

**EGREMONT PLANNING BOARD
MINUTES
SECOND CONTINUATION OF PUBLIC HEARING
APPALACHIAN TRAIL CONSERVANCY
APPLICATION FOR SPECIAL PERMIT AMENDMENT
JULY 27, 2015: PLANNING BOARD MEETING ROOM**

Present: Planning Board members Helen Krancer (chair), Gregory Cherin, Don Pulfer, Lucinda Vermeulen, Mark Holmes (clerk).

Adam Brown of Appalachian Trail Conservancy

Keith Zaltzberg, Regenerative Design Group

Elizabeth Wroblicka, attorney for ATC

Twenty members of the public:

Ursula Cliff

Walter Cliff

Katie Burns

Eileen Vining

Lynn Wood

Marj Wexler

Alice Maggio

Ellen Maggio

Eliza Maggio

Karen Berger

Peter Maggio

Patricia Maggio

Grace Snyder

Bill Wood

Kerry Douglas

Peg Muskrat

Elliott Snyder

Kathy Orlando

Susan Bachelder

Robin Goldberg

The hearing opened at 7:13 PM

The clerk read the Notice of Public Hearing Continuance

Ellen Maggio submitted four letters from the Maggio family stating their opposition to the proposed parking lots.

Letter was submitted from Grace and Elliott Snyder.

Letter was submitted from Elizabeth Wroblicka of Etheredge & Steuer, attorneys at law

Letter was submitted from Nancy Howell Kuntz of South Egremont.

Letter was submitted from Susan Bachelder of South Egremont.

Letter was submitted from Eileen Vining of South Egremont.

Elizabeth Wroblicka, attorney representing the ATC, outlined the basic descriptions of the four parcels of land that comprise the Appalachian Trail Conservancy at the Kellogg Conservation Center. She detailed the proposed parking lot site and summarized Adam Brown's previous description (at the first Public Hearing on June 24) of the Kellogg Center and what their mission and purpose is. She said that the KCC and ATC are exempt for educational uses on land owned by a non-profit. She read the mission statement of the Appalachian Trail Conservancy and stated that the Planning Board cannot deny the permit but that they can "condition" the permit. She gave a history of the ATC's path towards this permit process and said that they had been "transparent" in their efforts.

Krancer pointed out that this is an "amendment to a special permit", not a special permit application.

Karen Berger asked, "Is there a limit on exempt use?"

Wroblicka answered that the zoning bylaws may be exempted because of setbacks, etc, and that would be part of the conditioning.

Krancer pointed out that the Planning Board could limit parking. Wroblicka answered that it could be conditioned "reasonably."

Wroblicka stated that the Conservation Restriction is an issue that "is not before the Planning Board." The Special Permit Amendment application and the Conservation Restriction are "separate issues", she insisted, and the CR should not be part of the Board's consideration.

Krancer stated that there is a conflict between the stated purpose of the ATC and their plans for a "mega parking lot."

Wroblicka stated again that the CR and the permit application are "separate entities" but it does not change the fact that the CR is in effect. The Planning Board has "no jurisdiction over the Conservation Restriction."

Vermeulen said that she would like to "turn the argument over to the human side" and stated that she is willing to set aside the CR issue and take into account the "passions of the abutters. Are there any compromises?"

Grace Snyder asked if the ATC is arguing that they are "exempt by right" because they are an educational organization?

Susan Bachelder asked if the ATC's special permit amendment application would fall under Section 4.1.1.2 g (i) of the Egremont Zoning Bylaws (accessory uses permitted by right).

Wroblicka answered that the section is not applicable in this case.

Adam Brown answered Grace Snyder's questions by outlining what the educational purposes of the ATC are:

- Workshops for ATC members
- Workshops for ATC volunteers
- First aid training
- Plant identification training
- Volunteer workdays
- Walks for the Egremont Council on Aging
- Programs for Appalachian Mountain Club Ridgerunners and trail maintainers.

Kate Burns asked how big the classes are, and Brown answered that they are generally 6-10 people. Burns then asked why they are planning for a proposed parking lot for 56 cars, and Brown answered that in this area the ratio is usually one person/one car.

Lynn Wood stated that Mary Margaret Kellogg "would not have done what you are suggesting." She asked that the ATC set the proposed parking lot "back."

Eileen Vining reiterated her earlier letter submitted at the previous hearing, and said that she feels she is representing Mary Margaret Kellogg's wishes, and thinks others in the room feel that way also. She submitted a letter stating that the question of an educational exemption is complicated and a determination would have to be made after further research as to the standards to qualify for an educational exemption under the statute and a by-right educational use under the bylaw. She also submitted an 11-page letter which outlined her concerns to the Planning Board in accordance with the mandatory findings the board must make to grant the special permit, and said that there would be a "public outcry" against a parking lot on conserved land. She stated that the board must make a finding that the proposal is in harmony with the purpose of the bylaw, and under Section 1.3.1.4c the board should consider the existence of the Conservation Restriction. Section 1.3.1.4c says that one bylaw purpose is to support the acts of other town agencies, acting under legislative authority, to preserve the Town's existing rural character, open spaces, and low density of population, and the act of Board of Selectmen in approving the Conservation Restriction is just that kind of act.

Ursula Cliff asked if the original Special Permit specified the number of parking spaces allowed. Pulfer answered that the original special permit stated that "average number of cars would be 10-15."

Krancer read the appropriate sections of the original special permit that addressed parking.

Bill Wood asked if Adam Brown was an employee of the National Park Service. Brown answered that he is not. Wood then asked who his next -in command at the ATC was, and Brown answered that Hawk Metheny was his immediate supervisor.

Wroblicka stated again that the Conservation Restriction and the intent of Mary Margaret Kellogg are not issues before the Planning Board. She said that the ATC has been excellent stewards of the property. She said that the ATC has been trying to find a “holder” for the CR for the 34 acres in Conservation Restriction (4 acres for the proposed parking lots and 30 acres across Undermountain Road), and that the Sheffield Land Trust, Berkshire Natural Resources Council, and Egremont Land Trust had all declined. She said that the National Park Service had agreed to hold the Conservation Restriction.

Margaret Muskrat (representing the Egremont Land Trust) stated that the ELT could not hold the restriction because of manpower shortages. Kathy Orlando (representing the Sheffield Land Trust) said that the SLT felt it was inappropriate for them to hold a CR on land in Egremont.

Wroblicka said that she had spoken with the attorney who represented Mary Margaret Kellogg at the time of the transfer and that this proposal was “exactly what she had in mind,” according to the attorney. Wroblicka also stated that she has drafted many conservation restrictions, and that she completely disagreed with Ms Vining concerning the board having jurisdiction over the Conservation Restriction.

Vining clarified that she did not state that the board has authority to enforce the Conservation Restriction but that the board, under the Purpose section of the bylaw, must consider that there is a Conservation Restriction on the parcel as approved by the Board of Selectmen.

Cherin asked who should oversee a conservation restriction if not a planning board? Wroblicka answered that a CR should be enforced by a land trust.

Alice Maggio addressed the letter from Peter Puciloski, in which he points out that the CR on the ATC property was to be enforced by the National Park Service. Wroblicka said that she disagreed with this interpretation.

Bill Wood stated that the grantor of the CR was Mary Margaret Kellogg, the grantee is the Appalachian Trail Conservancy, and the CR was to be enforced by the National Park Service.

According to Wroblicka, the National Park Service did not sign the CR enforcement agreement. So the ATC is the enforcer of their own CR. “Merger of like interests” is the term she used.

Wroblicka stated that “public access is a conservation purpose.”

Ellen Maggio asked if there are “other issues we can act on.” Krancer pointed out that the Planning Board has not deliberated on any of the previous public hearings, or the site visit.

Karen Berger asked again if the Board could place limits on the permit.

Vining asked Wroblicka if, in her opinion, the mission of the ATC, as a whole, is what is important or if the mission of the Kellogg Conservation Center in particular is important in determining whether the standard is met for an educational exemption.

Wroblicka answered that the proposed parking lot is “part of the educational mission.”

Ellen Maggio asked if the expanded facility is going to be a “profit-making entity for the KCC. Brown answered that the primary goal of the KCC/ATC is educational. Maggio then asked why the proposed parking lot was on their agenda first. Also, she asked if the ATC were going to renovate the barn, would the septic field be expanded?

Brown answered that that issue is not before the Planning Board at this time.

Bill Wood stated that he believed that the issue would “be in court.” Vermeulen disagreed.

Alice Maggio stated that the issue is an emotional one for her and her family. The proposed parking lot cannot be removed once it is in place, she said. A parking lot there would be “ruining open space.”

Wroblicka commented about conditions that could be placed on the permit.

Pulfer stated that the engineering that has been done on the proposed parcel showed that the design of the proposed parking lot is excellent as far as ecology is concerned, but only if we discount views and the character of the neighborhood; those are ecological concerns as well.

Krancer pointed out that the other conditions and locations of the proposed site have not been discussed by the Board. She also said that Ms. Kellogg evidently had in mind additional parking to the north of the house.

Keith Zaltzberg said that the preliminary exploration of the north area showed that the excessive groundwater in the soil discouraged the site from being explored further, and that RDG did not do a rigorous ecological/ engineering investigation there.

Ursula Cliff stated that the reputation and credibility of the Appalachian Trail Conservancy would be damaged by the proposed parking lot.

Ellen Maggio encouraged the ATC to “pull back” and look at different options—using the Jug End parking lot as a shuttle location to ATC, for example. The controversy has upset her family this summer, and the ATC needs to “stop.”

Wroblecka said that the applicant would be willing to discuss conditions for the parking lot.

Wroblecka asked Zaltzberg to summarize the process with which Regenerative Design Group arrived at their recommendations for the proposed parking lots. Zaltzberg said that the RDG would be willing to eliminate the upper bus parking area, or even the entire upper parking area, or rearrange the configuration of the design, or screen the proposed lots in different ways.

Pulfer said that the proposed north parking lot option should be explored in more detail.

Cherin asked if a north parking lot could be accessed from the proposed south driveway. He also asked the Maggios if they had any ideas of their own about any other options for a proposed parking area.

Ellen Maggio said that the ATC should “withdraw” the proposal, for her earlier stated reasons.

Eileen Vining asked if there could be a more informal way to come up with a good solution for the proposed parking lots and other issues that the ATC would like to deal with. She recommended that people involved could “brainstorm” ideas.

Krancer asked Brown if the ATC would be willing to meet with townspeople to discuss the plan. Brown said yes. Krancer then asked Brown if ATC would withdraw the special permit amendment application. Brown said he would do that.

Wroblecka wrote out a request that the Planning Board accept the withdrawal of the proposed Special Permit Amendment Application, without prejudice. The request will be copied and sent electronically to Planning Board members, Wroblecka, and Egremont Town Clerk. The board moved and voted unanimously to allow the applicant to withdraw the application without prejudice.

The hearing was closed at 9:15 PM

Respectfully submitted,

Mark Holmes, Clerk