

SCITUATE PLANNING BOARD MINUTES January 23, 2014

Members Present: William Limbacher, Chairman; Stephen Pritchard, Vice Chairman; Richard Taylor, Clerk; Robert Vogel and Robert Greene, Alternate Member.

Members Absent: Eric Mercer.

Others Present: Ms. Laura Harbottle, Town Planner.

See Sign-in List for names of others present at this meeting.

Location of meeting: Selectmen's Hearing Room, Town Hall, Scituate, MA.

Chairman Limbacher called the meeting to order at 7:30 P.M. The meeting was being recorded for airing on the local cable television station.

Documents

- 1/23/14 Planning Board Agenda

ACCEPTANCE OF AGENDA: Mr. Taylor moved to accept the agenda. Mr. Pritchard seconded the motion and the vote was unanimous in favor.

Continued Public Hearing – Accessory Dwelling Special Permit – 75 Moorland Road Assessor's Map/Block/Lot Applicant/Owner: John F. III and Catherine M. McNamara

Documents

- Revised primary dwelling floor plans by Off the Wall Design Sheets a-1 through A-7 dated 9-3-13, Decision from the ZBA recorded 1/7/14, revised Site Plan for Accessory Dwelling 1-10-14, revised memo to Town Planner dated 1/15/14
- Architectural Drawings A-1 through A-6 by Custom Homes Designs for McNamara Residence Carriage House dated 8/15/13
- Excerpt from Zoning Map for 75 Moorland
- Email from Paul Mirabito dated 1/14/14
- Revised transmittal to Town Departments dated 1/15/14
- Email from Mike and Katie Benning dated 1/19/14
- Email from Katie Benning dated 1/23/14
- Two Emails from Julie Burgess dated 1/23/14

Paul Mirabito, Jeff DeLisi, John McNamara and Julie Johnson were present for the applicant. Mr. DeLisi indicated that the application was filed last April and continued so that revised accessory dwelling plans could be formulated and then continued again so that the applicant could go to the Zoning Board for a square foot revision to the primary dwelling. He indicated that the revised accessory dwelling will have a different visual impact and addresses the Board's concerns that it is subordinate to the primary dwelling. Mr. Mirabito indicated that the plan is essentially the same, but the floor area of the primary dwelling was increased so the accessory dwelling dropped from 39.6 to 31.1% of the floor area of the primary dwelling. He said the site has been regraded so that the accessory dwelling sits lower into the ground with additional walls and the height from the average grade around the building is now lower at 25.4'. He said the house will look smaller. Designer Julie

Johnson indicated that the front of the house is the most revealing view. She said the overhead doors on the side have been removed, the slab lowered and there will only be 4 to 5 risers instead of a full flight of stairs at the back. She said that along with taking the peak off the attic and having a widow's walk, the accessory dwelling is a miniature version of the home now built. Mr. DeLisi pointed out that the lot is on the dividing line between the 10,000 sq. ft. R-3 and 20,000 sq. ft. R-2 zone and is a larger lot. He said that as of right his client could build a structure that complies with all the dimensional requirements and obtain a building permit for it. He said his client wants to keep with the character of the neighborhood and keep the accessory dwelling at about 30% of the size of the primary dwelling. He said it will be used by the children, family and friends of Mr. McNamara who otherwise couldn't afford this area of Scituate. He said the dwelling is clearly subordinate in size and use.

Chairman Limbacher questioned Mr. DeLisi's analysis of putting 2 houses on one lot by right which is not allowed by the zoning bylaw. Mr. Mirabito indicated that a 3 car garage 35' high could be built on the lot as a matter of right. The Board determined that since the property is in the R-2 zone, the property cannot be subdivided as 24,000 sq. ft. of lot area exists. Ms. Harbottle indicated that this is the fourth session for this public hearing. Concerns of the previous sessions included: did the accessory dwelling meet the purpose of the bylaw, the height and size and relationship of the accessory dwelling to the neighborhood, is the accessory dwelling subordinate and the grading. She indicated that now that the garage is subgrade some of the concerns are addressed. She indicated this is more reasonable than the other proposal and the height is less than allowed by zoning.

The Board discussed the grading. It was determined that the accessory dwelling is about 2.5' lower than the top of the ridge of the existing house and the garage floor is elevation 22.2. Mr. Mirabito indicated the grade was not changing along the north side of the accessory dwelling closest to the neighboring property. Ms. Harbottle said the grade along that side will change slightly so water drains away from the foundation. She indicated that the zoning for the property is R-2. A change could be initiated if someone wanted to go to Town Meeting. She said that zoning protects the character of the neighbor by giving an expectation of what could be built. Ms. Harbottle opined that a large garage is a different use than an accessory dwelling. She said the Board will need to decide if the purpose of the bylaw has been met. She said the purpose was for moderate income people to have an option and not for people who can't afford a particular neighborhood. She said the bylaw is meant to protect the stability and character of a neighborhood.

Mr. Taylor asked Mr. McNamara if he had a specific family member who would live in the accessory dwelling. Mr. McNamara indicated that he could have different family members and it is handicap accessible for his elderly family members. Mr. Taylor said he appreciates the changes that have been made to the dwelling. He said it looks like a 2 story building except from the front where it is 3 stories and looks tall because it is sunken in the ground. He said it appears to meet the physical square footage requirement of the bylaw. Mr. McNamara said he restores Boston Whalers and needs the trailers to fit in the garage. Ms. Johnson said that the parcel is viewable from all sides and from 3 sides only 1 ½ stories are visible. She said the widow's walk is accessible by a ladder and hatch only.

Mr. Pritchard summarized that the changes include the unit is sunken into the ground 3' lower than before, the building height is reduced by 3', the grading around the dwelling has changed and there are minimal changes to the dwelling itself. He asked if other concerns from the neighbors had been addressed and if the neighbors had been consulted. Ms. Johnson indicated that the changes were made in response to Planning Board feedback. Mr. Pritchard asked how close the accessory

dwelling was to the neighbor on the north side. Mr. Mirabito indicated it met the setback and was 15.5 feet from the property line and was about 40 feet from the primary dwelling. He said the house next door is about 8 feet from the property line making the accessory dwelling about 23 feet from the house next door. Mr. Pritchard said it is close to the house next door and from the front it looks very large and asked how it met the subordinate requirement. Mr. DeLisi said it is a detached unit with separate entries and it is smaller in size as it is 30% of the square footage of the primary dwelling so he didn't see how it cannot be concluded that it is subordinate in size. Mr. Pritchard indicated it has a second floor and a widow's walk. Mr. DeLisi said that it is allowable under the bylaw. Mr. Pritchard said he understood that, but questions if it is really subordinate or not. Mr. Vogel suggested possibly conditioning landscaping on the north side as it was not an attractive elevation and close to the neighboring property. He said landscaping would soften the site and he thought that there was previously a fence. Mr. McNamara said that there was a fence and it blew down and he would be willing to put in a row of arborvitaes. He indicated that most of the homes in the neighborhood are bigger and the house next door is 5,500 sq. ft.

Chairman Limbacher said he saw two major hurdles. The first was the same with all special permits – does it fit with the intent of the bylaw. He said he does not see where it fits. The second is that the accessory dwelling is as big as other houses in the neighborhood. Gene Sullivan of 6 Collier Road indicated that was no longer the case. He said many homes in the neighborhood are 3 stories and the accessory dwelling has been part of the Scituate community for a long time. He said people who have lived there a long time can no longer afford the taxes. He said he thought the accessory dwelling fit and will be excited to see it finished. Mike Benning of 74 Collier said he has nothing against the applicants, but believes a large accessory dwelling doesn't meet the purpose of the bylaw. He said he moved away from the Jersey shore to get away from accessory dwellings. Mr. Mirabito said that his analysis of homes within 300 feet of the accessory dwelling show that only 2 homes – 78 and 57 Moorland are smaller than the accessory dwelling. He said one summer home is 532 sq. ft. and has no heat. Mr. Pritchard inquired how many of those properties have accessory dwellings. Mr. Mirabito said none. Mr. Sullivan indicated that some have in-law apartments.

Mr. DeLisi offered that there are many non-conforming lots in the neighborhood. He said that this lot is unique in that it can accommodate an accessory dwelling and meet the setbacks. He said he disagreed with the discussion of 530.1C. of the bylaw – to provide a variety of housing types to meet the needs of its residents and workers. He indicated that Mr. McNamara has family and hobby needs and the accessory dwelling would provide for his needs to be accommodated. He said that bylaw section D allows for an accessory dwelling to be located if it meets the criteria. He said that the requirements of the special permit prevent the dwelling from being on the lot lines and that there is a whole section of the bylaw to deal with affordable accessory dwellings. Mr. Taylor inquired if the dwelling is to be used for family year round or if it was for one member to use it for 2 weeks and another to use it for another 2 weeks like a summer rental. Mr. McNamara said he would like his parents/in-laws or one of his children to live there full time.

Ms. Harbottle said that there are approximately 17 surrounding homes and ten are less than 2,000 sq. ft. Mr. Mirabito respectfully disagreed. He said many homes look tall in front as they have garages and 2 floors above. He left a package of photographs of surrounding homes. Mr. Taylor indicated that the applicant could build a big barn and then come back and ask for an accessory dwelling. Ms. Harbottle concurred and noted the Board would have less control. Mr. Benning said that the aesthetics of the dwelling will be beautiful, but asked the Board to consider the spirit of the bylaw and accessory dwellings in town. Mr. Bjorklund questioned how the Board could relate square footage of the accessory dwelling to other houses in the neighborhood as the size is written in the

bylaw. Chairman Limbacher indicated to protect the character of the neighborhood and Ms. Harbottle indicated that it must be subordinate. Mr. DeLisi argued that the size is set forth and the use is interrelated. Ms. Harbottle indicated that the applicant is seeking a special permit and it is up to the Board to define if the criteria are met. Steve Guard of 51 Garrison Drive disagreed with Ms. Harbottle as to size. He said that the size is regulated by the bylaw and provides the Board no discretion. He said the Board should apply the bylaw to the size. Chairman Limbacher said he understood Mr. Guard's point, however; the problem is not mathematical but visual. He questioned if the accessory dwelling visually fits into the neighborhood. Mr. Taylor said it is subordinate and it meets some, but not all of the bylaw criteria. Mr. Vogel said his only objection is that there is no landscaping. Mr. Pritchard agreed with Mr. Taylor on the purpose, but remains concerned about it being subordinate and if it would be a two week rental unit. He said he doesn't feel the house is an accessory dwelling, despite its nice visual appearance.

Mr. Taylor said that the image is skewed because the lot is bigger than the others, thus the house and accessory dwelling would be. He said the lot is large and unusual and needs to stand on its own merits as it is different from other lots in the neighborhood. Mr. Pritchard said it didn't feel clearly subordinate to him. Mr. DeLisi offered that the applicant is open to landscaping. Mr. Taylor questioned if the dormers were eliminated, would it seem subordinate or is it the fact that it is 3 stories. Mr. Pritchard said it was the mass of the building. Mr. Taylor said that unless one parks in front, the 3 sides visible have been lowered. Mr. McNamara said he will provide a hedge and plantings. Mr. Benning asked that if this accessory dwelling is approved, does it set precedent.

The Board decided they were not ready to vote. Mr. Pritchard asked for true grades, landscaping and a perspective of the dwelling. Mr. Taylor moved to accept the applicant's request to continue the Accessory Dwelling Special Permit public hearing for 75 Moorland Road until February 13, 2014 at 9:45 pm. Mr. Vogel seconded the motion. Motion was unanimously approved.

**Continued Public Hearing – Mixed Use Special Permit in the Village Business Overlay District
50 Country Way
Assessor's Map/Block/Lot 53-5-3 and 3B
Applicant/Owner: 50 Country Way Trust, C. Christopher Ford Trustee**

Documents

- Request for continuance dated 1/20/14

Mr. Taylor moved to accept the applicant's request to continue the public hearings for the Mixed Use Special Permit in the Village Business Overlay District for 50 Country Way until February 27, 2014 at 7:30 pm. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Zoning Workshop - Water Resource Protection District

Documents

- Proposed Water Resource Protection District Map Dec 2013
- Proposed changes to the zoning Bylaw to update regulations for the Water Resource Protection District, with revisions Jan 2014
- Power Point presentation by John Clarkeson

John Clarkeson of the Water Resources Committee was present along with Jim DeBarros and Rick Mosca of the Scituate Water Department. Mr. Clarkeson presented a PowerPoint presentation

regarding the proposed changes to the Water Resource Protection District (WRPD) Bylaw. He said DEP promulgates Rules and Regulations for use of water for public health and safety for both quality and quantity. He indicated that the changes need to be passed for the Town's water withdrawal permit which must be renewed by October 2014. He said the permit lasts 20 years and if the bylaw doesn't pass, then the Town can't provide drinking water.

Mr. Clarkeson indicated that Humarock's water is purchased from Marshfield. He also said that Scituate relies both on surface water and groundwater to provide the Town with drinking water. He said the 2035 population projection estimates that there will be less people consuming water in the Town. He said population predictions are stable and there will be bigger houses with less people resulting in fewer residential water customers. Mr. Clarkeson said the WRPD Bylaw addresses water quality. He said the state regulations are integrated with the federal regulations of the Clean Water Act. He said new WRPD Bylaw will simplify the old bylaw by providing a proposed table for protection of groundwater (Zone A) and Surface Water (Zone II). He indicated if there is not a check on the table, then the section does not apply.

Questions regarding limitation to 20% impervious coverage in Zone A were raised. Mr. Clarkeson said he would verify the impervious surface. Concern was expressed on condition 35 that preventing surface recharge with artificial means was unfair as it could affect the mixed use zone in Scituate. Mr. Clarkeson said the language comes from DEP based on extensive research into impervious coverage in Massachusetts. He said one way of getting around impervious area is to go up in height. Mr. Clarkeson said that because of advanced GIS data since the original WRPD map was made, the new map covers less geographic area as some areas are likely covered under the Wetlands Protection Act and Rivers Protection Act. He said there is still a 150 foot buffer zone for tributaries going to the reservoir. He indicated nitrogen limits are not addressed in this version of the bylaw as the Water Resources Committee feels they should be addressed at another time. He said the proposed bylaw conforms to DEP requirements and without it the Town cannot provide drinking water.

Samantha Woods of NSRWA clarified that the change in the mapping means that some areas are no longer in the Zone A or Zone II areas. Mr. Taylor asked if properties are grandfathered. Mr. Clarkeson said yes if a business is already doing something within the chart, but not if the use changes. Mary Ellen Schloss of 50 Mann Lot Road questioned the watershed mapping versus the Zone II – Zone A approach. She questioned the decision not to protect the entire watershed. Mr. Clarkeson indicated that is what DEP is requiring and if an area is outside of the Zone A or Zone II then the River Protection Acts or the Wetlands Protection Act would likely address the impacts. The Board questioned how big of a change this would be. Ms. Harbottle said it is a big change, but there will be standards for the Zone A and Zone II. Mr. Clarkeson said that the new bylaw accepts stringency where needed and it loosens standards where it is not needed.

Mr. Mirabito said he was concerned about the bogs on Old Oaken Bucket Road as prior to 1968 when the bogs were re-built there was a diversionary structure built so that the bog outflow does not go to Tack Factory Pond but to the ocean. Ms. Harbottle said that the maps will not match everywhere and tributaries must be surveyed and field verified. Mr. Clarkeson said that the bylaw would accept the Zone A and Zone II area, but the tributaries must be field verified. Mr. Mirabito said the maps should be revised. Samantha Woods questioned the ownership/control of the bog management structures. She said the high flows may go around the structure and this needs to be clarified. She was concerned that the new bylaw is less protective in the upper reaches of the watershed while increasing protection of the Zone A/Zone II area.

Steve Guard said that reducing restrictions and protecting the water supply are both important. He said some parts of the bylaw will restrict economic development. He said there needs to be adequate recharge in Zone A/Zone II to protect the water supply and technology exists to have clean water and recharge. He said 20% impervious for all sites does not make sense and nitrogen loading should be in the bylaw. He believes that the map should be more accurate and there must be the ability for property owners to deal with their sites. He also said that with respect to grandfathering, it is not fair if a landowner can't do something different. Mr. Clarkeson said that nitrogen loading is not a mitigation and there is a limit of that regionally. Mr. Pritchard questioned how the new regulations accept new technologies. Mr. Clarkeson said that most of the new regulations will try to reduce impervious cover. He said no variances will be allowed. Mary Ellen Schloss expressed her concern for the protection of the entire watershed.

Chairman Limbacher said that there needs to be a few changes to the wording prior to release of the wording for the public hearing. He said numbers will be added to the table, field verification for property in Zone A/Zone II will be clarified and the old bounds will be kept for regulation. The map will be incorporated by reference.

Discussion – The Glen – Modification of Condition 2 of the Flexible Open Space Special Permit Assessor's Map/Block/Lot

Representative: David Johnson, Beals and Thomas

Documents

- Decision on the Flexible Open Space Development dated 12/16/08

Dave Johnson of Beals and Thomas indicated that he would like a modification of condition 2 to the Special Permit for the Flexible Open Space Development of The Glen. He said Kevin's Way was approved for 5 duplex lots. He said there are 2 walls - one is approximately 55 feet and the second is approximately 300 feet. The second wall is about 4 feet tall at its maximum. Both walls were proposed as poured concrete walls with fieldstone veneer faces. He said the wall is not visible as it is parallel to the street and 3.5 feet down. He said the people who want to purchase the development would like to do a segmented block wall with a cap. He said the wall is not holding up any part of the road paving and there will be a sidewalk and guardrail next to it. Mr. Johnson indicated the color will blend in with the landscape and he will bring in samples if the Board requires. He indicated that the subdivision was rather unique as no one spoke against it when it was approved. Steve Bjorklund commented that these types of walls are done all the time and the Board should approve the request.

Mr. Taylor moved to approve as a field change to condition 2 for a segmented wall in place of a stone wall with color of stone to match stone at entry. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Form A – Irving Road

Assessor's Map/Block/Lot: 34-17, 12, 13, 14

Applicant: Paul Sheerin Jr., Marvell Homes, LLC

Owner: Suburban Realty Trust, Benjamin Goulston

Documents

- Application and Plan of Land in Scituate, MA Irving Road by Ross Engineering Co., Inc. dated 1/6/14.

Mr. Mirabito said the purpose of the plan was to take a 5 foot piece of off Parcel F and give it to Parcel B to provide adequate frontage for a buildable lot. He indicated that there are wetlands on Parcel F which makes it so that a house cannot be located on the parcel within 50 feet of the wetlands making the parcel unbuildable so they did not go to the Conservation Commission to have the wetland line officially confirmed. Mr. Mirabito indicated there was enough upland for a lot, but the location of the wetlands divides the land so it is not buildable. Ms. Harbottle indicated that there can be no disturbance within 50 feet of a wetland and the Conservation Agent has indicated that the wetland may contain a vernal pool. She indicated the regulations require the wetland locations to be approved by the Conservation Commission. Mr. Mirabito indicated that there is no purpose to the regulations requiring wetlands be approved except to tell how much upland is required. Ms. Harbottle indicated that the lots will be up for sale and having the wetland locations approved ahead of time will make less of an issue later on. Mr. Taylor indicated that the location of a vernal pool could impact the lot locations. Mr. Mirabito suggested that he add the language that Parcel F would not be buildable.

Mr. Taylor moved to endorse as approval under the Subdivision Control Law not required a Plan of Land in the Town of Scituate, Massachusetts Irving Road stamped by Paul J. Mirabito, Professional Land Surveyor of Ross Engineering Co., Inc. for applicant Paul Sheerin Jr. Marvell Homes, LLC and owner Suburban Realty Trust, Benjamin Goulston dated January 6, 2014 as the division of land is not a subdivision because every lot shown on the plan has frontage as required by the Scituate Zoning Bylaw on the public way of Irving Road with the addition of Parcel F being labelled as a non-buildable. Chairman Limbacher seconded the motion. Motion was unanimously approved.

Town Planner/Liaison Reports

The Board decided that the best day for a site visit for 40 Curtis Street would be on February 7, 2014 at 8:00 am. Ms. Harbottle indicated that she went on the site visit with DEP on January 16, 2014 at 305 Country Way. She said there was some confrontation between the owner and the abutter's representative. She said DEP reviewed the bounds of the tributary and noted there was a lot of sediment in the ditch with no flowing water. She said that DEP will hopefully make a decision by January 30. Ms. Harbottle said that the decision on the ENF for 214 Clapp Road was received and will be sent out to the Board. Chairman Limbacher indicated that a conservation restriction will not be required on 214 Clapp Road. He also said that he sent a memorandum to the Traffic Rules Committee on the mitigation for the sight triangle for 305 County Way.

Accounting

Documents

- PO # 1404476(\$6.87)

Mr. Taylor moved to approve the requisition of \$6.87 to WB Mason for office supplies. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Minutes

Mr. Taylor moved to approve the meeting minutes of 1/9/14. Motion was seconded by Mr. Vogel. Motion was unanimously approved.

Old Business and New Business

Documents

- Tilden Road multipurpose trail
- Email on Disposition Development of MBTA Greenbush Station Parking
- 1-16-14 letter to Town Counsel from Traveler's counsel on Walnut Tree Hill
- Staff Report for 1/23/14 meeting sent 1/21/14 to members

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 10:55 p.m. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk

2/ 13/14
Date Approved