

SCITUATE PLANNING BOARD MINUTES July 10, 2014

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

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, Scituate, MA.

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

Documents

- 7/10/14 Planning Board Amended Agenda

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

Discussion –Application to CPC for Vinal Ave. Path – Jen Geoghegan, Jenkins School Council and Val Baker

Documents

- Vinal Ave Pathway power point presentation

Jen Geoghegan and Val Baker from the Jenkins School Council were present to ask for Planning Board support for a path on Vinal Ave. Jenkins fronts on Vinal Ave with First Parish Road being the rear of the school. Ms. Geoghegan said they want to improve school safety and the narrow street barely allows room for two busses to pass and has no walks despite having upwards of 60 walkers. She said the elementary handbook encourages safe routes to school and to work with the Town for these routes as the school space is open during non-school hours for recreation and various activities. She indicated that the 2007 sidewalk study accepted by the Selectmen lists Vinal Ave. in the top 10 streets for sidewalks as it would also offer a connection from Stockbridge Road to Driftway. Ms. Geoghegan said that the safe routes to school funding for the town has been exhausted and the Tilden Path is using CPC funds, so they believe this Vinal Ave. path would qualify for funds under the CPC as it is a recreational use. She said a preliminary application has been filed with the CPC and they are now seeking Town and neighborhood support. She said Town supporters include the School Committee, DPW, Traffic Rules Committee and the CPC as well as most of the residents on the road.

Ms. Geoghegan said that DPW estimate a cost of \$450,000 for the path, but that it would not include a path on both sides of the road. She said that DPW said that the path would probably need to switch sides of the road to avoid telephone poles and they thought there was room in the right-of way for a path. She indicated that the Traffic Rules Committee suggested making the road one way. Ms. Baker said before Jenkins was proposed, a sidewalk was suggested on Vinal Ave. She said that there are many walkers to the school and the path would further promote a healthy lifestyle. The

Board was supportive of the path and saw that it really would be a public path that provided connections to other places in Town and the recreation activities that occur at the school during non-school hours. Ms. Geoghegan said that only one resident on the street objects so far due to visibility into house windows from the path. Chairman Limbacher said the project has received support from the CPC, but needs to go through the process of meeting with Town boards so that the problems are known before the application is fully submitted. Ms. Geoghegan said that the desire for the front entrance of the school to have a safe walk benefits the community as a whole.

Mr. Taylor moved that the Planning Board write a letter in support of the Vinal Ave. path. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Discussion – Massachusetts Zoning Reform Bill – Ann Burbine

Documents

- Zoning Reform summary from Jay Wickersham dated 4/15/14
- House bill 4065 (1)

Ann Burbine, Scituate's representative to MAPC, and Eric Hove of MAPC were present. They indicated that this is the first major overhaul for zoning reform in 35 years that has made it out of committee. Mr. Hove summarized that the bill grants cities and towns more powers to control their vision, it provides more transparency and predictability in the permitting process and provides for more regional land use outcomes so that the environment can be preserved and reinvestment can occur in cities and villages. Mr. Hove said there are only 20 more days in this legislative session in which the bill could be passed. He outlines a few major advantages to the bill which affect Towns like Scituate including a local option to opt for a majority vote for zoning articles instead of the current 2/3 vote, building permits would be valid for 2 years and special permits would be valid for 3 years, subdivision freezes would be for the project and not all the land uses, ANR plans would be substituted with small subdivision plans of up to 6 units which would give more authority to Planning Boards to look at land uses and cities and towns would be asked to develop by right development districts, economic development districts, open space residential development districts and to use more Low Impact Development features for treatment of runoff on site in order to qualify for more state grants.

Ms. Harbottle said that the changes to the Form A process are attractive and would provide Planning Boards with a more leading role. She said she liked the process for dispute resolution by professional mediators as there could be more opportunity for compromise and that Master Plans should have a stronger connection to zoning. Mr. Hove said there would be a 3 year transition period to do conformance updates and there are no timelines to adopt majority measures. Chairman Limbacher said they would need to go through Town meeting. Ms. Burbine indicated that a rebuttal presumption to the subdivision standards is included in the bill. Mr. Hove said that both environmentalists and developers like this as it will make narrower roads easier to obtain.

The Board decided to vote on sending a letter and figure out the appropriate logistics after. Mr. Taylor moved that the Scituate Planning Board endorse the zoning reform bill House 4065 that is currently before the legislature. Mr. Vogel seconded the motion. Mr. Pritchard said that the Wickersham letter doesn't recommend the item on nonconforming uses and structures and he feels the Board should not conceptually support this. The Board agreed. Mr. Taylor modified his motion his motion to exclude Bill Sections 9 and 10. Mr. Pritchard agreed to draft the letter of general support and circulate it to the Board.

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

- 3-27-14 email from Mike Benning
- 3-28-14 email from Kathy Beagley
- Revised site plan dated 4-20-14 by Ross Engineering
- 3 current photos of the existing house forwarded from attorney Jeff DeLisi
- Spreadsheet with approved accessory dwellings
- Spreadsheet with home sizes in the Moorland neighborhood

Paul Mirabito, Jeff DeLisi, Julie Johnson and John and Catherine McNamara were present for the applicant. Mr. DeLisi summarized that the applicant applied for an accessory dwelling special permit with the hearing opening in June 2013. He said the applicant made several changes and went back to the Zoning Board to adjust square footage of the primary dwelling. He said the lot was a unique lot on Moorland Roads as it has a large lot in the R-2 zone and is surrounded by 10,000 sq. ft. lots in the R-3 zoning district. He said that only 4 to 5 homes in the area are in the R-2 district. He said the proposed accessory dwelling meets all the dimensional requirements in the Zoning Bylaw and the height is 23 feet versus the 35 feet that is allowed and the gross floor area is 31% of the primary dwelling where 40% is allowed. He said design changes were done at the request of the Board to reduce the appearance and size of the dwelling including lowering the garage slab into the ground, reducing the height, changing the roof line and adding grading and landscaping. Mr. DeLisi said he provided pictures of what the dwelling would look like coming around the curve as requested by the Board and the applicant has been responsive to requests made by the Board.

Chairman Limbacher asked Mr. DeLisi about the use of the accessory dwelling and the relative dimensions. Mr. DeLisi said that the McNamaras would like their family to live in the accessory dwelling. He said they have 3 elderly parents and the dwelling will be handicap accessible and they have 4 children who don't have the means to live in Scituate in Third Cliff on their own so the dwelling meets the bylaw for the hardship purpose. He said the size of the accessory dwelling is 3 bedrooms and approximately 1,453 sq. ft. and the primary house has 5 bedrooms and 4,668 sq. ft. He said the accessory dwelling is smaller in size, height, bedrooms and thus occupants who could use the dwelling and it is 31% of the floor area.

Mr. DeLisi said that a residential accessory building could be done by right for a 3 car garage, a barn, an office for a home occupation, a bed and breakfast and a lodging house. He said an accessory dwelling is a good use on this property and it meets the definition in the bylaw of a separate housekeeping unit. Ms. Harbottle said that the board has been discussing this a long time with some nice changes having been made. She said that the Board needs to think carefully about this as a special permit is discretionary. She indicated this is the largest accessory dwelling the Board has seen in a residential district, it reads like a single family house, it will be visible from the road and the widow's walk makes it appear showy. She said the landscaping will be helpful. She said the lot is in the R-2 district which has requirements for density that people expect in the district. She said that 2 houses on a lot won't keep the character of the single family neighborhood. Mr. DeLisi said there won't be 2 primary dwellings on the lot. He said he has no knowledge if it is the largest in town, but the accessory dwelling bears a relationship to the size of the primary dwelling and that is what matters.

Mr. Taylor said that it has been a long process and he appreciates the changes the applicant has made to make it more subordinate. He said he was concerned about exactly who would live in the unit. He asked if Mr. McNamara would consider making 2 of the gravel parking spaces on the side of primary dwelling public. Mr. McNamara said he has 6 parking spots on Collier and they are for his friends to use the spit. He said he would not make any of them public as it would open up Pandora's Box. Mr. Taylor said he was just trying to find a compromise.

Mr. DeLisi said the size of the accessory dwelling relates to the primary dwelling under the bylaw. He offered that he did research on a court case from 2012 - 81 Spooner vs Brookline. He said Brookline has a purpose and provisions section to prevent overcrowding with dimensional requirements included. He said that the court said that the dimensional requirements are there to insure the bylaw is met. He said there are purposes and criteria and all don't have to be met. Mr. Taylor indicated he looks at one purpose. Chairman Limbacher said he makes sure the conditions meets the purpose for checks and balances. Mr. DeLisi said that he respectfully disagreed relying on the Spooner case.

Mr. Taylor said he has a problem with the bylaw, but what is before the Board is an accessory dwelling. He said a garage could be built if it complied with dimensions. He said based on the wording in the bylaw he would probably vote to approve the accessory dwelling. Mr. Pritchard said that the Board is here to talk about the accessory dwelling not any other use. He said he appreciated the pictures, but does not see the accessory dwelling as clearly subordinate to the primary dwelling. He said it would be the largest accessory dwelling approved in Scituate and it looks like a second house on the lot so it does not pass the clearly subordinate test despite being a larger lot. He said that people bought their houses knowing the lot size. Mr. DeLisi said that the zoning bylaw does define clearly subordinate and Section f says subordinate with floor limitation size so the court will look at the specific language to interpret the general language. He said the bylaw says 40% or 750 square feet so that subordinate is limited in size. Mr. Pritchard said that the bylaw is clear that the accessory dwelling should be clearly subordinate and it is up to the Board to determine if the application meets that requirement and the size requirements. Mr. DeLisi asked Mr. Pritchard what was not clearly subordinate here as height, size and occupants are. Mr. Pritchard said that the applicant has attempted to reduce the impact, but he does not feel it is clearly subordinate due to size and location on the lot up against the neighbor's property. Mr. DeLisi asked for a straw vote.

Mr. Vogel said that the bylaw needs to be reworded. He said the accessory dwelling bylaw did not generally anticipate buildings of this size as an accessory dwelling. He said it is difficult for him to say that it does not meet the requirements. He said if he could he would vote not to approve it, but he can't.

Mr. Greene said that if this was on a lot across the street it would be less impactful, but it is on the inside. He said square footage wise it is less than the main house and meets the setbacks. He said nothing stands out as a reason not to vote for it. Mr. DeLisi said that there is spot zoning on this inside lot. He said it would not look out of place with the pre-existing nonconforming houses and it meets the legal setback. Mr. Greene said that it is one lot and will visually look like two.

Chairman Limbacher said his position is not changed. He said he doesn't see the second house as subordinate to the primary dwelling. He said the same bylaw section requires subordination and size requirement. Mr. DeLisi said he understood and asked for a straw vote. He said sections 420 and 430 of the bylaw talk about residential accessory uses that can be done by right and they can build a

bigger building than the proposed accessory dwelling. Mr. Taylor said that the size of the accessory dwelling hadn't changed much since the original filing. Mr. DeLisi said that the basement of the primary dwelling received a special permit from the Zoning Board so it brought the percentage down.

Mr. McNamara said that the Town has a bylaw. He said originally the draft bylaw law had the size being 50%, but it is now 40% to define subordinate. He said he has spent \$20,000 and over a year doing in this process with hired professionals. He said if the Board intends to limit size it should be in writing. He said the definition of subordinate is not written and it is not fair. Mr. Pritchard agreed it was not fair, but it has to be clearly subordinate. Mr. McNamara wants the Board to adhere to the regulations. He said builders have told him to build a garage and an office to 35 feet tall then come back to have an accessory dwelling approved. He said he feels like he needs to do that. Chairman Limbacher said other people have done that. Mr. Taylor said that the Board tried to modify the bylaw, but it did not pass Town meeting so he thinks the Board should approve based on the language in the bylaw. An unidentified man said he has lived 20 years on Third Cliff and believes the proportions will look right. He said it was not right to pick on one lot owner when other people have done major renovations. He said the cliff is changing and this would proportionally look fine. He said there are multiple in law apartments on the cliff and this proposed one fits with the lot size.

In a straw vote Mr. Taylor, Mr. Vogel and Mr. Greene said they would approve the application. Mr. Pritchard said he would not. Mr. DeLisi said that Mr. Vogel is now the assistant Building Commissioner in town and is asked to make calls on zoning. Mr. DeLisi suggested Mr. Vogel could use his dual authority to make a call. Mr. Vogel said his opinion has not changed since he was hired. Mr. Mirabito said that he reviewed options with Mr. McNamara of what he could do on the property. He said that they reviewed the bylaw and don't understand the Board's definition of subordinate. He said that he feels this is spot zoning and if it were in the R-3 zone another lot could be obtained. He said the McNamara's could build on 75% of their lot and it would be legal. He suggested that the accessory dwelling would be better than a 35 foot tall accessory building. Chairman Limbacher said the zoning is what is it and he said any building on the property would look nice. Mr. McNamara said he would build a larger barn for storage of his boats if this application is not approved.

Mr. Taylor said he thinks the bylaw is grouped into sections to define subordinate and sizing. Mr. Pritchard said that subordinate to him means area and volume. Mr. DeLisi said that the alternative is in front of the Board. He said Section 110 of the bylaw talks about the most appropriate use of the land. He said that the accessory dwelling would maintain the character of the neighborhood, but they will do the alternative. He said if the Board was looking for a hook, Section 110 provides it. Chairman Limbacher said that zoning protects the character of the neighborhood. Mr. DeLisi said the site will look worse if the applicant pursues the alternative. He said the site is challenged by its size, grade and curve and said it is not similar to other projects or situations. Ms. Harbottle said that an accessory dwelling will have people living in it versus a barn which can change the character. Julie Johnson said that the only occupants of the accessory dwelling would be parents or children. She said that the original design was for a 5 bedroom house and 3 car garage with rooms over it, but they thought it was not right for the neighborhood so they proposed an accessory dwelling that would be more conducive to the neighborhood. Mr. McNamara said he was told he could do an accessory dwelling. Mr. Pritchard said that is allowed, but it needs to be subordinate.

Mr. DeLisi said that the general and precise language has already been discussed and he has no intention of testing it. He said the bylaw does not talk about massing and volume. He said the

Board should consider the best use of the land and look at all the bylaw provisions as the alternative will be built. Mr. Vogel said he thinks volume is implied by the square footage, but subordinate is subjective. Mr. McNamara said if the property was divided through a Form A he could build a home twice as big and 35' tall. The unidentified man said that is what other people in the neighborhood are doing. Mr. DeLisi said that this lot has the space between the primary and accessory dwelling and each meets the setbacks. Chairman Limbacher said he would not vote to support the project.

Mike Hayes of 43 Front Street said that Richard said that clearly subordinate was less important than the main structure. He said you need to look in the bylaw at the 750 sq. ft. or 40% as to how to quantify it. He said that is the guidance for applicants. He said the accessory should be secondary or less important than the main dwelling. Mr. McNamara said that if the intent was to limit the square footage, it should be in the bylaw. He said the bylaw is what it is and it is not fair to residents. Mr. Pritchard said that it had been a long time since the beginning of the hearing, but the Board talked about the size at the beginning and the applicant went back to get an additional approval from the ZBA. Mr. McNamara asked what he needed to do to make the plan comply with subordinate. He said he reduced the size from 1490 sq. ft., made the rooms smaller, there is less volume as there are pitched roofs and the house is depressed 6' into the ground to match the driveway of the existing house. He said he was not told to reduce the square footage to an exact amount. Mr. DeLisi said section F says "the accessory dwelling shall be clearly part of the single family dwelling." He said it is talking about what part is subordinate to the single family dwelling. He said the detached accessory dwelling complies with the bylaw and all the setbacks as noted in Section D and he thinks massing was contemplated with the language. Mr. McNamara asked for a second straw vote which yielded the same results as the first. Mr. DeLisi said that the applicant would like to withdraw the application without prejudice and they would be back in less than 2 years after the structure is built.

Mr. Taylor moved to accept the applicant's request to withdraw the application without prejudice. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Form A – 35 Village Lane
Assessor's Map/Block/Lot 13-01-23
Applicant/Owner: Emily and Daniel Clark

Documents

- Form A application, supporting materials and Plan of Land in the town of Scituate, MA 35 Village Lane prepared by Ross Engineering Co. Inc. dated June 26, 2014.
- Transmittal to departments dated 6/30/14

Attorney Robert Fasanella and Paul Mirabito were present for the applicant. They indicated that they would like to divide the back land from the property as they would like to donate it to the Maxwell Trust or Trustees of Reservation and put a conservation restriction on the land.

Mr. Taylor moved to endorse as approval under the Subdivision Control Law not required a Plan of Land in the Town of Scituate, MA 35 Village Lane stamped by Paul Joseph Mirabito, Registered Land Surveyor of Ross Engineering Co. Inc. for applicant Emily J. and Daniel M. Clark dated June 26, 2014 as the division of land shown on the plan is not a subdivision because it shows a proposed conveyance or change in lot line which does not alter the existing frontage as required under the Scituate Zoning Bylaw. Motion was seconded by Mr. Pritchard. Motion was unanimously approved.

**Endorsement – Flexible Open Space Definitive Subdivision Plan - White Ash Farm
Assessor's Map/Block/Lot 37-2-2 & 37-8-13R
Applicant/Owner: Douglas Sheerin**

Documents

- White Ash Farm Flexible Open Space Definitive Subdivision Plan set (mylars) issued 6/ 30 /14 consisting of Sheets 1- 16.
- White Ash Farm Lane Restrictive Covenant dated July 10, 2014.
- White Ash Farm Lane Homeowner's Association Trust and Supplemental Covenant dated July 10, 2014
- White Ash Farm Declaration of Easements dated July 10, 2014

Mike Hayes was present for the applicant. He said that the Selectmen had voted to accept the open space as conditioned in the Flexible Open Space Special Permit so endorsement could occur.

The Planning Board has received a covenant dated July 10, 2014 to secure the construction of the way and installation of municipal services. Other conditions required prior to endorsement of the plan have been met. Mr. Taylor moved that the Planning Board approve and sign the Declaration of Easements, Restrictive Covenant, and that the Planning Board endorse the Flexible Open Space Development Subdivision Plan for White Ash Farm Lane at 305 Country Way. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Accounting

Documents

- PO # 1408462 (\$308.40), PO #1408461 (\$438.48), PO # 1408460 (\$648.44), PO # 1408438 (\$735.00), PO #1408437 (\$997.50), PO # 1500194 (\$116.58), PO # 1500196 (\$595.00), PO # 1500227(\$240.00)

Mr. Taylor moved to approve the requisition of \$308.40 to Amory Engineers, P.C. for construction inspections for Blanchard Farm, for \$438.48 to Amory Engineers, P.C. for construction inspection services for Benjamin Studley Farm, for \$648.44 to Amory Engineers, P.C. for construction inspections for Dreamwold Estates-Coby's Run, for \$735.00 to Murphy Hesse Toomey & Lehane LLP for legal review of Blanchard Farm Estates documents, for \$735.00 to Murphy Hesse Toomey & Lehane LLP for legal review of Benjamin Studley Farm documents, for \$116.58 to Gatehouse Media for legal advertisement in the Scituate Mariner for 345 Hatherly Road, for \$595.00 to Chessia Consulting Services, LLC for engineering peer review for 50 Country Way Definitive Plan and for \$240.00 to Image Resolutions for 2 mounted 2014 zoning maps. Mr. Vogel seconded the motion. Motion was unanimously approved.

Minutes

Mr. Taylor moved to approve the meeting minutes of 6/26/14. Mr. Vogel seconded the motion. Motion was unanimously approved with Mr. Pritchard abstaining as he was not present on 6/26/14.

Old Business and New Business

Documents

- Staff report for 7/10/14

- Scope of Work, Housing Plan Update
- Summary, Conference on Sea Level Rise
- Guidelines for donations of Land

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 10:18 p.m. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk

8-14-14
Date Approved