

Milton Planning & Zoning Commission Meeting
Milton Library
Tuesday, November 18, 2008
7:00 p.m.

1. Virginia Weeks called the meeting called to order at 7:00 p.m.
2. Roll call of Members:
 - Ted Kanakos
 - Al Perkins
 - Ed Kost
 - Virginia Weeks
 - Gene Steele
 - Louise Frey
3. Changes, additions, corrections or deletions to the Agenda
 - Al Perkins: I make a motion to approve the Agenda.
 - Louise Frey: second.
 - Virginia Weeks: All in favor say "Aye". All opposed. Motion carried.
4. Approval of Minutes from October 21, 2008
 - Virginia Weeks: Any changes, additions, corrections or deletions to the Minutes of October 21, 2008
 - Gene Steele: I make a motion to approve the Minutes of October 21, 2008, as presented.
 - Louise Frey: Second.
 - Virginia Weeks: All in favor say "Aye". All opposed. Motion carried.
5. Public Hearing on the Modification of an Approved Conditional Use for 309 Union Street

The Applicants, Joanne Mattioni and Denise Suthard are requesting a modification of an approved conditional use. The Applicants are currently approved for the retail sales of gourmet treats and supplies for pets. The modification includes the addition of a 210 sq. ft. area for a grooming salon and future use of 172 sq. ft. room and the 450 sq. ft. shed for storage and boarding. The property is located at 309 Union Street, further identified by Sussex County Tax Map Parcel 2-35-14.19-168.00 and is zoned residential R-1. Would the Applicants like to speak to this?

 - Ted Kanakos: Excuse me I would like to recuse myself.
 - Joanne Mattioni: I represent Bark Avenue. My address is 309 Union Street, Milton, DE and there is a correction to the square footage that is being requested which is totally my mistake; I'm not very good at measuring out room footage. What we were asking to be added is 169 sq. ft grooming room; a holding area, which is a hallway which consists of 88 sq. ft.; and a shed, which is 171 sq. ft. If

you notice, I put the corrected plans on your desk and as I said, it's my fault because I'm not very good at square footage. Usually, Denise takes care of that.

Virginia Weeks: The square footage of the shed is 169?

Joanne Mattioni: No, 171 sq. ft.; 169 sq. ft. is the grooming room; the hallway is 88 sq. ft. where we will be having the holding area for the cages for the grooming and the shed is 171 sq. ft.; so it comes to a total square footage of 428 sq. ft.

Virginia Weeks: One moment please, at this time I would like to announce that Councilman Filicko has arrived. I believe at this time these changes are okay, although it wasn't what was advertised; because they're smaller than what was advertised; it's less space.

Al Perkins: Would you mind repeating the square footage again, for the Councilman that has just arrived.

Joanne Mattioni: Yes, the grooming room is 169 sq. ft.; the hall is 88 sq. ft., which comprises the 257 sq. ft. that I have there; and the shed is 171 sq. ft.

Al Perkins: Thank You.

Joanne Mattioni: We feel that our business in town has been a benefit but in the financial times now our retail is really down; and the reason why we are looking to expand our business, is because as it is presently we would not be able to continue in business, financially. We are putting out way more than is coming in and unless we can expand to do the grooming and eventually, boarding, we will have to close up and leave and we don't want to do that. We love Milton; we love being here; we feel that we are providing a service to the town and the residents and we would like to continue. I would like to address the grooming room. We have equipment that we already got in and it is top of the line equipment and I feel that people would appreciate us being here. There are not really many grooming salons in the area and we also will be offering a service, within a ten (10) mile radius where we will pick up and drop off, which will benefit people who have physical disabilities and the elderly. Most of them do have pets and they need to be groomed and we're willing to pick them up and drop them off and I'm sure that these customers would appreciate that. When it comes to the boarding, which will be in the future, if approved, we will do it in our shed, which we will modify. It will be renovated; it will be insulated so that it would be pretty much sound proof; we are going to take no more than 4 to 6 dogs; if they're large dogs it would be 4; if they're smaller dogs it would be 6. We have a large fenced in yard; the dogs would never be out there by themselves. We would only let them out one or two at a time; they would be well supervised. We're also taking precautions as to electronic devices that we will be purchasing, for inside the shed, outside the shed, also hand-held devices that are bark control devices. They are not shock collars; what they do is emit a sound that is audible to the dog and it discourages the barking. They are sound activated. When the dog starts to bark and the device goes off; they stop. Any questions?

Virginia Weeks: Is anybody else here wishing to speak in favor, please come forward.

Martha Idet: My address is 308 Chestnut Street, Milton, DE. I own Vintage Café & Bake Shop and I would just like to speak for the business itself. I don't know how many of you have actually been in the boutique; but it's been well done; it's

an asset to this town; that boutique is the cutest thing I've ever seen for any animal; and, if you have animals you should participate in their business and in other businesses in town. We need businesses here in town. Milton is a small town and half of the businesses are closing up because of the restrictions that we have here and things like that. It's very, very difficult to run a business here in Milton.

Virginia Weeks: Thank you. Does anybody else here wish to speak in favor of this petition? Does anybody wish to speak against the petition? Please come to the microphone.

Julie Tyrell: I live at 306 Union Street, Milton across the street from the doggie cookie shop. While I'm not anti-business, I just feel that a grooming salon and a boarding kennel would disturb the peace in the neighborhood; there also could be an issue with parking. I live next door to the ice cream shop and if you live on that street, you know that there is only parking on that side and at first when we purchased our home we knew there was an ice cream shop there; so we already have a lot of people who park in front of our house and they can't park across the street, so we would have even more people that are parking there. I'm also concerned about the issue of the noise and I'm concerned about the issue of waste disposal. There are a number of businesses I wouldn't oppose there, including the one they have there now. But I just feel that a grooming salon and a boarding kennel is an inappropriate business in a residential neighborhood. I thank you.

Virginia Weeks: Is there anybody else that wishes to speak in opposition, Joseph Tyrell: 306 Union Street, Milton. I live with Julie and I'm afraid it's going to hurt property values. I'm also concerned about the possible noise, although they seem to be taking precautions there and the sanitation; but I just feel that it would hurt property values and not be in the interest of the neighborhood.

Virginia Weeks: Is there anybody else that wishes to speak in opposition?

Norman Lester: 311 Union Street, Milton. The only point I wish to address is the boarding. We have dogs; we've had them for a long time; and we've looked at and talked to other people that have these control collars and various other devices. A dog, is a dog, is a dog. If it wants to bark, it's going to bark. If a dog wants to get out, it will. That's the only piece I'm concerned about. I certainly could go along with the boarding piece. Having a business there is perfectly fine. That's a wonderful addition to the Town of Milton, but the boarding piece is the problem. Thank you.

Virginia Weeks: Is there anybody else that wishes to speak in opposition?

Karen Patton: 312 Chestnut Street, Milton, DE. I would like to speak for this application. I think that these women are aware of the ramifications of what they want to do. I think, if they want to take on the boarding part; they're taking all the precautions that they can to make sure it's safe for the community and there are environmental ways to dispose of the waste; there are in-ground disposals that recirculate it into the ground and stuff; there's no shock collars; I don't think that these women would do that; they're just trying to bring life to this town that needs it. I think, as a pet owner, myself, I enjoy going to their shop and I would definitely use their boarding if they got approved for it. I know there are other people in this community that would do so, as well. Thank you.

Virginia Weeks: Anybody else wishing to address this Application? I have a letter here from a Mrs. Jeanette Boyer at 320 Union Street, Milton. “Dear Commissioners: Please be advised I have no objection for Joanne Mattioni and Denise Suthard to expand their business endeavor per the November 8th notice to their neighbors. Milton is a pet-loving town and I wish them great success.” That being so, the public hearing is now closed.

6. New Business

- The Applicants, Joanne Mattioni and Denise Suthard, are requesting a modification of an approved conditional use. The Applicants are currently approved for the retail sale of gourmet treats and supplies for pets. The modification includes the addition of a, now corrected, 169 sq. ft. area for a grooming salon; a hallway that measures 88 sq. ft.; and a shed that measures 171 sq. ft. room; the shed will be for storage and boarding. The property is located at 309 Union Street, further identified by Sussex County Tax Map Parcel 2-35-14.19-168.00 and is zoned residential R-1.
Virginia Weeks: Do the Applicants have anything further to say?
Joanne Mattioni: I wish to say that first of all, the people at 306 Union Street, though they own the property, do not live there. I can understand their concerns. There have been no problems with parking; that was one of the concerns that was expressed at our original hearing; when we requested the conditional use. There have been no problems with parking. We have a driveway with parking in the back; most of the time the people just stop across from King’s; drop off their dog or come in and then leave and there has not been any kind of problem. With regard to the grooming and the boarding; that would also be the same thing. People would drop off their dogs and leave and then come back to pick them up. They’re not going to be parking there on the street; we have not had any kind of problem from any kind of delivery or customers or anything like that. As for the waste, the waste will be in our backyard. There are not going to be any dogs on the street. We have a can out there for people that do come. In fact, we have people that walk their dogs that our not our customers that use our can that’s out in the front, with our doggie bags; and I’ve seen them do it and they’re welcome to it. The waste will be disposed of in our backyard. There will not be any loose dogs and we are taking all the precautions that we can for barking. As I said, it will be a small operation, 4-6 dogs; that’s all we will be doing and they will be well contained. In fact, most of the time, we’ll probably have them in our house; because we have dogs ourselves; when they are in the kennel at night they will be sleeping and somebody will always be there; they are never going to be out by themselves, even when they are out in the yard. At that time, we’re only going to let them out 1 or 2 dogs at a time; to exercise and to do their business and then come back in. So, I can’t see that this is going to cause any problem whatsoever. There already is a kennel in town, in a residential area, and I have not known any problems from that, on Betts Street, Keri’s Kennels. It’s been there for a few years and there have been

no problems. We are taking all the precautions that we can. What we're trying to do is to bring business to Town. Our customers patronize the other businesses and I know they do, because they tell us. When they come in, we refer them to the bakery shop, Vintage; we send them down to Irish Eyes; we send them across to King's; they go to Iguana; they go to the antique stores; so all the businesses are benefiting from us being there. I think we need to embrace businesses that are trying to stay in Town; because we do need them.

Virginia Weeks: Does anybody on the Board have a question for the Applicant?

Louise Frey: Is there any kind of a license required in the County or the State for boarding and/or grooming?

Joanne Mattioni: No, there's not.

Virginia Weeks: Are you sure there's not a kennel license required?

Joanne Mattioni: Not if we're only boarding like 4-6 dogs and they're not going to be there all the time. It's only for a daily basis or some might be staying overnight.

Virginia Weeks: Do you know when a kennel license would be required?

Joanne Mattioni: I can definitely look into that.

Louise Frey: How about for grooming? There isn't anything required for that?

Joanne Mattioni: No, any other questions?

Virginia Weeks: Yes, parking. As you know, I knocked at your door today and asked if I could take a look at the shed and I did that. Last month or the month before, when you were here about the railroad ties, we talked about the parking not being delineated and it's not.

Joanne Mattioni: There are two railroad ties back there.

Virginia Weeks: They are behind a tree.

Joanne Mattioni: One is next to the tree and one is on the other side.

Virginia Weeks: There was a blue car in it; there is nothing delineated for the business and that was one of the requests.

Joanne Mattioni: We could do that; that's no problem.

Virginia Weeks: What is the shed being used for now?

Joanne Mattioni: Right now the shed is being used for storage. If we get approved for boarding, that is where we're going to do the boarding.

Virginia Weeks: So it's 169; 171, that's about 400 sq. ft. more.

Joanne Mattioni: Yes.

Ed Kost: On Page 69 of the Zoning Ordinance (I'm asking our attorney a question) under Home Occupation (I'm assuming this is a home occupation).

Virginia Weeks: No, it's just a conditional use.

Ed Kost: Yes, but how does it fit into the Zoning Ordinance? It has to fit in somewhere.

Virginia Weeks: It fits in under conditional use, which is on Page 97, I believe, 11.1.

Mary Schroeder-Fox: The relevant section for tonight's purposes is 11.1, about conditional uses.

Ed Kost: What I'm trying to figure out here, is under the Zoning Ordinance, under Residential, how did this use get permitted in the first place?

Virginia Weeks: Would the attorney care to address the philosophy of conditional use?

Mary Schroeder-Fox: Conditional Uses, in fact, the purpose and intent of a conditional use is actually set forth in the ordinance that I just referred to, 11.1 and it states "The purpose of conditional use approval is to provide for certain uses which can not be well adjusted to their environment; in particular, locations or as not permitted in the current zoning district, but would not have an adverse affect on the surrounding area and properties. These uses are generally of public or semi-public character and are essential and desirable for the general convenience and welfare of the Town. Because of their unusual characteristics or the special characteristics of the area in which they are to be located, conditional uses requires special consideration so that they may be properly located with respect to the objectives of this zoning ordinance, the comprehensive plan, and their affect on nearby properties." A conditional use provision like this one is a mechanism by which somebody can come to the Planning & Zoning Commission, ask for a recommendation to then go to the Town Council, because that's who has the final voice here; on whether to approve or disapprove of their proposed use; but they can come to you and ask for your recommendation for something that they normally wouldn't be able to have. That's true for all zoning districts.

Ed Kost: The ordinance I thought says public or semi-public?

Mary Schroeder-Fox: It says in there, these uses are generally of public or semi-public character. It's just giving you an idea saying that they are generally of public or semi-public character; but that doesn't necessarily mean that they have to be something that would be deemed to be a public use, like a Library. We're sitting in the Library and that's an easy example to give. Or Kinder Care or something like that, where you would think more in terms of the general public. That's where you're going to find some guidance is in that section in your book (Section 11.1.1).

Ed Kost: So for all intents and purposes, there are no restrictions in terms of square footage or anything else. There just aren't any, as far as I can tell.

Mary Schroeder-Fox: There aren't any specific requirements in your conditional use ordinance that says a certain type of conditional use must have X number of square feet. You're right, that's not in there.

Ed Kost: That's what I wanted to make sure of in my mind. I looked at this and I thought is this a home occupation? How did it get there in the first place? And, what rules apply? What I think you just said to me is no rules.

Mary Schroeder-Fox: That's not correct, because if you read on, in Section 11.1.2, which is the following section about conditional uses, it says "Conditional use of a property may be permitted with conditions or not permitted by the Town Council. In permitting a conditional use or the modification of a conditional use, the Town Council may impose those standards and requirements especially specified by this ordinance and any additional conditions which they, or the Planning & Zoning Commission, considers necessary and reasonable to protect the best interests of the surrounding property, the neighborhood or the Town as a whole." You do have some rules and you can place certain rules to say we believe that X, Y, and Z conditions are necessary to help protect your neighbors; to protect the entire town; what have you. That's what happened the last time that these applicants' received a conditional use. There were four conditions placed on the recommendation that Planning & Zoning Commission gave the Town Council; the Town Council adopted those recommendations when they approved it. There were conditions placed and that's the mechanism by which you can try to control or help guide whatever is happening at that property.

Virginia Weeks: When they are given a conditional use for the business, they come under all the rules and regulations in the zoning ordinance; parking is required; this is required; that is required. But we can also put additional conditions on that are not in the zoning ordinance, if we feel they are for the good of the community.

Mary Schroeder-Fox: That's correct. The other rules, regulations and ordinances of the Town, still apply. Just because you get a conditional use doesn't mean you can go wild and do whatever you want; you still have to follow the other rules in Town, which would include any other building code requirements; health code requirements; zoning requirements.

Ed Kost: I was more interested in governing how many square feet; and what uses may be permitted on the side. That's what I was interested in.

Mary Schroeder-Fox: Robin, I don't know if you have anything to add to that particular part of it being that you're more familiar with the specifics of any square footage, or other kind of requirements that the Town may have on a regular basis.

Robin Davis: As Mr. Kost said, if you look at a home occupation, it says 25%; there is a number that is says; it gives you a number. In the conditional uses, it doesn't. It basically gives you the option to say too big, too small, not enough, whatever. Same thing is with parking; when we were discussing parking during the public hearing, there is nothing in our old ordinance that talks directly about dog boarding or the number of square feet per parking spots. That's something the Planning & Zoning Commission will have to feel out; to say is it one spot per 200 sq. ft.? Is it 300; 100; how would they feel; just like they did the last time. It's actually in addition to what was granted the first time; and now it's just the modification of adding the extra room. What other, if any, conditions would you like to see?

Virginia Weeks: So it's an additional 400 sq. ft., more or less. What about signs. What are you going to do about signs?

Joanne Mattioni: The sign is going to basically be the same size that it is and we're just going to add "grooming and boarding".

Virginia Weeks: That means there will be no lettering put on the mural that's now on the side of the building.

Joanne Mattioni: No, there's not going to be any lettering put on the mural.

Virginia Weeks: What about lights?

Joanne Mattioni: For what?

Virginia Weeks: The kennel. If you're going to store dogs outside, what kind of lights will you have?

Joanne Mattioni: We have sensor spotlights on both sides of the shed that shine into the driveway, the backyard and in our yard.

Virginia Weeks: Do they shine on the house next door at all?

Joanne Mattioni: No. No they don't. In fact, theirs shine on ours; but we don't mind.

Virginia Weeks: Is there going to be any plumbing in the outdoor shed?

Joanne Mattioni: No. Electric is already there and that was done by the previous owner.

Virginia Weeks: What kind of heating?

Joanne Mattioni: We're probably going to get the heating that goes into the wall – that can be both a heating and air conditioning unit. That will be into the wall.

Virginia Weeks: In your grooming section, what kind of plumbing changes have been made?

Joanne Mattioni: Well none really. All we did is put the tub in there.

Virginia Weeks: You ran no new...

Joanne Mattioni: No, there's plumbing already there because there's a bathroom there.

Virginia Weeks: Does the electricity have to be upgraded in there?

Joanne Mattioni: No, the electricity was upgraded when we moved into the house.

Virginia Weeks: What are your hours of operation going to be?

Joanne Mattioni: Our hours of operation are going to be 10 am to 6 pm and that will be during...

Virginia Weeks: What were the hours of operation on the... It was something to 5 pm. Wasn't it?

Joanne Mattioni: We were running 12 pm to 6 pm before; and what we're doing now is we're opened 10 am to 6 pm, five days a week. Now during the winter, we probably will be closing earlier; probably closing closer to 5 pm. It gets dark.

Virginia Weeks: What kind of fencing will you have around the... Where is the... You're proposing a shed within which you will house these dogs.

Joanne Mattioni: Yes.

Virginia Weeks: Where is the dog run?

Joanne Mattioni: Well, it's actually a carriage house. We're calling it a shed. The dog run is in our yard and there is a door that opens up into our yard from there.

Virginia Weeks: So that same yard that has your tables and where you entertain people and so on, is where you're going to have the dog run?

Joanne Mattioni: Right and what we're going to do is we're going to fence off a section for the dogs.

Virginia Weeks: That's not on the site plan that you submitted, right?

Joanne Mattioni: No, I have to do that. We will probably run a fence from the shed across to the other fence. This way we will have an area just for the dogs.

Virginia Weeks: So people will have to walk through the dog run in order to get...

Joanne Mattioni: No.

Virginia Weeks: Well, you show here that the door into your yard is on the far side of the shed. You show here that outside your shed is the door into your backyard; into your fenced area. If you run a fence there, how are people going to get in and out of your yard? There's no exit.

Joanne Mattioni: Well, that's not really the way the fence is.

Virginia Weeks: Then why is it like that on the site plan?

Joanne Mattioni: I guess that's the original fence. The fence runs here now.

Virginia Weeks: Well, this should be correct when we get it. The idea is how are people going to access this area? So everybody going into the area, in which you entertain, will come through your house.

Denise Suthard: If we're entertaining, people will be coming from our house.

Virginia Weeks: Denise, that can't be good. Which is the shed that you're going to use for boarding?

Denise Suthard: This one.

Virginia Weeks: Well, they're not going to come into the shed to go into your backyard.

Joanne Mattioni: No.

Virginia Weeks: How are they going to get into your backyard?

Denise Suthard: They're going to be boarded in total.

Virginia Weeks: I want to make sure that these dogs are contained.

Joanne Mattioni: They are contained. They are going to be contained.

Virginia Weeks: Thank you.

Ed Kost: Should this be tabled until we have an accurate drawing?

Virginia Weeks: At this time, I think that perhaps what needs to be done is that we need to separate the boarding out from the grooming and look at them separately and take two separate votes; one vote on the boarding and one vote on the grooming; because one may be more acceptable to us than the other. I don't think it should be a package deal, because they are two individual issues.

Joanne Mattioni: Okay.

Virginia Weeks: Is there a problem with that?

Mary Schroeder-Fox: The question was being asked over on my side here, whether or not it makes a difference that the request came in as a package deal. I think the way to treat it is that you can, let's assume for the sake of argument that this Commission is going to recommend the approval of one thing but not the approval of another thing that was part of the application. I think you can do that. If you were inclined to say we vote to recommend granting part of the application with X, Y and Z conditions; but we don't recommend the other part for X, Y and Z reasons. You could do that, I think; because ultimately the final decision lies in the hands of the Town Council anyway; so if you want to bifurcate your thought process, I think you are fine to do that.

Virginia Weeks: If we were to decide at voting time to table the boarding; I didn't want to delay their ability to open their grooming salon; that's the reason I suggested splitting it.

Joanne Mattioni: What's our recourse if we're denied the boarding? Do we have an appeal?

Virginia Weeks: We'll get into that later. Let's not put the carriage before the horses.

Mary Schroeder-Fox: Ms. Weeks, if I can just add to that. Tonight is simply a public hearing and a recommendation, so whatever ultimately happens, whether you get approval or you don't get approval that will be from the Town Council. This is not the end of the road. This is merely one step in the process that the Town Council receives with Planning & Zoning Commission's recommendation, one way or the other, and they are the final decision. So when you're speaking in terms of an appeal, any kind of a process to second guess the final decision will happen after the next phase.

Virginia Weeks: The other thing I need to make you aware of is the process review committee met with a gentleman from the Department of Transportation and you must have a letter of no objection from the Department of Transportation.

Joanne Mattioni: I've already talked with them.

Virginia Weeks: You can get it at Georgetown?

Joanne Mattioni: Yes.

Virginia Weeks: If it's under a hundred trips a day, and a hundred trips a day is the equivalent of 50 cars; 50 in and 50 out of your driveway; so you can take care of that in Georgetown and any recommendation we make, obviously one of the conditions would be that you have that letter of no objection before anything happens. Does anybody else have any questions?

Al Perkins: You mentioned the urgency with trying to get the expansion going, with winter coming in and all. Do you have a timetable on when you want to expand to the dog grooming and when you want to expand to the boarding?

Joanne Mattioni: Well, the grooming we would like to do as soon as possible. The boarding is going to be in the future, because if and when we get approved, we would have to renovate the building where we're going to hold this, so that is down the road. The only reason we added that now, is because we thought that if we did it now, we wouldn't have to come back in a year and go through the whole process again; so we kind of wanted to just include everything that we could so we wouldn't have to come back. But that is going to be down the road; it's not going to be any time soon, but the grooming we'd like to get off the ground as soon as possible, because we do need the income.

Virginia Weeks: Are there any other questions?

Michael Filicko: Can you tell me please how the dogs will be housed in the shed?

Joanne Mattioni: They will be in kennels. We have what are called cages, but they are galvanized and enameled metal and they have trays on them and the doors are in front.

Virginia Weeks: Are they what we commonly refer to as crates?

Joanne Mattioni: No, they're not really crates. They're metal, like in a pet shop. They have solid walls and they have doors on the front and they have a grate with a tray underneath.

Michael Filicko: How big?

Joanne Mattioni: It depends on what size dog. We're only going to board 3 or 4 dogs at a time if they are large, no more than that; and if they are smaller dogs, then...

Virginia Weeks: The question from Commissioner Filicko was for you to please describe how the dogs would be housed in the kennel.

Joanne Mattioni: They actually call them kennels. They are metal cages, if you will, that are metal on the top, sides, backs and bottoms, with trays and they have these grates and the metal door in the front, that closes. According to the size dog, they have small ones; medium ones; and then they have very large ones that can actually be separated with a panel that goes in there. We will limit the amount of dogs that we have. We are not going to run a kennel where we are boarding 15 or 20 dogs. It will be a very small operation. Most of the time there will probably be 3 or 4 dogs there.

Virginia Weeks: How many dogs do you personally own?

Joanne Mattioni: We own three. They're small.

Virginia Weeks: Thank you. Are there any other questions for the Applicants? No other questions. At this time, I would like to ask the Commission how they want to handle this. As I see it, there are two parts to this; one consisting of the 169 sq. ft. grooming area, plus the 88 sq. ft. hall, for use as a holding area for the dogs that are groomed; and the second part, which is the outdoor shed, which they would like to convert within a year into a kennel, with proper fencing. We don't have a site plan for that and I'm very reticent to do anything about that. We can discuss

about that after motions are made. If I can have a motion on the grooming and a second and then we'll have a discussion.

Louise Frey: I would like to make a motion to approve the grooming portion of the Application.

Gene Steele: Second

Virginia Weeks: Discussion now. Before anything, I would like to point out that the site plan that we have in front of us apparently it is also incorrect for the hallway.

Joanne Mattioni: I gave you an amended plan.

Virginia Weeks: Did Robin get one of those, also?

Joanne Mattioni: Yes, everyone did.

Virginia Weeks: Thank you. Do we have any discussion on the grooming section?

Al Perkins: I just wanted to be clear about how many pets will you be grooming simultaneously?

Joanne Mattioni: Usually they are one at a time, the most maybe two. You make appointments and people bring them in and then they come and pick them up. So, we're not going to have a lot of pets in there at one time. It's like a hairdresser. You make an appointment and you come in.

Al Perkins: That's my only question for now.

Virginia Weeks: There are some conditions that should have been put on the Motion. I'm going to ask the maker of the Motion and the second of the Motion to also include the following: that there can be no overnights for the grooming business; that the business hours are from 10 am to 6 pm; how much parking they need, etc.

Mary Schroeder-Fox: If after you have discussion about the motion and the maker of the motion wishes to amend the motion, to place additional conditions, instead of just a straight out approval/recommendation and wish to place certain conditions that come out of your discussion, and that gets seconded; that's fine. Another way to do it can be that the motion on the table, which is just a recommendation, without any conditions, that you vote on that and a new motion is made afterwards.

Virginia Weeks: Does anybody else have anything that they would like to add?

Michael Filicko: After the dogs are groomed, they will be in the hallway, correct.

Joanne Mattioni: They will be in cages in the hallway. Usually when the dog is finished being groomed; we put them in the little cage; we call the Mom or Dad and then they come and pick them up. They're only there for a very short time. They're in the cages until their parents come get them. That's usually a pretty short time.

Virginia Weeks: And the dogs that are being groomed will never be in a house without a human being in it.

Joanne Mattioni: Never.

Louise Frey: If we put conditions on the motion; how many dogs; who's going to pick them up; where they will stay in the house; who would be policing that, to see that it's done?

Virginia Weeks: In this town, word gets out. The Code Enforcement Officer will tell us. If you sneeze up at Food Lion, they know about it in Martha's Bakery, before you get in the car. In this Town, everybody knows everything. If you hear about it and you call the Code Enforcement Officer and he will go immediately and check it out. I would ask the maker of the motion if she would consider adding these conditions, as stated. That there will be a human being in the house 24 hours a day; that the hours of business will be from 10 am to 6 pm; that you will need an additional two parking spots; and all four parking spots now, need to be clearly defined for business and before the permit can be given, these things need to be done. We need to have it investigated because none of us know if indeed a kennel needs a license... But we are not doing the boarding, so that doesn't matter. And that there will be no overnights of dogs that will be in for grooming, they will come in the morning and be out by the close of business. Are those acceptable?

Denise Suthard: Everything, except that they will be in their house 24 hours a day.

Joanne Mattioni: No, she said no dogs...

Virginia Weeks: A human being will be in the house 24 hours a day.

Denise Suthard: 24 hours a day?

Joanne Mattioni: No dogs will be left alone while the dogs are there. Once our grooming salon is closed, so it's not 24 hours.

Gene Steele: No dogs should be left unattended.

Virginia Weeks: No dogs should be unattended.

Joanne Mattioni: Okay. We have to leave sometime.

Virginia Weeks: All four parking spots need to be clearly marked.

Joanne Mattioni: Absolutely.

Virginia Weeks: The hours of operation are 10 am to 6 pm; it should read all days, excluding Sunday.

Robin Davis: Ms. Weeks, just to make sure we're clear. The only other question that I have is when we talk about the DelDOT issue; there are other agencies out there that probably need to be looking into and being involved in this too. Is that going to be put on this, too? You can just put in all applicable outside agencies which will require the applicant to at least go to them and find out if they would require anything, or not.

Joanne Mattioni: Okay.

Virginia Weeks: Those agencies would be the Fire Marshall...

Robin Davis: Also Soil Conservation, DelDOT, kennel license...

Ed Kost: Can't we just say all other applicable agencies?

Joanne Mattioni: All other applicable State and Local agencies.

Virginia Weeks: We're just trying to make sure that the Applicants understand which agencies. You can meet with Robin and he can help you out on that.

Robin Davis: Soil conservation probably doesn't have anything to do – they'll probably tell you not because you're not going to do anything with the soil. Normally, when you add parking, it has to be paved and that's when they start getting involved. But we can have the Applicant's go to them; and if they say no, at least it's in the books saying that you did come to them and they were not bypassed. That's their big concern. We're adding to an existing conditional use. Are the hours of operation for the retail section going to stay the same or are they going to be different from the grooming section?

Joanne Mattioni: No.

Robin Davis: Your hours will have to adjust to these new hours. I just wanted to be sure that we are on the same page on the parking, the hours, etc. This way they can't come back to you or us later on.

Virginia Weeks: Are you clear on what the motion is, Robin?

Robin Davis: I would just run through this one more time. Right now, Mrs. Frey made a motion to approve the grooming for the 169 sq. ft. and the 88 sq. ft. The discussion with the conditions that were put on, were that: no dogs would be left unattended; the hours of operation will be 10 am to 6 pm, Monday through Saturday and closed on Sundays; there will be an additional two parking spots, to make it now a total of four and the parking spots will be clearly marked; there will be no dogs that are groomed to be left overnight; and all applicable outside agencies will be consulted before their building permit is issued. The next step is to go before the Town Council. The Council will look at these; perhaps make some changes; add or subtract; and then the Applicant would have to go meet all those requirements and come back to me and if I say it's okay, then they will get their license.

Louise Frey: Ms. Weeks, what about the signage?

Virginia Weeks: The signage as presented will not increase the size of the current signage.

Robin Davis: Because this is in the historic district, so if any sign gets changed in size, then you would have to go before Historic Preservation District Commission for approval.

Louise Frey: No lights or writing on the mural.

Michael Filicko: Do you have a fenced in secure area right now?

Joanne Mattioni: Yes, 6' cedar picket fence.

Virginia Weeks: Will the gentleman who seconded the motion, agree to these conditions and changes?

Gene Steele: Yes, I agree to the changes and conditions.

Mary Schroeder-Fox: I just want to interject at this time. I notice that Mrs. Frey has been making notes down there, about what the conditions to the motion are. Since you are the maker of the motion, will you restate and amend your motion and state the conditions so that the record is absolutely clear, so there's not confusion.

Louise Frey and Ed Kost: The motion is for approving the dog grooming salon and increasing the existing business by 169 sq. ft., plus 88 sq. ft.;

business hours are 10 am to 6 pm; six days a week, not on Sundays; the dogs will not be left unattended or overnight; all other applicable outside agencies have to approve and be notified of the changes; a total of four parking spaces; no lights on the signs or the mural; the existing signage will remain the same.

Louise Frey: My motion is amended to reflect the Secretary's comments; and to amend the motion to have Robin Davis prepare an Approving Resolution for this Application.

Gene Steele: Second.

Michael Filicko: Excuse me but the drop off time has to be added to the motion, because some people will drop off their dogs on the way to work.

Joanne Mattioni: Yes, there are some people that drop their dogs off on the way to work, which is before 10 am and they come and pick them up when they are ready. But, there are other grooming places. Is that restriction put on Keri's? I don't think so.

Virginia Weeks: Wait, we asked you what the hours of operation are.

Joanne Mattioni: The hours of operation are 10 am to 6 pm, but there are people that drop their dogs off earlier because they have to. This is a common practice among grooming salons.

Louise Frey: What would be the earliest they would drop them off?

Joanne Mattioni: Probably 9 am, 9:30 am – usually. They drop them off on their way to work. If you want us to amend our hours, we can say 9 am to 6 pm.

Virginia Weeks: Just amend the hours to 9 am to 6 pm.

Al Perkins: I did hear you say 9 am to 6 pm. My concern is that if it doesn't turn out to be 9 am to 6 pm and you get a complaint...

Joanne Mattioni: Why would there be a complaint?

Virginia Weeks: We have a motion on the floor and we're not supposed to be having a discussion. I will ask if there can be one more amendment to the conditions and it would just be simpler to make the business from 9 am to 6 pm, rather than saying if you're dropping it off, la, la, la. Agreed?

Virginia Weeks called for a roll call vote:

Ted Kanakos	Aye
Al Perkins	Aye
Ed Kost	Aye
Virginia Weeks	Aye
Gene Steele	Aye
Louise Frey	Aye
Michael Filicko	Aye

Mary Schroeder-Fox: I'd like to just add something to what you just said. You have your opportunity to go to the Town Council now to seek your final approval; you have the Planning & Zoning Commission's recommendation for your grooming business; but it's not a done deal yet. I just wanted to follow up so that that last statement was not misconstrued in any way.

Virginia Weeks: Thank you very much. That's right. We only recommend.

- Virginia Weeks: Now we'll go to the boarding section. We can do three things here. We can table this; we can make a recommendation for approval; or make a recommendation for disapproval. We do not have a proper site plan; I'm not happy with the site plan we have. I quite frankly am not happy with the boarding business. Once the motion is made to approve or disapprove, I'll discuss it further. How does the Board feel? Mary Schroeder-Fox: I just want to interject that this last go round with making the motion and then having discussion and having to amend the motions, as you can see it can get very muddy. In Robert's Rules of Order it says that a proper method of making a motion is to make the motion and then have discussion. The Chair can suspend that rule and allow discussion prior to a motion being made. I say that, so that if you wish to allow, as the Chair, discussion on a certain topic, prior to a motion actually being made, you may do so; and, in fact, many other commissions, councils and boards do behave that way.

Virginia Weeks: We will have the discussion first and also, I would like to say that at this point it is closed to the public, including the Applicant, unless somebody here has a question for the Applicant. What do you want to do about the boarding business?

Ed Kost: If the Commission decides it does not want to approve boarding, there's no point in asking for a revised plan; so I think, in general, the question is do we want to agree to boarding or disagree and simply discuss that?

Virginia Weeks: I, for one, find the property too narrow for boarding. I find it too loosey goosey; the fencing isn't proper; where the dog run would be is right next to the area in which they entertain their guests outdoors; I'm concerned about barking; I'm concerned that they will have collars on them that help to alleviate some of it, but all those fire engines go by and I don't know what's going to happen when they go by; every time the fire siren goes off, I'm not sure what will happen, which is almost in all of our backyards; I am just not comfortable with the boarding issue. I think that takes a special building, not a redone shed; I think that it needs certain sanitation; you need to be able to wash it out; you need to be able to sanitize it; there have got to be health issues there; you need a better plan for waste disposal; and, I'm not real happy with that being in the middle of a residential area. Anybody else?

Ed Kost: The grooming salon is inside an existing structure. It's an existing home and I don't have a problem with that. Building a new use outside in a residential area, I'm basically against doing that; simply because I think it's a residential area and what we're doing here is building a bigger and bigger business; which I don't think belongs here.

Al Perkins: I have similar reservations about the boarding business. It feels like that type of business in this particular location in Town in a

confined location in close quarters, close living, just feels like an inappropriate or at least a business of serious concern for that particular neighborhood and I would just echo some of the specific concerns that have already been raised.

Virginia Weeks: So, now, we can have a motion for an affirmative recommendation; a negative recommendation or a tabling. Would somebody care to please make a motion?

Gene Steele: I would like to make a motion to table this request until we get a better drawing. I don't want to say no to it, I know some of the other members feel that it is not suitable for a residential area, but I feel we should give the Applicant every opportunity to present the case properly so I feel we should have a better drawing to define it better.

Al Perkins: Second the motion to table this until we have more information and a better drawing.

Virginia Weeks: I would also like the Applicant to come back with something in writing on whether or not a kennel license is required.

Robin Davis: When you talk about a better drawing, can we be a little bit more specific about what we're talking about, because somebody's better drawing might not be what the committee members would like. I was trying to help the Applicant and myself.

Virginia Weeks: I believe the drawing should be two-scaled; to have all the doors; where the fence is; where the dog run is; and, it should show us where the trash is going to be, what this waste is going to be held in; where are they going to put the waste from all of the kennels; what type of fencing; how high; we want to see where the lights are located; we want to see where the plumbing is located; we want to know what kind of electric update has to be put in (because that's really an old shed); we need to have the parking spots delineated.

Robin Davis: The Applicant said there would be no plumbing in that shed, electric only. That's what she said.

Virginia Weeks: Are you going to wash it out with a garden hose?

Joanne Mattioni: Yes.

Virginia Weeks: Is that enough for you, Robin?

Robin Davis: I just want to make sure it was clear to them; that they knew and they brought back the drawing, I might look at it and say it's fine, then we get here and a member says no, we need more; or I don't want them to have to spend \$5,000 for a drawing that they might not need.

Virginia Weeks: I would also encourage each of the board members to drop by the house and take a look at the shed and the area in the back of the house so we know exactly what we're talking about.

Robin Davis: The fencing, the Applicant said the fencing was already there.

Virginia Weeks: No, the fencing for the dog run is not already there. Part of it may be there, but not all of it.

Joanne Mattioni: The yard is going to be portioned off.

Robin Davis: Let's show that on the new drawing. There might be a concern if it's seen; then it might have to go to the Historic District.

Virginia Weeks: Are you clear with what your requirements are?

Joanne Mattioni: Yes.

Ed Kost: I would like to add something to the motion. I would like to add that Robin review the drawing before it comes to us and make sure that it meets some standard that you like; that it come from somewhere before it gets here.

Mary Schroeder-Fox: Mr. Steele, were you the maker of the motion?

Gene Steele: Yes.

Mary Schroeder-Fox: Would you like to amend your motion to reflect the comments made by Ms. Weeks and the Secretary? Why don't you read the new motion in its entirety and then Mr. Steele if you would so amend your original motion?

Ed Kost: What I have here is a motion to table the boarding aspect of the Application and we're requesting a drawing done to scale and Robin Davis will review the drawing, prior to its coming to the Planning & Zoning Commission and make sure that it meets some standard that Robin likes; and, secondly that the drawing has complete details of the operation.

Gene Steele: I amend my motion to include the Secretary's statement.

Al Perkins: I agree with that amendment. Second.

Virginia Weeks: Now we will have a roll call vote:

Ted Kanakos	Yes to tabling the motion.
Al Perkins	Yes to tabling the motion.
Ed Kost	Yes to tabling the motion.
Virginia Weeks	Yes to tabling the motion.
Gene Steele	Yes to tabling the motion.
Louise Frey	Yes to tabling the motion.
Michael Filicko	Yes to tabling the motion.

7. Old Business

- Discussion and possible vote on changes to Section 4.8.8, Paragraph 2 of the Zoning Ordinance, that's part of the Large Parcel Development. Do either Robin Davis or the Town Solicitor have anything to say?

Mary Schroeder-Fox: I don't have anything to say because I haven't actually seen the rewrite. I read about it in the Minutes, because of course, I read that as part of my package, prior to coming here.

Virginia Weeks: Excuse me, one was supposed to be given to you last month, but it wasn't.

Mary Schroeder-Fox: I wasn't able to come last month, so therefore I didn't get a chance to read it.

Virginia Weeks: I know Mr. Dickerson has some information. The reason I put it in there, by a super-majority of the Town Council, is a long time ago when we were doing the conditional use for Dr. Howard, we were told at that time that if a negative recommendation went to the Town Council,

then they would need a super-majority to overrule it. I'm told now, that's not so.

Ted Kanakos: Where did we hear this?

Virginia Weeks: When we were doing Dr. Howard.

Robin Davis: We're talking conditional uses, compared to an LPD.

They're two totally different areas of the book. We don't need to get confused on what this section we're talking about on amendments to an LPD and a super-majority vote for a conditional use would be.

Virginia Weeks: I just assumed that if you needed a super-majority for a negative recommendation in one place, you would need a super-majority for a negative recommendation in the other.

Mary Schroeder-Fox: Not necessarily. I think what you were trying to say that you were borrowing the logic and the reasoning from someplace else in the Zoning Code; when there's a negative recommendation from the Commission. And that is important to say out loud because that's part of your reasoning for writing your proposal the way you've written it. So that can be part of your pitch if you will, that you make to the Town Council when you ask them consider this proposed change. Because, of course, that's where it needs to go as an ordinance amendment would be to the Town Council to approve this revision to Section 4.8.8. The only thing that I'm going to just throw out there for consideration – I know before that we did not like the existing language that talks about this “unless changes proposed significantly alter...”. That's loose language. It doesn't give you clear definition. I understand that and I agree with some of the comments that have been made before about this language; however, the proposed re-write, if this is what you want this is fine, is saying “any change requires a public hearing”. There are some changes that could be very de minimis; that those things tend to happen from time to time as these developments get underway and they start to get built out. Some of the surveys were just a little off and things moved by an inch. Technically, they're changing their record master plan, but they're not changing the number of lots; they're not changing the density; perhaps part of your proposal might include a list of definitions of things that are not significant; that wouldn't require public hearing; but, that would require our Planners to be involved; because they would have to give us the recommended language.

Ed Kost: I'd almost go in the reverse. I'd almost rather say if the change involves changing the number of lots; changing the mixtures; big things; as opposed to limiting it to the little things; I'd rather deal with the big things.

Mary Schroeder-Fox: And that may be one way to go about it. I just foresee an issue that if this proposal was made, as written, and it was adopted by the Town Council, you are going to go bleary-eyed with every tiny little change that someone needs to make, because they're going to have to come back before you and have a public hearing. It's going to be very cumbersome. If the way to approach it is to say here's a laundry list

of big things, or very important things, that require public hearing, anything else that doesn't fall into these categories that we listed, won't require a public hearing. That is certainly a valid and good way to approach it. Maybe you need to think about what are the big things and compare notes, before you submit your proposal to Town Council.

Ed Kost: In thinking about this, if everything is going to be submitted to us, it doesn't necessarily mean that we have to have a full meeting about it. If it's like a change in the lot line, literally you could send in a letter with Robin saying we want to change this lot line by 1", that doesn't require any more than a quick, two-minute, fine, thank you for sending this in and that way we might not have to get into drawing up a long laundry list. No matter how many lists we make, you know there's going to be one that you're going to miss and it will slide in somewhere.

Ted Kanakos: That's why you put in "not limited to".

Mary Schroeder-Fox: That's right. I agree with both of your points that were just made that no matter how well you try to list things, you're always going to miss something and that's why we lawyers love to say "including, but not limited to the following...". Then you list all of the different things. You mentioned something about certain things might be able to go just to Robin and then he signs off on things. Look at the Sussex County Ordinances where the Planning & Zoning Commissioner has a certain amount of administrative authority to sign certain kinds of changes and then there's some definition about how other changes have to go to the full Commission; some require public hearing and some don't. Robin could be something like Lawrence Lank as the Director of Planning & Zoning at the County level, but that might give you an idea of something you might want to do. Not necessarily the exact same thing, but that could be a way to split the authority and some of the tasks involved. It's just an idea.

Virginia Weeks: At this point, I believe that there are changes to Master Plans that don't come back and forth, that are miniscule. Is that right, Robin?

Robin Davis: I don't know about how it was in the past, but anything that changes the Master Plan – the only two I know of was Heritage Creek and Cannery Village. They are the only two developments that have the LPD that have a Master Plan. That's the only developments that we're dealing with in Town. There's Heritage Creek, Cannery Village and River Walk, which we are still in the early stages of that one. We've not gotten the final yet on that. Cannery Village and Heritage Creek had started well before this committee was here.

Ed Kost: Following up on the suggestion of Robin acting as a filter, I like the idea of Robin discussing various things with the Chairman, to make sure that the line of communication is nice and clear; that if it's a gray area, make a decision to go or not to go. That way we could have a series of filters and we know we hit a big subject that's going to come here and

it's going to be changing a lot line by 3"; it's not going to show up and we're not going to worry about it.

Robin Davis: Now that we have Debbie [Pfiel] involved, Bob Kerr was the major portion of the engineering and the planning section. Bob Kerr has a lot of history with what has been significant or a minor change in this town. There could have been a lot of things that happen out at the site; that a water pipe might get moved two feet because now it's more reasonable because of the utilities. If you actually look at this plan, you have to decide. Is that necessary? No.

Virginia Weeks: Actually, this was meant to only incorporate the things that would naturally come to us. That was written just to give us a starting point and it was only meant, for example, when a request came in, was it a minor or a major for 77 houses were moved; I strongly felt that the public should have had a hearing on that. But a hearing on whether it's major or minor? No. Just let them come in and let it start with we want to move these 77 houses. Do we have permission to move these 77 houses? I don't understand why we had a meeting over whether this was major or minor. That's what I'm trying to get rid of. I'm not trying to have water pipes moved.

Robin Davis: I'm not trying to flash back again, but that was the previous Town Solicitor, John Brady and he said that while reading the ordinance, he interpreted the ordinance to say that it was your requirement to first say yes or no to a public hearing. Because what would happen if we put it on the agenda as no public hearing, it comes before the Commission and the Commission says I think this is a major significant change, basically progress stops. We have to give public notice for a public hearing and all that, so they're back next month. I think Mr. Brady was saying let's get that cleared up first before we say yes or no on the public hearing. Of course, there's always the plus and the minus of any public hearing. You get into every little move and every little change has got to come back. The public might not be concerned about that. But then if you say you're leaving it up to the Commission, I understand your concern is whether we are doing the right thing.

Virginia Weeks: We had 77 houses that want to be moved to another section. Even if they are attached townhouses, that's a lot of square footage and I was very uncomfortable doing that because we don't know if he's going to put a dry retention pond; is he going to put this; is he going to put that; do the people who bought there want to look at an empty lot now, rather than have neighbors. That is my concern. I want them to come to us before hand and say, please let these 77 lots be moved.

Ed Kost: The one we're talking about is Cannery Village. What upset me is that 77 lots are being taken out of the area I live in, I think. I'm not even sure; and they're going to another area. You say, what does that matter. It matters, because they are building a community center; I'm going to have to pay dues to the community center; now the total number of houses that support that community center just went down; my dues

will go up; and I had no say in the whole deal. None of my neighbors even know about it. To me, that was very important. It cost money.

Virginia Weeks: That wasn't well explained because Section IV is being sold and will they remain under the Cannery Village Homeowner's Association or are they going to go off and have their own little thing?

Ed Kost: My understanding is no. I'm on a Committee right now, working on a homeowner's organization covenant. I was just told no, they are not part of it. Have a nice day. That's that. It's a done deal.

Virginia Weeks: Who told you that?

Ed Kost: Some of the people on the covenant committee. I'm not sure where they get their information.

Robin Davis: We're kind of getting off track. Cannery Village, no matter how you split it up into 25 owners or whatever, it's all a part of the initial LPD conditions and approval. It's still part of it. I don't care if you have one owner, five owners, or ten owners. No matter how they do it, they still have to be subject to the conditions that were put on the overall LPD.

Mary Schroeder-Fox: When Cannery Village came before you with the movement of the 77 houses, you were stuck with a situation that was created before you existed. Part of what happened that evening, and I don't have the information right in front of me to give you a direct quote, the original conditions talked about moving things around and that that would be allowed. And moving things around had been previously allowed and approved and deemed to be something that was not significant and didn't require a public hearing. Not only did you have a set of conditions that allowed for it, but you also had those conditions applied already in a previous situation that allowed something that was actually a bigger movement than what happened this last time they came before you. There are lots of reasons why things happened the way they happened the last time and your hands were tied to some extent. I want to comment, just very briefly, it's a little bit outside of the Planning & Zoning Commission province here about what happens at the Homeowner's Association level. In my day job, I'm actually a homeowner's association attorney, so I represent a lot of communities and I haven't read through Cannery Village's documents yet, so I can't absolutely say for certain what is or what is not in there. Typically for a community like Cannery Village, which is modern, meaning you're not dealing with covenants that are 40 years old, things have changed a lot since some of the original covenants that went down in Sussex County were written; but one of the things that the developers often do is reserve a lot of rights unto themselves to switch things around, to change amenities, we promised you a clubhouse, but in those documents that go "of record" and everybody has constructive notice; which is very important in Delaware; if they're recorded at the Recorder of Deeds; and that really has residents in a community if you have a problem with something the developer is doing or not doing, you have to look at your contracts documents. One of your contract documents is your set of restrictive

covenants and what kinds of powers the developer reserved unto himself. I have written some of them for certain communities, not Cannery Village, so don't blame me; and we were hired by the developer and we have written in that the developer, as long as he owns one lot, can amend the covenants and do all sorts of things. The idea behind that is to try and give them flexibility, but ultimately at the end of the day those types of concerns, it sounds harsh and uncaring and unfeeling, that's not the primary concern for the Planning & Zoning Commission when you've got this hat on. Have that concern in your community and certainly go after it and do what you need to do to make your voices heard; but, at the Planning & Zoning Commission level you can't be concerned about every complaint that homeowner's might have against their developer, because that's really their concern and you can't interject yourself into that. You have to simply look at what our job is. I know it's hard to split the two; but that is something to always keep in mind because otherwise you could end up fighting a battle that is really a private battle between a private consumer and their builder or developer.

Virginia Weeks: Going back to our previous one, Mr. Dyer was here with these 77 houses; we were told that he would have to come back with a revised sub-division plan anyway for us to look at and there would be a public hearing then. So why did we even have a meeting deciding whether or not it was a major or minor change, if he's coming back to us anyway?

Mary Schroeder-Fox: Because of your ordinances.

Virginia Weeks: That's what we want to get fixed. Would you please right something?

Mary Schroeder-Fox: I don't have the authority to write something yet until the Town Manager...

Virginia Weeks: The Town Manager knows this has to be changed. I met with the Town Manager and I asked him to put his input into our packet, but it didn't get there. This I did just to start the discussion.

Mary Schroeder-Fox: I understand and what I will do then is to ask Robin to have George get in touch with me about the level of involvement that I'm supposed to have right now in terms of redrafting this; because there are so many different ways that we can go and the entire zoning code for the Town of Milton needs work and the Town Council is aware of that and they've mentioned it numerous times in their meetings and what we don't want to do is change or recommend, because we can't change anything at this level, it has to go to Town Council, but put a lot of work into changing one particular section, when a global revision is underway and that may get done because they are looking at the entire zoning code as a whole. You want to make things work together.

Michael Filicko: Is that being done?

Ted Kanakos: Is that being done?

Mary Schroeder-Fox: It's been talked about and there are financial concerns. That is a huge undertaking to get this entire zoning code revised

and fixed. That's why I'm saying I don't know exactly where things are. I know it's been talked about. I haven't been involved. The best that I can do is say Robin, please ask George to get in touch with me and he and I can talk about what I'm authorized to do; what his thoughts are about this particular section and see where we are.

Virginia Weeks: Robin, are you a message carrier from George? He called me and I know he had concerns. I asked him to please write up what they were and put them in our packet so everybody gets to see it.

Robin Davis: No, he didn't give me any information on this. I know we did talk about it briefly and then he said he had talked to you, but that's as far as I got with him.

Virginia Weeks: We were at a meeting with Robin, myself and George and it was agreed that rather than having to decide whether there should be a public hearing; whether it's a major or a minor; give everything a public hearing. Give everything that would come under either major or minor a public hearing. Just let them have a public hearing. Basically, I come from New England where we have a Town Hall and everyone is entitled, at some point, to let us know what they think before making our decision rather than making it in a void. I felt badly for the two people from Cannery Village; not because they had to recuse themselves; but before we agreed to the movement of the 77 houses, we had no input and I'm not even sure whether we could disagree to the movement of the 77 houses.

Ted Kanakos: He said he had the perfect right to do it. He defied us. He just said this is what I can do.

Virginia Weeks: There's a great deal of dissatisfaction and what can we do and what can't we do and I basically don't want to take a person who is not part of the Town Government's word for the fact that he can move anything he wants, whenever he wants.

Mary Schroeder-Fox: I don't think you took his word for it because it was part of the requirements when he got his original approval. That goes back to what we were talking about earlier. In that particular situation, your hands were tied to some extent, because of things that you didn't even do. You didn't have any part of it.

Ed Kost: If we make this change, it doesn't change that situation at all. Into the future, either.

Mary Schroeder-Fox: That would be correct. If he came in again and said I want to make some other changes and move these things around, his original approval said he could move things around. That's not exactly what it said, but it said something like that. He would fall under the new ordinance that says you have to have a public hearing. He comes in and has a public hearing and then goes, I've got this piece of paper that says I can move things around. I've already done it twice or three times before; this time I'm only moving five. Last time I moved 77 and the time before that I moved 168, or whatever the number was. Each situation is still going to be unique and different, depending upon the requirements or conditions that were placed on an original approval.

Virginia Weeks: I have a hard time and it's my own mental lack of facilities here to understand why he has to come in at all if he's got to bring us a sub-division plan.

Mary Schroeder-Fox: I don't think we need to waste our time thinking about that, because at this point it simply is what it is. That's what is required under the current system that's in place.

Virginia Weeks: I don't want to go through that again.

Michael Filicko: The system needs to be changed, Mary. That's the issue and it sounds like we don't have the authority to make those changes at this time. Is that correct?

Mary Schroeder-Fox: Are you talking about the Section 4.8.8, about changing that?

Michael Filicko: Yes.

Mary Schroeder-Fox: You don't have the authority to change that ever. You just have the authority to recommend something and give the Town Council a proposal to say this is what we think needs to happen. In order to pass a new ordinance and/or amend an existing ordinance the Town Council has to make that decision. Only they have that authority. To answer your question, no, you don't have the power to do that. I think what's on the table is whether or not I'm going to rewrite the sucker for you and get paid for it and whether or not I'm authorized to do that. We will talk to George about that because he's going to know whether or not the Town Council is even receptive to hearing something like this right now. I know that they don't like the Zoning Code, so maybe they will be. I would also like any effort that you make to be complementary to anything else that might be going on in terms of the Zoning Code getting changed. I don't know that it is; like I said, it's been discussed; I have no idea if it's on the drawing board or if anybody is doing anything or if it's just something we're dreaming about. Maybe this will kick start it. At the very minimum I want to make sure that we don't undo anything.

Virginia Weeks: We're between a rock and a hard place. The comprehensive plan is due and I guess we're not going to do the Zoning Ordinances until the comprehensive plan is done.

Mary Schroeder-Fox: That would make sense.

Robin Davis: Yes, that's probably correct.

Virginia Weeks: I know the Zoning Ordinance is being recodified, but not changed.

Robin Davis: To say whether or not this significantly alters their vision, is there even any need to change it. You can say, yes I think it is necessary, all the time.

Virginia Weeks: We can't do that. We can't have an agreement amongst ourselves that we're going to make this all get better.

Robin Davis: You don't want to go from one extreme to the next. You don't want to automatically turnaround. Then you could say that a public hearing is required for all of it and then the three of us stand here and say,

they just want to move that line this far and we're going to have to go through this public hearing.

Virginia Weeks: Even if he comes back with 78 houses and we say, I'm sorry, we need a public hearing. He's going to say no you don't, because you approved this in the past. We don't have the force of the Zoning Ordinance anymore.

Robin Davis: You wouldn't with Cannery Village anyway, as was discussed.

Michael Filicko: Cannery Village is a done deal.

Mary Schroeder-Fox: Cannery Village is a different deal; you're right; a different and a done deal, because of the original approval. You could have all the public hearings you want and when he whips out the piece of paper that says my approval says I can move things around, you're kind of stuck with some of that.

Virginia Weeks: Then don't send him to us.

Ed Kost: I disagree entirely. I would rather have him come here and have him stand up and say what he has to say. Let's shine some light on it before he gets all the planning done and shows up with the finished product. If we have some input, life may be better because when he shows up with his sub-division plan; he's showing up with a sub-division plan because he increased the density; and he's changing all the lines in the drawing probably. That means he's going to have to come here and submit something. Engineers are going to have to look at it; everybody is going to look at it; because it's a totally new plan compared to what it was. But if we get him before he gets to that point, maybe we can say this part over here is okay, but this part you ought to give thought to and maybe move it around and save a lot of time and aggravation later. I think amending the ordinance, what we're saying here is we're going to do a comprehensive plan, which is going to take years and then we're going to get to the zoning thing. I just turned 66 and I'm probably going to be long off the board and maybe in the ground before you get to it. Amending it a piece at a time, will at least solve some of the problems that bug us right now.

Mary Schroeder-Fox: I'm not disagreeing with any of that, I'm just saying I need to find out what my marching orders are and I will do that.

Virginia Weeks: Robin, would you please ask George to see what authority we may have here? Obviously, this board needs the help to write this properly.

Mary Schroeder-Fox: Part of the process is, whatever I come up with, you're not going to get this done and to the Town Council next month, because I guarantee you I'm going to give you something and it's going to get blood all over with red ink. That's the way it works. You will have your own ideas. I can only propose something, because it's not going to look like this, it's going to look like something else.

Gene Steele: You can't do that, until you get permission from George to do that. That's just going to back everything up.

Mary Schroeder-Fox: That's right.

Virginia Weeks: Could I have a motion that we recommend that the Town Manager ask the Town Solicitor to give us some language on this. I just want to get it done so we can go home, folks.

Mary Schroeder-Fox: It's my understanding that you've already met with George and Robin about this.

Ted Kanakos: May I ask a question here of Robin and this goes back to those 77 houses. When he switched over those 77 units to the Open Circle, supposedly I'm hearing that these people are not members of this homeowner's association. That's all Cannery Village. That block, did that spin off from it and get a different name; Cannery Village II? Is it completely separate? What do they share in common? Where are they attached at the hip?

Robin Davis: He can sell off chunks of it as he goes. Right now IA, IB, IIA, IIB, IIC have all been finalized and approved. He has IIIA, IIIB and IV that have not been final approved yet. He can take units out of IIIC that have received final, because he's not started building yet and move them over to IIIA. IIIB at one time was all commercial, now he's talking about changing all the commercial and moving it out of that area. It's still part of the blanket LPD approved for that total of 100 acres, or whatever it was, at 538 total units with 10.86 acres of commercial, conditions which can reasonably allocate units within the LPD, all those little conditions that were put in; but Section IV, if it ever goes to Open Circle, they have to keep the same conditions that were done originally.

Virginia Weeks: Don't they have to put up a club house and people will pay dues?

Robin Davis: That's homeowner's association stuff and we do not get into the covenants; we don't get into homeowner's association issues. If the homeowner's association doesn't like you over on that side and you don't like us on this side, that's not our issue. It's nothing to do with us.

Ed Kost: Part of what I'm talking about shining a light on this, is just what you said. He can pick up the commercial and stick it right up against somebody's house who is on the other side of this property, an existing homeowner and say, I'm putting it right here.

Virginia Weeks: One more time, down the line. Ted do you have anything to say?

Ted Kanakos: No.

Virginia Weeks: Al?

Al Perkins: No, I'm good.

Virginia Weeks: Ed?

Ed Kost: If you're going to write something, deal with total number of units, mixture of units, residential and commercial, location and traffic flows. Those are four big ones.

Virginia Weeks: Mike, do you have anything quick to say?

Michael Filicko: No, I can't say anything quick, Ginny. Prior to this being written, I called the Town of St. Michael's, I got the name of the

gentleman who did their zoning ordinances, also they were going to send me a copy for X amount of dollars. Prior to me bringing this back to Town Council, they went ahead and hired someone who did the ordinances, prior to this, the same person. What he did was, he took his zoning ordinances from another town and he took out the name of that town and put in the word "Milton". But he did leave out in some parts the Seneca Indians. The Town paid him thousands of dollars to do that.

Virginia Weeks: Gene, do you have anything further to say?

Gene Steele: No.

Virginia Weeks: Louise, how about you?

Louise Frey: No, but everyone have a nice Thanksgiving.

Virginia Weeks: Happy Thanksgiving to everybody.

8. Adjournment

Virginia Weeks: We need a motion to adjourn.

Ted Kanakos: I make a motion to adjourn.

Gene Steele: Second.

Virginia Weeks: All in favor say "Aye". Meeting adjourned at 8:48 p.m.