in terms of detached single family dwellings, government uses, multi-family dwellings and I think that was the focus in the meeting last year. You also have semi-detached single family dwellings, townhouses, two-family dwellings.

Don Mazzeo: If I was reading the Code, the only significant difference that I could see between the two particular zones, was the term multi-family dwelling and that presents a condition to me that is not acceptable

in the current zoning area that everything else around you is basically an R-1, with that very big exception to the rear and I'm not sure which direction that is, of the Light Industrial. Now recognize that there are other folks in this room, as a matter of fact, who have a backyard with an R-1 and they're R-1 zones and there doesn't seem to be an issue, or if it is an issue, it's already passe, I would have to say it that way. This is my commentary on your application is that R-3, I believe, is just too heavy a use for that particular piece of property and going to an R-3 is very potentially, whether you build or sell the property to someone else and obviously that R-3 zone stays with the property. It's not to you, it's to the property. Residential folks that are around you may or may not have any objections; obviously they don't have any objections in a verbal fashion. Have we received any written documentation?

Robin Davis: No, we haven't.

Don Mazzeo: Okay, again, then we here sitting on the Commission are acting as the public and I recognize that there is someone who would like to have a comment, but not yet. That's my opinion right now and my commentary. Certainly whatever from the Commission, I'd love to hear.

Bob Heinrich: Once again, I can understand the applicant's position in wanting to get the zoning changed in this market, but I still have an issue with going to R-3 in an area that's primarily not and the surrounding neighborhood. Once it's R-3, it's as you said, it's R-3 and you may have very good intentions on what you want to build there, but I think we've all seen these things happen before and it doesn't always end up the way it was expected or anticipated. I mean, I'm not sure why we're even here tonight, because it seems to me it's a continuation of a discussion that was had more than a year ago.

Don Mazzeo: Well the discussion ceased upon the withdrawal of the applicant.

Bob Heinrich: But nothing's changed here. It's an application for R-3 that wasn't really concluded at the last meeting, because it was assumed that the applicant would withdraw and the applicant doesn't appear to have withdrawn and I guess I don't know where we go from here.

Don Mazzeo: Well, we go from here, we have Lynn who would probably like to have a few words. If not, I have a few others.

Bob Heinrich: Sure.

Lynn Ekelund: Well, I think that Mr. Sachs is here because of the Dogfish rezoning and the proximity of Light Industrial to his current property and I'm not trying to put words in your mouth, but...

Raymond Sachs: That's the first thing that I said.

Lynn Ekelund: When I realized that it was a "continuation" of the application of over a year ago, in my mind I thought well the only thing that's changed is Dogfish and I can see where that might be something that if I owned the property, I would think maybe I can get my toe in the door

and get this changed to R-3. I went back and drove down Atlantic Street. A Public Hearing has not been noticed.

Don Mazzeo: This is not a Public Hearing.

Lynn Ekelund: So I think any people that lived on Atlantic, that looked at the agenda, might not have attended the meeting, whether they had something to say or not, because there was not a Public Hearing. I know that I heard from the same people that I heard from last time, who are not in favor of R-3 in basically an R-1 street. I don't think those people were in favor of R-2 when it was rezoned from R-1 to R-2 in basically an R-1 street.

Raymond Sachs: Excuse me, at that point we had to communicate to everybody who was adjacent to us within a certain distance and I don't remember the exact record, but I don't remember anybody in a formal way coming forward and objecting to it.

Lynn Ekelund: As I said, I don't think. I don't know. I do know that I spoke to the same people this time that I spoke to last time and my main concern is that of multi-family dwellings. I also looked at the property and I honestly believe that putting 12 residential units on that piece of property is really... While it might be 2,500 sq. ft. per dwelling, which our Code allows. I think it's over development of that parcel.

Raymond Sachs: But of course the point of having zoning and specifications is to define what is possible, within it, once a person has obtained that zoning.

Lynn Ekelund: Correct. As I said, my main concern is multi-family dwellings. I would hate to see multi-family dwellings there. I would hate for the property to be zoned R-3 and an apartment building to go up in there. I don't think that that is the place.

Don Mazzeo: I would like to read one section from 220-14 and it's under a. under the title Intent. It says, the R-2 zone, or, excuse me, the R-2 district protects the integrity of the residential areas by prohibiting the intrusion of any use which is not compatible with the types of intensity of use outside of R-2. You've taken it from... I don't mean you on a personal basis, you've taken it from an R-1 and moved it into an R-2 and I think there's – well I'll count them – but it looks like about 14 different possibilities that are automatically accessible to you as the owner of the property, not excluding what they call cluster housing. Now if you looked up the terminology in our Code, cluster housing, is a sub-division technique in which the attached dwelling units are grouped relatively close together, leaving open spaces as common area. Not that I prefer seeing cluster housing, as it's currently defined here, but it certainly is, in my opinion, more beneficial use of the property than an apartment building. I know the term apartment building has never been entered from your mouth to this Commission, that I can recall and that doesn't mean it can't be and again, I go back to the fact that it's an R-2 zone, today,

surrounded by R-1...

Raymond Sachs: No, that's not quite true.

Don Mazzeo: Other than the Light Industrial to the very, and I keep saying, the rear of the property again. I don't know which direction it is.

Raymond Sachs: Well, but it's adjacent to the property.

Don Mazzeo: It is. It is and what I would say however, is that if you're going to come to us looking for an R-3, you have something specific in mind that you are looking to put on that piece of property. I can't ask you that question, legally, because you are not legally bound to say what you're going to do there.

Raymond Sachs: And as I understand it, even if I said it...

Don Mazzeo: You're not bound to it.

Raymond Sachs: It doesn't mean anything.

Seth Thompson: That's right.

Don Mazzeo: Exactly, so that's why I'm not going to bother asking you. But I have to take it to the worst case scenario and it's an apartment building and I think the three of us sitting on this Commission tonight, for that one sole purpose would defeat this particular application, deny this application. Now, that being said, is there any other comments from the Commission? Okay, there is someone here from the public. There's a question that I have before I go to that. Is it acceptable for someone from the audience to make comment.

Seth Thompson: It is. Again, the Public Hearing occurs at the Council level...

Don Mazzeo: At Council.

Seth Thompson: Meaning that it's noticed through the newspaper and the adjacent properties all receive mail notice, but that doesn't mean that that's the sole place where you can receive public comment. This is an open meeting. Before we get to the public comment, the one – this is kind of a legal question, but it always crops up when you have a relatively small parcel that's being applied for a rezoning and I know you said that the market is different now and that the property adjacent to you is now Light Industrial. Normally when we see a small parcel of land that's being rezoned, we need to understand why it's different from the other parcels around it, that are zoned Residential, or R-1, in this case. Is there anything unique about this parcel that somehow makes it distinguishable from the properties around it?

Don Mazzeo: And before you answer that question, may I ask Counsel, are you referring to a condition which might be considered spot zoning?

Seth Thompson: That's exactly right.

Don Mazzeo: Thank you. Say what you mean, please, Seth.

Seth Thompson: When we're dealing with a large tract of land, it's much easier when it comes to zoning to see, oh well, this fits within the grand scheme; when you're potentially rezoning a very small parcel, that's

normally what comes to mind right away, because, again, if it's a small parcel, how is this different from the tracts around it that wouldn't have the same automatically permitted uses?

Raymond Sachs: I cannot point to anything in the neighborhood that is similar to what we are proposing.

Don Mazzeo: Okay.

Lynn Ekelund: And if I could just segue onto that, on July 19, 2011 at the last meeting, Seth, you asked Robin, "Just for the record, Robin, do you know if there are any non-conforming buildings that are of similar nature, you know recognizing that they would be the only R-3, but is there anybody who's pre-existing, non-conforming. Robin Davis: In that area? Seth Thompson: Correct. Robin Davis: I don't think so. All along Atlantic Street in town properties look like they have single-family homes on there. Nothing like a duplex or that type of multi-family home."

Seth Thompson: Well, I think a duplex, if I'm not mistaken, is actually permitted in the R-2.

Don Mazzeo: It is.

Lynn Ekelund: I'm just reading what...

Seth Thompson: But that's right. I wanted to double-check, because it's not just the zoning when you're concerned about spot zoning, you might look to any non-conforming but permitted uses that would be in the area, because that might be a reason to rezone something if it's already surrounded by similar items based on the pre-existing non-conforming.

Don Mazzeo: Okay, thank you. Now at this point, I would ask Mr. Gard to come in and speak. Speak your name and your address, please.

Sam Garde, 115 Sassafras Lane: As the crow flies, I'm probably one of Ray's second or third, maybe fourth, closest neighbors. I do not live on Atlantic Street, but I live right behind Atlantic Street. I have a first question concerning the continuation because as I recall and I'm probably incorrect, but I think the sign on the For Sale sign, when I moved here, said "Space for 5 units." So, I conclude, if I'm correct, that the first application was to change from R-1 to R-3.

Bob Heinrich: R-2.

Lynn Ekelund: R-2.

Don Mazzeo: R-2.

Sam Garde: No. I think this couldn't be a continuation if he asked for R-1 to R-3, or R-1 to R-2, because that was granted.

Don Mazzeo: That was granted.

Sam Garde: I don't know when or how or under what circumstances, but it's an R-2 today, so my first question is can there actually be a continuation for a request from R-1 to R-3, when it's currently R-2? That's kind of a legal hocus pocus question, but I think it's valid.

Seth Thompson: And there were two separate applications. The one was granted going from R-1 to R-2 and I think that was 2004? Maybe?

Don Mazzeo: Yes.

Seth Thompson: So when they're talking about continuation of the prior application, it was the one that was submitted last year to go from R-2 to R-3.

Sam Garde: Okay. I stand corrected. Thank you for that clarification. I will just have my own view, that in that particular area of Atlantic Street I think the concept of what is allowable at one unit per 2,500 sq. ft. is inconsistent with what the surrounding areas are and I would just leave it at that. Thank you.

Don Mazzeo: Thank you Mr. Garde. Do we have any other comments, questions, concerns from the Commission regarding this application?

Bob Heinrich: I don't have any.

Don Mazzeo: Lynn?

Lynn Ekelund: No.

Don Mazzeo: At this time then I will ask for a motion on this particular application.

Seth Thompson: It's on a recommendation.

Robin Davis: The motion would be to recommend to Council.

Don Mazzeo: To recommend. Thank you.

Lynn Ekelund: Alright, I move to recommend that the Council deny the application from Raymond and Katherine Sachs for the rezoning of the properties located at 302 and 304 Atlantic Street from an R-2 Zoning (Residential) to an R-3 Zoning (Residential). The parcels are further identified by Sussex County Tax Map and Parcel # 2-35-20.08-88.00, 88.02, 89.00 and 89.02.

Bob Heinrich: I'll second the motion.

Don Mazzeo: Roll call vote, please.

Seth Thompson: And if you could include your reasoning, that would be helpful. Thank you.

Bob Heinrich            I vote to deny. Mr. Sachs, you seem like a very nice man and I wish I could say yes to what you want to do, but R-3 is R-3 and I'd be afraid of what goes into R-3 in that particular area.

Lynn Ekelund            I also vote to deny for the same reason as Mr. Heinrich, but also I just don't think that R-3 is at all compatible with the properties in the surrounding area on Atlantic Street.

Don Mazzeo             Would also vote to deny the application, based on the fact that it is over use in that particular area for an R-3 zone and it's incompatible with the surrounding R-1 zones that are on Atlantic Street.

Don Mazzeo: I believe that fits all the categories of legality.

Seth Thompson: It does.

Don Mazzeo: The motion has been carried to deny application and recommendation to Council accordingly.

Seth Thompson: But it will still go in front of Council. The effect is I think they require four-fifths super majority...

Don Mazzeo: Four-fifths majority to overrule our particular recommendation.

Seth Thompson: Correct.

Don Mazzeo: I don't know if that's ever happened or will ever need to be happening. I have no idea. Thank you very much this evening. Appreciate your time.

7. Adjournment

Seth Thompson: I think you need a motion to adjourn.

Lynn Ekelund: So moved.

Bob Heinrich: Second.

Don Mazzeo: We have a motion and a second to adjourn. All in favor say aye. Opposed. Motion carried. Meeting adjourned at 7:01 p.m.