

SCITUATE PLANNING BOARD MINUTES August 22, 2013

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

Members Absent: None.

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.

Chairman Limbacher called the meeting to order at 7:35 P.M. The meeting was being audio recorded. The meeting was being recorded for airing on the local cable television station.

Documents

- 8/22/13 Planning Board Agenda

ACCEPTANCE OF AGENDA: Mr. Mercer 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 architecturals and Site Plan for Detached Accessory Dwelling by Ross Engineering dated July 12, 2013 with grading added 8/9/13
- Email from Mike Benning dated 7/25/13 forwarding Julie Burgess' comments
- Email from Mike Benning dated 7/25/13 forwarding Ken Golden's comments
- Email from Mike Benning dated 7/25/13
- Request for continuance from Ross Engineering dated 8/20/13

Mr. Taylor moved to accept the applicant's request to continue the Accessory Dwelling Special Permit public hearing for 75 Moorland Road until September 26, 2013 at 7:30 pm. Mr. Vogel seconded the motion. Motion was unanimously approved.

Discussion on Medical Marijuana Bylaw

Documents

- 8-6-13 First Draft Medical Marijuana Bylaw

Mr. Taylor summarized some of the subcommittee recommendations that have been incorporated in the first draft of the medical marijuana bylaw. He indicated that cultivation and dispensing of the medical marijuana is proposed for the Commercial District. He indicated dispensing is proposed in the HB and GB business districts with all the requirements in the Dept. of Public Health Regulations (DPH) and a 500 foot requirement from daycare facilities, schools, rehabilitation facilities etc. He indicated the uses will be by Special Permit. Mr. Taylor said the proposal essentially limits

dispensaries to Greenbush and a few other locations. Mr. Vogel indicated he read the bylaw and thinks it is good. Chairman Limbacher asked what areas would remain outside of 500 in Greenbush. Ms. Harbottle said she would map the areas and the Board overwhelmingly supported mapping the areas for clarity purposes. Chairman Limbacher questioned what the criteria would be for the Special Permit. Mr. Mercer indicated the special permit process will ensure that applications are compliant with the state regulations and that the operator has a viable business plan.

Mr. Taylor indicated that after the Board's input is received, the subcommittee wants the bylaw to be circulated to all the stakeholders to receive their input. Mr. Vogel indicated that the state will need to give future operators significant input. Mr. Mercer indicated that applications are already being submitted to the state under the first round of applications. He indicated that local support will be needed by applicants as part of the second phase of the application. The Board indicated they would like the Economic Development Commission to review the bylaw. Ms. Harbottle said she would ask for it to be on their agenda in October. Chairman Limbacher indicated criteria for the special permit would be considered after the meeting with public safety officials. Ms. Harbottle indicated that criteria will probably be limited to the site similar to Site Plan review to minimize conflicts with the DPH regulations. Mr. Pritchard indicated he would want to see a business plan. Ms. Harbottle indicated that the Director of Public Health will be attending a meeting in September for Health officials and she will bring back more information on local regulation of these facilities.

John Clarkeson asked about cultivation since growing marijuana is against the federal law. He questioned if there should be a bylaw when there is a conflict with federal law. Ms. Harbottle said that was a question for the Attorney General and Town Counsel, but that the Town cannot outright ban facilities according to rulings by the Attorney General. She indicated these facilities are cash businesses because the FDIC does not lend to a use prohibited by federal law. Mr. Mercer said a bylaw is needed so that a dispensary does not come into Town and locate where ever they want. Mr. Taylor indicated that the 60 Minutes piece on dispensaries in Colorado was very informative. He said he interpreted that the federal government is not going to prosecute for these facilities. Mr. Clarkeson indicated that the state is grappling with how to develop agricultural best management practices based on federal law for the growing as it would be considered agriculture. Ms. Harbottle and Mr. Taylor both said that is why Scituate is defining this use as non-agricultural. Ms. Harbottle said that DPH is facing the same dilemma on the federal law. Mr. Mercer said a political decision has been made not to pursue medical marijuana criminally, but that could change any time.

Mr. Taylor asked if the Board liked the split of the uses for the business and commercial districts. Mr. Vogel asked if it was the vision that growing and dispensing occur on the same sight. Mr. Mercer said that a cultivation facility can be tied to two dispensaries. Ms. Harbottle indicated that dispensaries can occur without cultivation. Mr. Vogel asked what this is setting up for Scituate which has limited commercial area and may not be a great place for a dispensary. Mr. Mercer said that a dispensary will need a classroom so one may locate in the commercial area instead of a higher rent business area. Mr. Pritchard believes if one is built, people will come. Mr. Pritchard and Mr. Vogel asked to see the difference between a 300 and 500 foot zone so they can see where the facilities could possibly locate. Chairman Limbacher asked if it was possible to meet with the EDC in September.

Ms. Harbottle indicated that she has received an informal inquiry into changing zoning for some parcels along Driftway to the Village Business Overlay District. She indicated this is a potential citizen's petition for land in close proximity to the commuter rail where the mixed use would have synergy with transportation facilities. She indicated they are looking at west of the Riverway and

before the Jacob Hatch Building and on the north side to the upper MBTA parking lots. She indicated she hopes they include the medical building that is in the residential zone as well. She said they are discussing the matter with the EDC on September 11. Ms. Harbottle indicated that if the petition is received a public hearing will be required after the Selectmen refer the article to the Planning Board as it is a zoning change. She also said that no date has been set for a fall town meeting. She indicated that she recommended the applicant talk to property owners in the area prior to Town Meeting.

Town Planner Report

Ms. Harbottle indicated she attended a meeting with other Town officials and FEMA in Boston on 8/20 on the FEMA map changes. She indicated there will be a meeting for the public with FEMA in Marshfield on September 4 at the Furnace Brook Middle School. FEMA will review changes to the maps with residents at that time. She indicated that wave set up is being considered in the elevations now resulting in a big impact. She said she has not received much information on why the changes are happening now. She also indicated that there have been a significant number of requests for flood elevation grant applications. She indicated that FEMA is changing the Severe Repetitive Loss reimbursement to 100%. Mr. Taylor inquired as to the implications for the Harbor Business District. Ms. Harbottle indicated that all of Front Street is in the flood zone now and insurance rates will be impacted.

Ms. Harbottle indicated that Walden Woods 40 B and Deer Common are both under construction now. She said that Walden Woods had some issues with abutters not knowing there was a detention basin adjacent to them and that the site has been totally cleared, even in the area of the septic system that is not being built because the site is now being sewered. Ms. Harbottle indicated that she, the Building Commissioner and Conservation Agent would like to meet with the new ZBA chair in the near future. She indicated that Amory Engineers is observing construction for the Town. She indicated that at Deer Common, the road has been cleared, grubbed and the base material is anticipated to be installed next week after an inspection on 8/26.

Documents

- PO # 1400922 (\$2,560.00), PO # 1400938 (\$217.08), PR # 1401388 (\$85.00)

Mr. Taylor moved to approve the requisition of \$2,560.00 to Chessia Consulting Services, LLC for peer review for 305 Country Way, for \$217.08 to Gatehouse Media MA for legal ads in the Scituate Mariner for 37 Otis Road and 61 Border Street and for \$85.00 to Mass Association of Planning Directors for Annual dues for 2013-2014 for Laura Harbottle. Mr. Mercer seconded the motion. Motion was unanimously approved.

Minutes

Mr. Taylor moved to approve the meeting minutes of 7/11/13 and 7/25/13 with the change added by Mr. Vogel. Motion was seconded by Mr. Pritchard. Motion was unanimously approved with Mr. Vogel abstaining on the 7/11/13 minutes as he was not present at that meeting.

**Continued Public Hearing and Scenic Road Public Hearing – 305 Country Way
Flexible Open Space Special Permit & Definitive Subdivision Plan & Scenic Road
Assessor's Map/Block/Lot 37-2-2 & 37-8-13R
Applicants/Owners: Douglas Sheerin/Kristen DeGaravilla**

Documents

- Waiver Request list dated 6/6/13 by Morse Engineering
- Response to peer review comments by Morse Engineering dated 7/17/13
- 305 Country Way FOSD Drawings dated 7/16/13 sheets 1 – 11
- Comment from Bill Krusell and Lance Van Lenten dated 8/14/13
- Comment from Bill Krusell and Lance Van Lenten dated 8/21/13
- Comment from the WRC dated 8/22/13

Greg Morse, Mike Hayes and Doug Sheerin were present for the applicant. John Clarkeson from the Water Resources Committee (WRC) was also present. Chairman Limbacher opened the continued public hearing for the Flexible Open Space Special Permit, Definitive Subdivision Plan and Scenic Road hearing at 8:30 pm. He indicated that at the last session of the public hearing drainage and water resources were discussed. He said the WRC provided feedback after the last meeting. He indicated that the density for 3 lots was reaffirmed by the Board. Chairman Limbacher indicated that the applicant has submitted some revised material that the Board's engineer is reviewing. He indicated that he would like the Board to focus on other areas besides drainage to find out other concerns of the Board for the Flexible Open Space Subdivision.

Chairman Limbacher indicated he wanted to focus on two letters from the WRC and Lance Van Lenten received about the tributary definition and its location on the ground. He indicated that the two letters suggest the tributary location may not be accurate and they suggest that the Board should hire an expert to define the tributary location. The Chairman asked for input from the Board. Mr. Taylor indicated that this issue needs to be resolved or else it will keep reappearing. He believes that an expert, that all parties agree to, should be hired. Mr. Pritchard agreed. He indicated that he thought that issued was agreed to at the last meeting to properly establish the tributary line by objective professional evidence.

Mike Hayes indicated that the applicant does not have an issue with that. He thinks that they may not have to hire an expert because DEP could come to the site and do this. He said that would be reasonable. Mr. Hayes requested that the Board review the benefits and make a decision if the flexible open space plan is superior to the conventional plan. Mr. Pritchard said that a decision was made at the last meeting on information that may or may not be correct. He said he wanted to resolve that matter first before any more decisions are made. Mr. Taylor agreed that if the tributary location impacts the conventional plan which impacts the density, then that issue needs to be put to rest. Mr. Pritchard said that the other information on the 25% slope should be resolved as well before a decision is made. He said the letter suggests that the 25% slope is at a different spot that at the back edge of the lawn. Chairman Limbacher asked if the Board is suggesting that an expert look at both issues. The Board concurred.

Ms. Harbottle suggested that someone with soil evaluator experience may be good or a hydrogeologist does this work too. She said that DEP indicated by email that it was up to the applicant to define the tributary in the field. She said she thought she and Mr. Morse had the same emails on this topic and would like to be copied on the emails that Mr. Morse sent to the DEP regarding the subdivision if there are any new ones. Mr. Van Lenten said that he thought that Mr. Bouck of DEP had said it was up to the applicant and the town to identify the tributary location. Mr. Morse indicated that he sent 3 emails this summer to Mr. Bouck asking him to come to the site to see the flagged location. He said DEP has the authority to define the tributary location and he indicated Mr. Bouck previously said he was willing to come to the site. Ms. Harbottle indicated that remains

to be seen. She indicated that her conversation with Mr. Bouck indicated that the applicant was responsible for this work. Chairman Limbacher concurred that was his understanding when he was copied on the email. Mr. Morse said that his understanding was that Mass GIS approximates the tributary location as DEP couldn't locate all the tributaries in the state. He said DEP will come out here and review it after it is located. Ms. Harbottle indicated her understanding was that DEP will not flag the location of the tributary. Mr. Pritchard indicated that someone needs to do this.

Chairman Limbacher asked the Board what process it would like. Ms. Harbottle indicated that she will come up with a list of 3 to 4 names and resumes and run this by the WRC. Their input will be considered and a consultant chosen in a similar manner as to a peer review engineer. This will all be done outside of a Planning Board meeting. Mr. Clarkeson indicated this was acceptable as long as the WRC has input into the scope of the work and it be done during a storm event; he said they don't want it in the dry. He said a tributary flows better in a storm event. Chairman Limbacher asked if a soils person could do the analysis. Mr. Clarkeson said visual appearance of water will be more compelling than scrubbing on rocks so he would be willing to wear a rain jacket and observe. Mr. Vogel inquired as to what storm event the picture from the frame of the video of 2/27/13 represented. Mr. Van Lenten said it was about an 1 1/2" storm event. Mr. Vogel asked if it was reasonable to expect a similar storm event. Mr. Van Lenten said he preferred a hydrogeologist to do the work as the photo showed a small rain event. Mr. Vogel concurred and indicated it would be hard to replicate nature in the exact storms and the rock scouring and the environment will need to be looked at. Mr. Clarkeson said that the picture was not taken at the back end of a hurricane. Mr. Pritchard said there was no way for the Board to tell how the picture relates to the ground. Mr. Vogel concurred.

Chairman Limbacher indicated that his interpretation is that the Board is in favor of hiring such an individual. He asked if it was acceptable to the Board for him to work with Ms. Harbottle and Mr. Clarkeson and the applicant to identify the person and define the scope of the work. Mr. Mercer moved the preceding. Mr. Pritchard seconded the motion. Vote was unanimous in favor. Chairman Limbacher summarized that they will define the scope of the work, look at available resources, look at the forecast and then proceed to the field.

Chairman Limbacher indicated that the following issues identified by the Town Planner need to be discussed whether or not the road moves. These include the public benefit, line of sight, limit of work, internal road design and landscape plan. The Board agreed to the discussion. Mr. Morse suggested that the Board may want to do a site visit outside of a rain event. Mr. Morse started with the line of sight. He indicated the proposed road is opposite Black Beech Lane and the project is providing a safe sight triangle 15' back from the edge of Country Way so that a car could stop along Country Way if a car was coming out of the development. He said the posted speed is 30 mph which requires a 200' line of sight. He said 305' is provided at a distance 15' back from the road. He also indicated that the 85% tile speed must be reviewed. He said 40 mph is the speed which requires 305' of sight distance. He said 305' is required and provided so the project complies. Mr. Morse indicated that Mr. Chessia's letter says that part of the sight triangle is on the abutting property. Mr. Morse said there are no obstructions on the neighbor's property to the right. Mr. Morse said the applicant controls 305' to the left of the driveway. Mr. Pritchard questioned how post construction was controlled. Mr. Morse indicated that no obstructions are on the neighbor's property and that Lot 1 will have a sight distance easement so that obstructions are not placed in the sight distance triangle. Chairman Limbacher asked how far to the right does the applicant control. Mr. Morse said 277' and the speed limit is posted for 30, but the average speeds are 36-37. He

indicated that 3 trees – a 10", 30" and 12", located in the site triangle have been requested to be removed under the Scenic Road hearing.

Ms. Harbottle indicated that in the past the Board has asked applicants to talk to their neighbors to try to obtain sight line easements. Mr. Morse indicated that the Homeowner's Association would have the benefit of the easement so that they could keep the sight line clear and the applicant would be willing to put up a speed limit sign or intersection sign if desired. Mr. Morse feels traffic will go slower once the walkway/bike path is installed on Country Way by the DPW. He indicated the applicant controls 277' out of 305' of the sight line and 200' is required for the posted speed of 30 mph.

Moving along to the internal road design, Mr. Morse said the proposed road is 16' wide with cape cod berm and a single sidewalk on the left side of the road. He indicated the applicant is seeking waivers for the road width and the hammerhead turn around in order to reduce pavement. Mr. Pritchard determined that the FOSD plan is asking for 1/3 less pavement for the road going from 24' to 16'. Mr. Morse indicated that 16' is required for a common drive of up to 3 homes. Mr. Vogel indicated a fair amount of pavement is also saved from the turn around not being constructed. Mr. Morse said there is a 50% benefit for the road pavement. Chairman Limbacher asked that if the walk was not required, could the road shift away from the 150' no disturb buffer. Mr. Morse indicated it could, but there would be another waiver required for the road not being in the center of the right of way. Mr. Taylor asked about the road extension to the abutting property. Mr. Morse said it is for the turnaround and that the driveway to the lot is located there. He said the regulations require it. Ms. Harbottle suggested the extension to the property is not allowed and that future development needs to be limited as the road width is being reduced by 1/3. Mr. Morse said no road extension is proposed he reviewed it with the Building Commissioner with respect to required yards and it is a side yard and required. He said that Northey Estates and Coby's Run had the similar situations.

Mr. Morse reviewed the proposed erosion control. During roadway construction, he said there will be a stabilized construction entrance and a temporary detention basin similar in size to the permanent one. He said the temporary basin will control sediment removal during construction. He said there will be a staked wattle and silt fence at the 150' buffer. Ms. Harbottle indicated that a silt sock would be better than the straw wattles as there have been some problems in town with the wattles. Mr. Morse said the plan proposes silt sock which is continuous and the wattles come in 20' segments.

Mr. Morse said the applicant would like to submit the Landscape Plan prior to endorsement so they know if the FOSD Plan is approved. He indicated they would show street trees in the Right of way and plantings in the 150' no disturb area as revegetation of the space. Ms. Harbottle said there was much discussion at the Water Resource Committee meeting on 8/20 about protecting the 150' buffer area. She said use of native plants, saving vegetation, having more natural areas on the lot and rain gardens could be used in place of lawn. She indicated the Board really should have the plan prior to approval as changes would be difficult if the plan is submitted after approval and prior to endorsement. Mr. Pritchard said he would like the plan prior to approval. Mr. Morse indicated it would be tough to have a landscape plan for the lots when the architectural details are not known. He indicated maybe he could provide percentages of natural areas and seeding areas on the plan as well as landscaping for the right of way. Chairman Limbacher said he could understand the applicant's view. Ms. Harbottle said she can understand that, but the detention basin and abutters need screening, the streetscape should be considered, replacement of trees at the front of the property

and details for the open space should be considered and a landscape architect would provide the knowledge. Mr. Pritchard indicated he wants the 150' buffer on the Landscape Plan with definitive protection. Ms. Harbottle suggested a tree well may be able to save the Bur Oak or an offset for its removal should be considered.

Mr. Morse reviewed the public benefit. He said there is a perpetual open space benefit as compared to the conventional layout. He said there is 6.5 acres that will be in the perpetual open space including wetlands on site, the 100' buffer zone to them and the 150' no disturb buffer. He said the increment between the conventional and flexible was that 1/3 to 1/2 acre more could be developed. He said the open space includes 2.21 acres of upland. He said this is in the 150' no disturb area, but it could be part of a homeowner's lot. Ms. Harbottle indicated that one of the main benefits to the Town was control over the land in the 150' buffer as it will be deeded to the town. She said under the conventional plan it would not be under Town control, but restricted from development. She indicated that the wetlands are undevelopable outside of the 50' buffer. Mr. Morse said that 1/3 of an acre below the detention basin will be in the open space and it is beneficial to the Town to control. He said the applicant is proposing a split rail fence at the 150 foot no disturb line.

Mr. Clarkeson clarified the public benefit of the land being deeded to the Town will be in Town control. Mr. Van Lenten said he was involved with the First Herring Brook Watershed and noted that areas that were being protected were being dumped and intruded upon. He questioned who will patrol the area. He said that when land is developed adjacent to a no disturb area it invites disturbance. Mr. Morse said the primary public benefit is the preservation of open space by the Town. He indicated the FOSD Plan increases the distance of the house to the wetlands and to the tributary and reduces the limit of work area by having reduced road width and smaller lots with decreased number of bedrooms. He said they are limiting each lot to 4 bedrooms which will reduce the nitrogen loading and there is will be no duplex ability as would be possible with the back land in the conventional plan. Chairman Limbacher asked how the nitrogen loading ability would improve if the units were 3 bedrooms each. Mr. Morse indicated that the nitrogen loading is now 5.2 ppm and drinking water is 10 ppm so the project is already half of the acceptable limit. He said if it went to 3 bedrooms the nitrogen loading may get to 4 ppm. Chairman Limbacher said that better drinking water quality may be provided. Mr. Morse also said that reduced lot size reduces fertilizer impacts and thus nitrogen impacts. He indicated that the current proposal already reduces ground water impacts, land disturbance is minimized and lot sizes are reduced so the numbers speak for themselves.

Mr. Taylor asked where the nearest sewer was and was wondering if it is possible to extend the sewer to the site. Mr. Morse indicated it is south down Country Way past the Steverman Farm, approximately 1,000 to 1,500 feet. Mr. Taylor questioned if sewer could be extended for a public benefit. Mr. Hayes indicated it is not up to his client, but up to the Selectmen as sewer is their jurisdiction. Ms. Harbottle indicated the Town would likely be interested if it is possible. Mr. Vogel indicated it could be a slippery slope as to who is allowed to tie into the line and if there is capacity in the treatment plant. Chairman Limbacher said the treatment plant is the potential problem. Mr. Morse said they are meeting drinking water standards so it would be hard to justify sewer and his experience with the Town has been that it has to be shown that a site cannot accommodate a septic system which this site can do.

Mr. Vogel inquired about what is allowed to be done in the no disturb area and could a path installed there be a public benefit. Ms. Harbottle indicated that there can't be earth disturbance or permanent structures or surface/subsurface discharge of groundwater or vegetation removal so it makes it tough

for a path. She suggested the Water Division and the WRC would need to be consulted. Mr. Vogel indicated he is searching for a public benefit. Ms. Harbottle indicated that nitrogen loading on Cape Cod is required to be 5 ppm and the EPA has a 10 ppm limit. She said she thinks it is strange that 5.2 ppm is being considered as fine, even though Scituate is not a sole source aquifer. Mr. Morse said he did the calculation from the Cape Cod Commission technical bulletin and that the loading is primarily for wells. He said Scituate has an open reservoir which is different from a well and Scituate has no standard. Mr. Clarkeson corrected the record to indicate that Scituate relies on wells and reservoirs. Mr. Vogel thinks a future nitrogen standard for Scituate should be considered.

Mr. Pritchard indicated that the impervious component has a 50% reduction from the conventional to the flexible plan for the road and asked how the conventional would change if there were only 2 lots. Mr. Morse said they have not looked at a 2 lot plan and they don't have the frontage for 2 lots so would still need a road. Conventionally, he said the road would be in the same location and the limit of disturbance would be about the same and not 1/3 less. Chairman Limbacher questioned why the road couldn't be moved away from the 150' buffer zone in that case for an added public benefit. Mr. Morse said the road is supposed to be opposite another road per the regulations so that it why it is opposite Black Beech Lane. Ms. Harbottle concurred that is true for the conventional plan and makes sense from a traffic safety perspective.

Mr. Pritchard indicated he was trying to figure out if there is less impervious in the 3 lot flexible plan versus a 2 lot conventional plan. Ms. Harbottle said there would be one less roof, but the road would still take up about the same. Mr. Clarkeson followed up on Mr. Pritchard's concern of 1 less roof and house and said there may be a 10% reduction in impervious area, but the road would not likely change. Mr. Taylor thinks that sewer should be explored as it would be a benefit not to have septic in the Water Resource Protection District. Chairman Limbacher suggested that the applicant should be leading any discussion on sewer. Mr. Morse indicated that the regulations require a septic system to be 200' from a tributary. Mr. Taylor said he was looking for more public benefit. He said he was not sure ownership of the open space by the Town was enough for him. Ms. Harbottle clarified that she didn't mean that this was enough of a public benefit. Mr. Pritchard said that there are no natural or cultural benefits that exist since the house has been removed.

Chairman Limbacher said that the public hearing will need to be continued. He suggested 8:30 on September 26, 2013 to give time for the tributary follow up. Mr. Taylor moved to accept the applicant's request to continue the public hearings for the Definitive Subdivision Plan, Flexible Open Space Special Permit and Scenic Road/Public Shade Tree Hearing for White Ash Farm Lane at 305 Country Way until September 26, 2013 at 8:30 pm.

Old Business and New Business

Documents

- Town Planner recommendations for 8/22/13 meeting dated 8/16/13
- Letter from the Conservation Commission to Ken Duval dated 8/7/13 on 87 Maple Street

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 9:45 p.m. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk

9-26-13
Date Approved