

Scituate Planning Board, October 11, 2012

TOWN OF SCITUATE, MASSACHUSETTS

SCITUATE PLANNING BOARD

MINUTES

October 11, 2012

Members Present: Mr. William Limbacher, Chairman; Daniel Monger, Vice Chairman; Richard Taylor, Clerk; Eric Mercer, Robert Vogel and Stephen Pritchard, 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

Mr. Limbacher called the meeting to order at 7:30 P.M. He announced the meeting was being audio recorded and asked if there were any other recordings being taken. The meeting was being taped for airing on the local cable television channel.

Documents

10/11/12 Planning Board Agenda

ACCEPTANCE OF AGENDA: Mr. Monger moved to accept the amended agenda. Mr. Mercer seconded the motion and the vote was unanimous in favor.

Meet Kevin Kelly, new Facilities Manager

Chairman Limbacher welcomed and thanked Mr. Kelly for coming. He said that the Board wanted to understand what the new facilities manager does and wants him to understand what the Planning Board does so that when they need to interface in the future support will be there.

Mr. Kelly said he started on August 20 and is learning the buildings in town. He would like to see major contracts such as heating, elevators etc. centralized to achieve efficiencies. He has previously been a facilities manager at Harvard, Milton Academy and Mt. Ida College. He has and will be working with the ESCO study and Ameresco the contractor. His office is currently located in the highway barn. Chairman Limbacher offered him any help he needs through himself or the Town Planner, Laura Harbottle. The Board thanked him for coming and is pleased he is working for the Town.

Request to Eliminate Special permit Condition limiting number of signs – Jacob Hatch Building – 10 New Driftway (formerly 2 Country Way)

Documents

Email from Mike McGowan to Laura Harbottle dated 9/10/12 with DRC meeting minutes

Email from Joe Scanzillo to Laura Harbottle dated 10/3/12 with Jacob Hatch Building, Scituate, MA – Sign at Rotary for 10 New Driftway

Email from Karen Joseph to Joe Scanzillo dated 10/5/12 with 10/11/12 Planning Board Agenda

Email from Mike McGowan to Karen Joseph dated 10/5/12

Email from Laura DeLong to Mike McGowan and Karen Joseph dated 10/8/12

Joe Scanzillo and Russ Anderson were present representing County Way Associates and the Jacob Hatch Condominium Association. Since the last meeting, they have met with the Design Review Committee who

suggested the sign be separated from the posts and there be some type of decorative arch at the top of the sign. Mr. Scanzillo indicated the posts will either be 6 or 8 inch as they face the roundabout. There will be four interchangeable panel signs mounted to the background. The red on the sign backboard will be the same color as on the building and not the color on the sketch. The sign will have a colonial flare and the background colors will be subdued. Mr. Scanzillo indicated he wants to go with a neutral color for the backboard and have the maroon/red letters with perhaps a gold outline for the 24" by 90" sign panels to be mounted on the backboard. He said the sign posts will be on concrete footings and may be steel wrapped to look like wood.

Town Planner, Laura Harbottle indicated that the picture of the sign looks nice with its simple colonial flare. The main concern is the colors and location.

The location of the new sign was discussed. It is proposed to be about 2 feet to the right of the existing plywood mock sign there now. The Board was in agreement that the sign is acceptable with more information to be provided as to colors and the exact location on a plan. Any up lighting now or in the future would need to be included on the plan. Safety and directional sign language will be added as a condition of adding the new sign. Ms. Harbottle and Mr. Scanzillo will work on the verbiage of the minor change in condition for the new sign as soon as Mr. Scanzillo provides the information as to final colors and location. This item will be placed on an agenda as soon as it is complete.

Public Hearing – Zoning Articles for Fall Town Meeting

Documents

Town of Scituate New Water Resource Protection District Map dated 8/7/2012 prepared by Amory Associate, P.C.

Proposed Zoning changes for 11/13/2012 Special Town Meeting – Changes to the Water Resource Protection District Map and Bylaw to meet DEP requirements dated 9/18/2012.

Proposed Zoning change for 11/13/2012 Special Town meeting – Allow Flexibility in Frontage Requirement – Special Permit for Mixed Use Structures in the Village Business Overlay District dated 9/18/2012.

Chairman Limbacher began reading the public notice at 8:13 pm. He indicated after he read the notice that the Village Business Overlay District will not be going forward at this time based on the historical process of zoning being done at the annual versus the fall special Town Meeting. He indicated the Water Resource Protection District bylaw will go forward.

Anthony Antonello of the Advisory Committee confirmed that Section 560 was not going forward.

Town Planner, Laura Harbottle explained that the changes to the Water Resource Protection District (WRPD) are being done for the Town's Water Withdrawal Permit that DEP regulates. DEP want the Town to adopt certain zoning to protect wells and surface water supplies. They want changes to both the map and bylaw.

The map changes include showing tributaries to the surface water supply near the end of Clapp Road by the Arrowwood development, by the Tilden Estates subdivision and land behind Stockbridge Road and the train track. These areas must be in the protective district. There is no land in the business district being added to the WRPD. The bylaw changes include adding definitions of Zone A and Zone II, adding a purpose to protect wells, and changes in the use and activities with separate language for Zone A and Zone II including prohibitions. Within the Watershed Protection District, swimming and boating language was taken out as it is hard for the Zoning Enforcement Officer to prohibit these activities since he is not on duty 24/7. Signs will be added and the police and state laws will be in effect. The only other change is in the Special Permit process. DEP doesn't want Special permits for Zone A and Zone II. A minor change was requested for a variance which can be added in the motion.

Chairman Limbacher indicated that there were several meetings with the Water Resource Committee and the proposed language has been reviewed with the Selectmen, Town Counsel and DEP. This resulted in

the language for the hearing with the minor change for the variance. The Board had no questions on this matter. Mr. Antonello confirmed that this zoning is needed for the Town's Water Withdrawal Permit.

Judi Aronson of 19 Cudworth Road inquired about which was the reservoir and which was Tack Factory Pond as there was disagreement on a couple of maps. The Board confirmed that the reservoir was on the left of 3A heading south and Tack Factory Pond was on the right.

Patricia Butler said she lives next to Tack Factory Pond and was inquiring about the high water mark as sometimes water floods into her property and she wants to be able to continue to mow her lawn. Ms. Harbottle indicated that her property is in Zone A, but the elevations are based on the normal height of the water. Ms. Harbottle said her property is in the 150 foot buffer, but she has some grandfathering provisions.

Ms. Aronson indicated that the map in the hall has both sides of 3A listed as Tack Factory Pond. Chairman Limbacher and Mr. Pritchard both indicated that the map and the bylaw will be the correct documents.

Mr. Taylor moved to recommend that Town Meeting adopt the proposed changes to the Water Resource Protection District, including changes to the Scituate Zoning Bylaw and Town of Scituate Zoning Map, with the addition of the following language at the end of the first paragraph of Section 520.6, Design and Operations Guidelines:

Within the Zone A and Zone II Subdistricts, where the activities subject to these guidelines are more strictly regulated by Sections 520.4 B. or 520.4 C. above, the stricter regulation shall apply, and the variance process provided in subparagraph F., below shall not be permitted.

And to make the following report to Town Meeting:

The town must comply with the conditions of the Department of Environmental Protection for maintaining its Water Withdrawal Permit in good standing. One such condition is adoption of zoning which meets the requirements of all relevant state laws, as interpreted by the DEP. Therefore, the Planning Board supports the adoption of this zoning. Mr. Monger seconded the motion. Motion was unanimously approved. Mr. Monger moved to close the public hearing. Mr. Taylor seconded the motion. Motion was unanimously approved.

Review sign and site for compliance – Greenbush Icehouse – 17 New Driftway

Documents

Emails from Donald Spradlin to Town Planner Laura Harbottle and from Ms. Harbottle to Chairman Limbacher dated 9/24/12 with sign image attached

Donald Spradlin and Bob Burwick were present for the applicant. Mr. Spradlin indicated that he would like to keep the icehouse sign as it is. It matches the awning and will have some landscaping. The Board all agreed that the awning and the site look good and the icehouse sign is acceptable. Mr. Mercer thanked Mr. Spradlin for going through the process with the Design Review Committee and believes a superior result was obtained.

Mr. Taylor moved to approve the existing sign on site at 17 New Driftway for the Greenbush Icehouse and to recommend that a full Certificate of Occupancy for the ice house be granted as the icehouse has met all of the conditions of the Site Plan Administrative review Modification issued on 5/22/12 and modified on 7/12/12.

Discuss need for Stormwater Permit for 87 Maple Street
Assessor's Map/Block/Lot 36-1-14
Owner: Ken Duval

Documents

Letter from Town Planner to Ken Duval approximately dated September 5, 2012

Attorney Adam Brodsky and Ken Duval were present for the owner of property at 87 Maple Street. Mr. Brodsky indicated that Ms. Harbottle sent a letter asking Mr. Duval to stop clearing his land and obtain a Stormwater Permit. He indicated that approximately one acre of woods on the property has been cleared and graded for storage of Mr. Duval's boat, lobster traps and play area for his children. No house is proposed. There was no impervious surface added. The work is currently out of the 100 foot buffer zone of wetlands as a stockpile has been moved and surrounded with erosion control. There is no evidence of erosion or siltation. All of the work is out of the Conservation Commission's jurisdiction. He showed the Board an aerial photo and indicated the parcel size to be about five acres. He showed the area that was cleared and indicated it contained a cement pad and stone foundation.

Attorney Brodsky indicated he believes the work is not subject to the Town's stormwater bylaw as it is not a development or redevelopment project as defined in Section 3A 1 of the regulations. That is the only section of the bylaw that may be applicable. He said the regulations define a new development as relating to a building footprint or impervious area. He indicated the drainage patterns are not changed on or off site, there is no impervious area and there is no building, thus no development per the regulations. Thus he said there is no jurisdiction under the bylaw. He referred to the public hearing notes and indicated that the Board wanted the bylaw and regulations consistent with the state stormwater regulations. The performance standards in the bylaw are taken almost directly from the state regulations. Attorney Brodsky indicated jurisdiction under the wetland regulations requires stormwater runoff to be applicable. He believes DEP would not require compliance with the regulations here. He suggested that DEP would say that no stormwater discharge occurred in this case as it is similar to a case in Wareham where a cart path through the wetland was declared not subject to the regulations as it was only clearing and no impervious material was put down. He suggested his client does not have a regulated activity under the Town regulations.

Ms. Harbottle indicated she became involved by an abutter calling to complain about the noise of construction vehicles occurring for several days. She visited the site down a dirt road and part of the larger parcel and found a clearing of approximately one acre and sent out the letter referred to by Attorney Brodsky. Ms. Harbottle indicated the intent of the Stormwater Bylaw was for site preparation, large areas of clearing, grading and change in infiltration of stormwater in the soil should be covered by the bylaw and regulations. The wording may not exactly say that and may need to be changed to conform to the intent. She indicated it is unusual to clear such a large area without a house being built. There was a split vote of the Board when the bylaw was approved, but Town Meeting approved it and regulations were subsequently developed.

Ms. Harbottle also indicated that the regulations and bylaw are intended to prevent stormwater impacts to adjacent properties. She indicated a NPDES permit may be required. Attorney Brodsky disagreed and indicated only if there is a discharge to a Federal navigable waters then NPDES is required. Ms. Harbottle indicated to the Board that she can see Attorney Brodsky's arguments in his letter, and it will up to the Board to decide.

Mr. Taylor indicated that it depends on how a project is defined. Attorney Brodsky said the regulations define new development as building or increase in impervious area. Under the Town regulations it is not a development subject to regulation. Attorney Brodsky expressed the need to comply with the strict meeting of the bylaw and regulations. Attorney Brodsky does not disagree with Ms. Harbottle that one of the purposes of the bylaw was to address construction impacts. He indicated Sec 9.7 talks about construction impacts, but it is not reached in this case because there is no development here as defined in the bylaw.

Mr. Monger believes the point is arguable if it falls under the Board's jurisdiction. He read from Attorney Brodsky's letter and the definition of redevelopment and has a problem with the altering the impervious area in a manner to change drainage patterns. Mr. Monger believes tree removal changes the drainage pattern. Tree cover slows the rate of infiltration. Mr. Monger indicated vegetative versus non vegetative changes can make a difference. Attorney Brodsky disagreed because of evapotranspiration and he indicated that a level site with no trees will not change the drainage characteristics i.e. water moving off site

without a slope. Mr. Duval indicated that he did grade the site flat from a minor slope and water is being kept on the site. Mr. Monger indicated that Mr. Duval admitted to changing the drainage pattern. He is not sure if impervious surface could apply here as what is at the site doesn't meet the definition of a hard surface in the by law, but if it has been compacted for future use it could qualify. Mr. Pritchard asked if it was compacted. Mr. Duval indicated it was not. Mr. Monger indicated that it meets every criterion except a hard surface. He believes the intent of the bylaw was to cover this, but it arguably vague and seems to favor Mr. Duval. Mr. Monger indicated he supported an amendment to the bylaw for Town Meeting and suggested consulting with Town Counsel on this case if the Board wants to pursue it here.

Mr. Pritchard inquired if the site is in the Water Resource Protection District and the non- disturb buffer zone. It was determined it was not in the district. Mr. Mercer questioned the meaning of impervious. It doesn't say waterproof. Changing imperviousness can be changing how much and how fast water percolates in the soil. Mr. Brodsky indicated that a stormwater management system can be designed to comply with Best Management Practices, but how do you design a stormwater management system for just land clearing with no impervious structures. Attorney Borodsky indicated he has never been required to design a system for tree removal. In the future if there is a project, he would be required to come and obtain a stormwater permit. Mr. Mercer questioned farming and was told there was an agricultural exemption in the bylaw. Mr. Brodsky indicated that if the Board disagrees with what the rules say then the rules should be changed. He indicated that the bylaw says what it says and grading topsoil is not an impervious surface. Attorney Brodsky suggested if land clearing is to be included, the regulations should be revised.

Mr. Monger said there didn't seem to be an impact on abutters so perhaps the best thing is to let it go and fix the bylaw at Town Meeting. Chairman Limbacher indicated that it has to be new development or redevelopment that is what triggers the bylaw. He doesn't think this falls under the bylaw, but thanked Mr. Duval for bringing this to the attention of the Board. The Conservation Commission uses the same by law for project in their jurisdiction and they looked at it. It was reaffirmed there was no Conservation jurisdiction on this project. Mr. Monger indicated that when Mr. Duval goes to build, he will need a stormwater permit. Mr. Pritchard was worried about setting precedent. Mr. Vogel thinks that the bylaw should change. He indicated that disturbance is disturbance and was glad nothing bad has happened. It was clear to him that the intent of the bylaw was to be aligned with DEP, but the Town may need to be more protective.

Mr. Monger asked if the Board wanted to encourage the Zoning Enforcement Officer to enforce the zoning or did the Board want to table it and ask Town Counsel. Attorney Brodsky indicated that he wanted Town Counsel to have a clear direction. It was decided that the best thing would be for a letter from the Town Planner retracting her letter and to copy the same people as the original letter. This would not put the Board in a negative position, but the issue would be resolved.

Minutes

There were no minutes to approve.

Accounting

Documents

P.O. # 13002162(\$15.48), P.O. #13002244(\$9.99), P.O. # 13002333(\$120.60)

Mr. Taylor moved to approve the requisitions of \$15.48 to Schwaab Inc. for a nameplate for Stephen Pritchard, for \$9.99 to WB Mason for Day at a Glance Book 2013 and for \$120.60 to Community Newspaper Company for the legal ad in the Scituate Mariner for the 5 Third Avenue Accessory Dwelling Special Permit. Mr. Mercer seconded the motion. Motion was unanimously approved.

Town Planner Report

Ms. Harbottle summarized some of the grants that she has worked on. She worked with the EDC to apply to MAPC for a Direct Local Technical Assistance Grant for a market study. The EDC would like to apply this

year again as they did not receive the grant last year. She is working with FEMA on home elevation grants, including two for \$301,000 which the Town just signed the contract for with MEMA. She has worked on the Green Communities Grant which the Town was awarded \$160,000. Projects will be identified soon as the ESCO report was just issued. She asked if the Board was interested in applying to the Priority Development Fund. This fund has money for strategy/zoning/housing and whatever project put forth has to have a housing component. She passed the guidelines around and asked that the Board take it under advisement for their next meeting.

Mr. Taylor inquired about the grant that Scituate supported Cohasset on for a study of Route 3A down to Henry Turner Bailey Road. Ms. Harbottle indicated that the project was on the TIP, but has no funding yet.

Liaison Reports

Chairman Limbacher indicated that the Recreation Commission has just released a 3 to 5 year plan. He will route it to the Board after he has had a chance to review. The Recreation Department will likely be seeking more funds from the CPC due to the change in CPC funding requirements making more recreation projects eligible.

Mr. Taylor will be going to the South Shore Coalition next week. The topic will be transit oriented development.

Mr. Vogel moved to adjourn the meeting at 9:25 pm. Mr. Monger seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk