

SCITUATE PLANNING BOARD MINUTES September 11, 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 7:35.M. The meeting was being recorded for airing on the local cable television station.

Documents

- 9/11/14 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 – 113 Arborway Drive Assessor's Map/Block/Lot 25-6-2 Applicant/Owner: Russell E. Williams

Documents

- Revised Accessory Dwelling Floor Plans dated September 4, 2014 for 113 Arborway Drive.

Chairman Limbacher opened the continued public hearing. Attorney Michael Hayes, Russ Williams and Ed Tibbetts were present for the applicant. Attorney Hayes indicated that a Title V report was filed with the Board of Health today and all the work has been completed. He indicated that plans were submitted to change the accessory dwelling to a 1 bedroom unit with a storage area for the primary dwelling where the second bedroom was. He said that the square footage of the accessory dwelling is now 747.2 sq. ft.

Ms. Harbottle said she conducted a site visit. She said that parking is adequate in the driveway for the accessory and primary dwellings. She said she looked to see if there could be an exterior access to the storage area, but it is not possible. She said that large windows in the accessory dwelling bedroom would provide a second means of egress. He said that the Board had considered requiring a pocket door to the kitchen from the vestibule, but thought the electrical connections would not allow it. She indicated that as long as the Board is comfortable with the second bedroom being converted to a storage area, the unit would be below 750 sq. ft. She suggested that a deed restriction and a locked door would be appropriate for the storage unit. She said the new owner will need to provide a certification of ownership and occupancy when the sale is complete. She said the home does look like a single family dwelling from the outside.

Mr. Taylor asked if the closet in the storage room could be removed and the status of the sale of the home. Attorney Hayes indicated that the storage unit would be locked and that the special permit can require there just be one bedroom. He indicated that the house is still on the market and there is no purchase and sales agreement. Mr. Taylor asked if the accessory dwelling makes the house more

marketable and why it needed to occur before the sale. Mr. Tibbetts, whose wife is the real estate broker for the property, said that the house is suited to the use as an addition was added in 1989 for an extended family. He said the house is not fully suitable to renting to outside family members. He said the bylaw is in place to legitimize conversions. He said a legal accessory dwelling would clarify the use for potential buyers. He said price should not be impacted by the accessory dwelling. Mr. Pritchard clarified that the storage is for the primary dwelling and the only access to it would be through the accessory unit. He said that with a lock and deed restriction, the applicant has done as the Board requested. Mr. Vogel agreed as there is precedent for that type of storage. He thought that the entrance could be better, but that would be up to the new owner. Mr. Greene concurred with his colleagues. Chairman Limbacher indicated that he had a folder with comments received and they are available to the public. He asked for public comment.

Rich McDonald said he was concerned that someone would purchase a rentable home in a single family area. He said it has been rented in the past. He said that changing the name of a bedroom to a storage area doesn't necessarily change its use as who will enforce the condition. Kelly Saluti of 121 Arborway Drive said she was open to an au pair unit, but not a rental unit. She expressed concern about the small children in the neighborhood as well as the school down the street. She also wondered who would enforce the condition. Jenny Loughlin of 102 Arborway said her son built the addition in 1989 for the former owners. She said it was purchased as a single family house and then Mr. Williams started renting the property after his family situation changed. She said she would be disappointed if it is allowed to become a two family house. Mr. McDonald questioned if there would be no effect on the value of the house, why was a permit being sought now. Attorney Hayes indicated that his client has a right under the bylaw to seek to legitimize a "murky" situation.

Julie Paul of 122 Arborway said Mr. Williams has no vested interest in the neighborhood as he is selling. Patrick Paul of the same address was concerned that all the other neighborhood values would depreciate due to 2 units in the house. Mr. McDonald said that the people who have rented the unit in the past have been responsible, but there is no guarantee to that in the future so property values could be impacted. Eileen Jacobucci said that she called Coldwell Bankers and the house is being promoted as a rental property. Chairman Limbacher submitted that perhaps the property is being misrepresented as it is now a 6 bedroom house with no accessory dwelling. He diffused the issue of selling price of the home as immaterial to the accessory dwelling discussion.

The neighbors questioned enforcement of the storage area. Attorney Hayes indicated that if the neighbors complain, then the Building Inspector would need to enforce the bylaw and special permit if granted. Mr. Tibbetts said the idea was to make the unit for a family and if it was not utilized it could be a 6 bedroom house. Mr. Pritchard said if the accessory dwelling is approved it could be rentable. It would be under control of the town and the zoning bylaws. Mr. Tibbetts pointed out that 3 boarders and a 2 bedroom bed and breakfast are allowed without permits. Joe Joyce pointed out that when someone spends \$500,000 on a house that they are careful about renters. He said that he believes an accessory dwelling will not affect the value of the other homes. The Board agreed that they would support the accessory dwelling with the decommissioning of a bedroom.

Findings of fact: Mr. Taylor read the Findings of Fact. Mr. Vogel moved to make the following Findings of Fact concerning the accessory dwelling at 113 Arborway Drive:

1. According to Town of Scituate Assessor's records, the property at 113 Arborway Drive is owned by Russell E S and Nancy M Williams. The property is located in the Residential R-1 zoning district as well as the Water Resource Protection District, Zone II to a public water

supply well and Wireless Communication Overlay District on a lot of 40,032 sq. ft.

2. On June 24, 2014, Russell E Williams applied for a special permit for an accessory dwelling within a single family house on property at 113 Arborway Drive.
3. According to the plan, the floor area of the primary dwelling is 1,482 sq. ft. The floor area of the accessory dwelling as shown on the revised plan dated September 4, 2014 is approximately 747.2 sq. ft. The floor area of the accessory dwelling will be less than 750 sq. ft. It meets the size requirements of 530.2F of the zoning bylaw for accessory dwellings.
4. The accessory dwelling blends with the architectural style and is of similar materials to the existing primary dwelling.
5. The accessory dwelling is less than 750 sq. ft. in size and has one bedroom. It is subordinate to the primary dwelling.
6. The proposed plan shows the dwelling to have a 2 car garage. Outside the garage there is room for 3 parking spaces in the driveway. This appears adequate to provide two parking spaces for the accessory dwelling and ample parking for the primary dwelling.
7. The property is for sale. The applicant has submitted a signed, notarized statement that he will live on the property. The special permit will be recorded. A future new owner will need to file an affidavit with the Planning Board that he occupies the property.
8. The Board of Health has several issues regarding the septic system operation. A certification that the septic system is compliant with Title V must be provided to the Board of Health prior to the accessory dwelling special permit being recorded.
9. One accessory dwelling unit is contained on the lot in a single family house. It will be a separate housekeeping unit.
10. There are no new exterior stairs.
11. The application meets the standards of Scituate Zoning Bylaw for an Accessory Dwelling Special Permit.

Decision: A motion was duly made and seconded to approve the Special Permit for an accessory dwelling at 113 Arborway Drive with the following conditions:

1. The applicant shall meet all requirements of the Building Department, Board of Health, Department of Public Works, Fire Department, Water Department and other town agencies.
2. Except for any changes necessary to meet these conditions, any construction shall conform to the plans entitled Proposed Accessory Dwelling Application 113 Arborway Drive Scituate, MA 02066 revised September 4, 2014: First Floor, Lower Level, Second Floor Primary Dwelling, Proposed Accessory Dwelling First Floor and Chart of floor area.
3. The property at 113 Arborway Drive shall contain a maximum of two dwelling units, the primary dwelling and the accessory dwelling as proposed. The footprint, number of

bedrooms and/or square footage of the accessory dwelling shall not be increased without prior approval of the Planning Board. The number of bedrooms in the accessory dwelling is limited to one, in the location and size indicated on the lower level plan submitted with the application and attached to this decision. A deed restriction shall be recorded by the applicant noting the one bedroom and storage room conditions, and shall state that the storage area for the primary dwelling cannot ever become habitable space for the accessory dwelling unit. The storage room should be locked and under the control of the primary dwelling. The Planning Board shall be provided with a copy of the deed restriction along with the recorded decision.

4. The windows shall be removed from the storage area or completely blocked prior to the issuance of the occupancy permit for the accessory dwelling. Documentation of the completed work shall be provided to the Planning Board and Building Department within seven days of completion.
5. The owner of the property shall reside on the property as long as it contains an accessory dwelling unit. Any prospective buyers of the property shall be advised of this condition. An Accessory Dwelling Special Permit Certification of Ownership and Occupancy from the new owner shall be completed at the closing of the sale of the house and a copy provided to the Planning Board within seven days.
6. The Planning Board will require an on-site inspection for conformance to the approved plans and these conditions prior to a Certificate of Occupancy being issued for the accessory dwelling.
7. Future purchasers shall be notified at the signing of purchase and sale for this house of the requirements of Zoning Bylaw Section 530, including the requirement that they live on the site and the requirements of this special permit and its conditions. The Planning Board shall be provided with an affidavit from the owners within one week of the closing of the sale of the house stating that they will live on the property.
8. No on-street parking shall be permitted at any time.
9. This Special Permit shall be void if it is not recorded at the Registry of Deeds within 90 days of the date of filing with the Town Clerk. The owner shall provide proof of this recording to the Planning Board.
10. This Special Permit shall lapse within two years from date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A, Section 9.
11. The Planning Board reserves the right to review compliance with this special permit at any time. At the request of the Planning Board, an affidavit shall be provided that either the primary or accessory unit is owner occupied.
12. At each transfer of ownership of the property, a new affidavit that the owner resides on the property shall be provided to the Planning Board within seven days of the closing of the sale of the house.

13. This Special permit shall terminate if the use is not in accordance with this decision and its conditions or upon the request of the owners of the property on the approval of the Planning Board, with the removal of the stove.

Mr. Pritchard seconded the motion. Motion was unanimously approved.

Site Plan Waiver – Vehicle Garage – 126 First Parish Road
Assessor's Map/Block/Lot 49-2-6
Owner: Ryan Alan, LLC
Applicant: Shawn Harris

Documents

- Application and Site Plan revised dated 8/5/14 for Proposed Building at 126 First Parish Road.
- Zoning Board of Appeals Decision dated May 13, 2014

Attorney Bill Ohrenberger, Shawn Harris, Robert Harris and Charles Harris were present for the applicant. Attorney Ohrenberger said that the property was pre-existing nonconforming. He said that the auto body shop was formerly located off Old Driftway but was displaced by the MBTA and relocated to this site. He said that truck storage occurs here as well. He said that the ZBA approved the project as it was getting vehicles out of the weather and they also determined it was not in a floodplain. Attorney Ohrenberger said that the Conservation Commission will issue an Order of Conditions addressing stormwater next week. He indicated that there is no change in traffic patterns, impervious surface and ingress/egress and that is why a Site Plan Waiver is requested.

Ms. Harbottle indicated that the ZBA looked at the site in 2004 and approved uses that were pre-existing nonconforming. She said hours of operation were set up for the various uses. She indicated that the existing arborvitae and berm would screen most of the new proposed building. Ms. Harbottle said that the site is commercial and not in the Water Resource Protection District or a Zone II. She said that she was satisfied that the Conservation Commission would address the site as one with higher potential for pollutant loads and that the DEP standards would be met.

Mr. Pritchard questioned if the auto body addition was in the Riverfront area. Ms. Harbottle said that is why the Conservation Commission reviewed the plan and why we would want the roof water to stay on site. He asked if all the uses were the same. Attorney Ohrenberger confirmed the uses would be the same. Chairman Limbacher said they are taking outside operations and moving them inside for storage and better control. Ms. Harbottle said that the ZBA scrutinized the plan before issuing their approval.

Mr. Taylor asked about the color of the building. Attorney Ohrenberger said that the roof of the pre-fab building would be green. A rendering was shown that showed the roof and siding to be green/earthtone in color. There was no public input.

Mr. Taylor moved that the Planning Board finds the proposed site work and building work is minor in nature because the proposed structures are being built to accommodate pre-existing nonconforming uses and will not increase the number of vehicles, number of employees or number of customers using the site.

The proposed 7,000 sq. ft. building for interior storage of trucks and equipment will reduce the exposure of vehicles to the elements and provide for a safer environment away from the public view with a more organized site. The 1,500 sq. ft. expansion of the building containing an auto body repair business will be located to the rear of the building to accommodate work which is being done outdoors, and no increase in customers is expected. There is adequate parking and maneuvering ability on the property for the existing uses, and they are appropriately screened for a residential area. The existing arborvitaes and chain link fence along the rear of the automobile sales area and an approximate 6 foot drop behind this provides screening.

In May, 2014, the Zoning Board of Appeals authorized a change, extension or alteration of the existing pre-existing nonconforming uses to allow the proposed construction. Numerous conditions were previously imposed in a ZBA decision in 2004, including elimination of fish hauling trucks from the site, new limits on hours of operation for several businesses and planting and maintaining evergreen screening.

Based on these findings, the Planning Board grants the site plan waiver for owner/applicant Ryan Alan, LLC to construct an addition to the auto body shop and a new metal pre-fab building subject to the following conditions:

1. Construction shall comply with the improvements shown on a plan entitled Proposed Building Plan at 126 First Parish Road, Scituate, MA prepared for Ryan Alan, LLC c/o Shawn Harris revised dated 8/5/14 submitted with the application.
2. Approval is contingent upon all local approvals being obtained from the Town of Scituate.
3. The 7,000 sq. ft. metal building shall be screened by the existing chain link fence and tall arborvitaes. These shall be permanently maintained to provide screening for the building. The Board shall be advised of any changes to the screening. The color of the proposed 7,000 sq. ft. building shall be similar to the color of rendering submitted 9/11/14.
4. An as-built site plan prepared by a registered professional shall be provided to the Planning Board prior to receiving a certificate of occupancy.
5. All roof runoff must be contained on the site.
6. A construction schedule shall be provided to the Planning Board prior to obtaining a Building Permit.

Mr. Vogel seconded the motion. Motion was unanimously approved.

Bylaw Discussion – Accessory Dwellings and Flexible Open Space Development

Documents

- Smart Growth Slide Presentation on Accessory Dwelling Units
- Smart Growth Model Bylaw for Accessory Dwelling Units
- Proposed changes to accessory dwelling bylaw dated 9/4 /14
- 40 A Cluster Development
- BOS and Dept. Guidelines on land donation

- Proposed changes to Section 550 Flexible Open Space Development

Ms. Harbottle indicated that the Selectmen have been talking about accepting open space and are carefully considering any land donated as tax revenue is lost when the land is donated. She indicated that under the current Flexible Open Space bylaw, the land must be donated to the Town. The proposed change would make it so that the land could also be owned by a Homeowner's Association Trust giving another option so the bylaw could be used. She said that under state law the land set aside as part of these developments can be used for open space or park land. It would not be useable for ballfields. Ms. Harbottle said that the Selectmen only want to accept land that adds value to the Town. Currently, if the Town does not accept the land, then the Flexible Open Space Development option would not be usable. The Board concurred that they assign a public benefit to the open space in a Flexible Open Space development and they do not take that lightly.

Bill Ohrenberger stated that from a Town standpoint the open space can only be taken through the care and custody of the Conservation Commission with a Conservation Restriction which is costly. He said that non-profit take a significant stewardship fee. He said that getting an opinion from the Board of Selectmen before the start of the hearing may not be wise. Mr. Vogel emphasized that a Flexible Open Space Development is predicated on a public benefit to improve the Town. Mr. Taylor said that there could be more liability to Homeowner's Associations. Mr. Vogel thought that was a tradeoff for the benefit of the open space and the developer already is having cost savings through decreased clearing, a shorter road and less development cost. Mr. Greene said that developers see this as a "dumping ground" for the Town to take their land. Chairman Limbacher said that it may work to the Board's advantage by not having a public benefit so a Flexible Open Space Development can't be done. The Board agreed that the draft should go to the Board of Selectmen through the Planning Board liaison.

Form A – 145 Border Street

Assessor's Map/Block/Lot: 6-2-9A

Applicants/Owner: Eleanor Bleakie, Trustee

Documents

- Form A application and Plan of Land showing a Division of Lots 4 & 5 as Depicted on L.C. Plan 19784-D Town of Scituate Approval Not Required #145 & #147 Border Street in Scituate MA stamped by Edward A. Stone, Professional Land Surveyor of EAS Survey, Inc. for applicant Eleanor Bleakie revised dated July 9, 2014
- Transmittal to departments dated 9/4/14

Attorney Steven Guard was present for the applicant. He indicated that during the Land Court process an error was found that the 100 feet of lot width did not go through to the building. He indicated the Building Department determined the error of less than 1 foot was not negligible and a correction should be made as the lots received 50 foot frontage special permits. He said the Form A will correct the mistake. Ms. Harbottle had no comments.

Mr. Taylor moved to endorse as approval under the Subdivision Control Law not required a Plan of Land showing a Division of Lots 4 & 5 as Depicted on L.C. Plan 19784-D Town of Scituate Approval Not Required #145 & #147 Border Street in Scituate MA stamped by Edward A. Stone, Professional Land Surveyor of EAS Survey, Inc. for applicant Eleanor Bleakie revised dated July 9, 2014 as the division of land is not a subdivision because it shows a proposed conveyance or change in the lot line which does not alter the existing frontage as required by the Scituate Zoning Bylaw on

the public way of Border Street. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Bylaw Discussion – Accessory Dwellings and Flexible Open Space Development -- continued

Accessory Dwellings – Ms. Harbottle said this second draft of the bylaw contains several additional changes. She indicated that she added a preamble under accessory dwellings. She said that she added that the primary dwelling had to be in existence for 10 years as the impact would be lessened on new dwellings with that language. Mr. Vogel said that the Board has seen three recent projects predicated on an accessory dwelling in new construction and he is concerned about the impacts of density of some of these proposals. The Board decided that 5 years would be more suitable based on discussions from a few years ago. Mr. Taylor said that the new structure with an accessory dwelling in the basement at the rotary was well done. Mr. Vogel agreed, but said that people are not comfortable with the existing bylaw as evidenced by the hearing earlier in the evening. Mr. Taylor said that it seems unfair that you can't design a new house with an accessory unit. Mr. Pritchard said that any accessory dwelling can be an apartment. He said that if the Townspeople want it to be only family members occupying the accessory dwellings, then the bylaw should be changed. Ms. Harbottle said that some towns just allow family members, but many are shying away from regulating who can occupy apartments. Mr. Greene asked if there was a way to distinguish between family and nonfamily members. The Board said no as ownership can change. Mr. Pritchard said any house could be a 2 family house. Mr. Vogel said that only 25 per year are allowed, but that is the public fear.

Mr. Vogel said that the new proposed wording "current dimensional standards of this bylaw" precludes pre-existing nonconforming lots. He said he suggested this wording as the 5,000 sq. ft. lots are dense now and in his opinion increased density there would be a disaster. Joe Joyce said that a large number of homes are nonconforming in Minot and many other homes in town are also nonconforming. He said that if the proposed bylaw is implemented it would eliminate a lot of potential users. He said that based on his experience as a contractor, people don't spend the amount of money for an accessory dwelling for a tenant. He said that the accessory dwelling bylaw does provide a good way to have a housing mix. He thinks the new wording is too restrictive on nonconforming lots. Mr. Vogel said the wording was to address situations that the Board has been seeing and hearing. Chairman Limbacher said that when it goes to Town Meeting people could construe this as too restrictive and removal of property rights. Mr. Taylor said that a 1 bedroom accessory dwelling in Minot may be appropriate if it were under the size limit.

Ms. Harbottle said that under Section 530.2 F., there is a relationship between the primary and accessory unit. She said the height language added suggests quantification of mass and defining subordination. Mr. Taylor asked if he had an existing barn that was higher than 25 feet would it preclude him from having an accessory dwelling on the second floor of the barn. Ms. Harbottle suggested it could apply to new structures. Chairman Limbacher says it does provide a definition of subordinate. Ms. Harbottle said a 2 bedrooms maximum was added. She said the change in floor area is to have a maximum size as previously requested by the Board. She said she put in a different size for the Residential R-3 zoning district to address the size on smaller lots that the Board has been debating. Mr. Taylor questioned if the wording should say square footage of the primary dwelling versus the whole house. Ms. Harbottle said that is why a definition of primary dwelling is proposed. Ms. Harbottle said that with regards to building height, she wants to make sure that the height is lower for an accessory dwelling.

Joe Joyce commented that the Board should prioritize the most important items to change. Chairman Limbacher said that defining subordinate and size are the most important as then there would be more control over nonconforming lots. Joe Joyce said that he understands that the Board wants subordinate, but he thinks 900 sq. ft. is too small. He thinks 1200 to 1250 sq. ft. would be a more appropriate size. He said the average person will not understand the first paragraph. He said that many people have nonconforming lots and they may not always be able to predict their family circumstances. Mr. Vogel admitted that pursuing nonconforming lots is aggressive, but he said that he is concerned about crowding and having 5 or 6 cars per home. Joe Joyce said that by defining scale and subordinate the problem should be addressed. He said it isn't fair to restrict accessory dwellings to a particular zoning district. He said it is an anomaly for someone with a lot of money to come in and build a very big place. Mr. Pritchard said that the Board heard earlier it is not just scale, but that accessory dwellings could change a neighborhood from a single family area something different. Joe Joyce said that the Board is seeing more applications as demographics change, people are living longer so situations will change. Chairman Limbacher said that Hatherly, Moorland and Arborway were not accessory dwellings for family.

Mr. Taylor suggested 1000 sq. ft. may be better. Ms. Harbottle said many towns use 900. Mr. Pritchard said the model bylaw uses 900. Mr. Vogel said his major concerns were scale and congestion and density. He said that the Board is hearing fear of overcrowding and lack of control about the process from abutters. Chairman Limbacher suggested that the Board table the discussion for now and that defining subordinate and size were the most important issues.

Design Review Committee and Planning Board Alternate Member Applications

Chairman Limbacher said that there is one opening on the Design Review Committee. He asked that interviews be set up for the 2 candidates. He also asked that the opening for the alternate Planning Board member be advertised again on the Town website and Mariner as there were no interested persons.

Minutes – There were no minutes to approve.

Accounting

Documents

- PO # 1501660(\$1,829.26), PO # 1501657(\$345.00), PO # 1501658(\$57.50)

Mr. Taylor moved to approve the requisition of \$1,829.26 to Beals & Thomas for construction observation of the drainage wicks at Deer Common, for \$345.00 to Chessia Consulting Services for construction observation at The Glen and for \$57.50 to Chessia Consulting Services for engineering peer review for 50 Country Way. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Town Planner Report

Ms. Harbottle indicated that she would send an update on Monday. Chairman Limbacher said that 345 Hatherly Road was sold.

Old Business and New Business

Documents

- Staff report for 9/11/14

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 10:35 p.m. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk
9-25-14
Date Approved