

Scituate Planning Board, September 27, 2012

TOWN OF SCITUATE, MASSACHUSETTS

SCITUATE PLANNING BOARD

MINUTES

September 27, 2012

Members Present: Mr. William Limbacher, Chairman; Dan Monger, Vice Chairman; Richard Taylor, Clerk; Robert Vogel, Eric Mercer 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. Monger called the meeting to order at 7:35PM. Chairman Limbacher had left a phone message that he would be a little late. The meeting was being audio recorded and being recorded for viewing on the local cable television station.

Documents

9/27/12 Planning Board Agenda

ACCEPTANCE OF AGENDA: The items of the agenda were as posted.

All present indicated they wanted to use the time efficiently until the Chair arrived. Mr. DiNanno indicated he did not mind waiting. The board asked Town Planner, Laura Harbottle if the new facilities director could come to an upcoming meeting.

Minutes

Mr. Taylor moved to approve the September 13, 2012 meeting minutes. Mr. Mercer seconded the motion. Motion was approved unanimously.

Accounting

Documents

None

First Amendment to Tripartite Completion and Settlement Agreement - Walnut Tree Hill

Documents

Letter dated 9/20/12 from Brandon Moss of Murphy, Hesse, Toomey & Lehane, LLP containing the First Amendment to the Tripartite Completion and Settlement Agreement for the Walnut Tree Hill Subdivision

Mr. Monger recused himself and left the room for the discussion on the first amendment to the Walnut Tree Hill Settlement Agreement. Chairman Limbacher arrived at 7:40 during the discussion of the Settlement Agreement Amendment.

Ms. Harbottle indicated that the work has started on the project and is being done by a contractor hired by Travelers Insurance. Town counsel worked out the proposed amendment as the contractor was having trouble obtaining a performance bond, so has asked that 10% retention be held from the requisitions in lieu

of the bond. The original subdivision performance bond will also still be in place throughout the construction process. Ms. Harbottle indicated that the contractor has agreed to this and has already started work. She has let the residents know that work is starting as well. The work is scheduled to be completed by mid-November.

Mr. Vogel inquired as to the mechanism for inspections. Town Planner, Laura Harbottle indicated that our consulting engineer, John Chessia will be doing inspections and is being paid by Travelers. Mr. Pritchard inquired why the documents said Lumberman's and US Fidelity and Guarantee instead of Travelers. Ms. Harbottle said she was not sure the companies technically existed and thought that Travelers took them over and that Travelers would be responsible for obtaining all the proper signatures. Mr. Pritchard just wants to make sure the right people sign. Ms. Harbottle indicated she will obtain a copy with all the signatures. Ms. Harbottle indicated that the Selectmen will be given the document to sign next week. Mr. Vogel re-affirmed that Travelers still guarantees the existing bond and it will stay in place until the work is completed and accepted. Ms. Harbottle confirmed this.

Mr. Taylor moved to accept and execute the First Amendment to the Tripartite Completion and Settlement Agreement for the Walnut Tree Hill Subdivision. Mr. Mercer seconded the motion. Motion was unanimously approved.

Mr. Monger was brought back into the meeting room.

Review compliance with Planned Development District Special Permit – 60 New Driftway – Riverway Condominiums

Assessor's Map/Block/Lot 53/3/2B

Applicant/Owner: Anthony DiNanno, Republic Properties, Inc./R. DiNanno & Sons

Documents

Letter from William Limbacher to Anthony DiNanno dated June 19, 2012

Special Permit – Planned Development- The Residences at Herring Brook- 52 Ladd's Way dated 11/2/2005

Flood Plain & Watershed Protection District Special Permit for the Residences at Herring Brook dated 11/2/2005

James-Clapp Cemetery sign by Hassan Sign dated 4/16/2012

Letter from the Planning Board dated 11/4/2006 to the Town Clerk extending the time for Condition 7 of the Planned Development District and Flood Plain Special Permits

Chairman Limbacher indicated that it was 7:42 pm and the Board would discuss the Riverways on Driftway. Anthony DiNanno introduced himself and John Gregorio of Republic Properties/R. DiNanno & Sons. Mr. Gregorio is the construction person interfacing with the Building Department and moving the project forward. Mr. DiNanno indicated that he wants to answer the questions to date about the project and the Special Permit conditions. He indicated that the project has been ongoing for about 4 ½ years and the last phase, Building D with 6 units is nearly complete. He indicated that the mixed use building is the final phase at the entry. It will be commercial use on the first floor and have 2 affordable units on the second floor. Mr. DiNanno said it is probably the biggest issue remaining of the Special Permit. He said there is not much commercial demand due to the economy; however, they will follow through with their commitment. They propose a start date of not to exceed July 1, 2013 and a delivery date of no later than January 1, 2014 for the commercial component.

They are working on ongoing improvements to the walkway to the Clapp cemetery. The work should be done tomorrow. Ms. Harbottle met with him at the site and good direction was received. They have been communicating with Annette Markwood as her family is buried there. Her concern is improvements in the Special Permit. Mr. DiNanno said there is concern about locating the fence and chain proposed for the top of the cemetery wall on the wall. They were about to proceed with this when they realized some of the granite wall is pulling away. The wall will need to be fixed prior to the fence being installed. Mr. DiNanno said they will complete their obligation after the Board and the cemetery owners decide what they would like to do whether it be fencing or something else. He indicated they are also ready to move forward with the

cemetery sign after the issues with the date and location are resolved.

He indicated the performance bond is still in place. He has talked with Eagle Bank and they are party to the Tripartite agreement. The bank has provided a letter dated August 27, 2012 that the funds are there and a mutual agreement needs to be reached before the funds are released. He submitted the letter and indicated that the Board members never signed the Tripartite Agreement even though it was executed by the bank and developer. He said or it could be he never got a copy of the executed agreement. He hopes this can be resolved.

He also indicated that the drain lines have been inspected and he has a contract for the landscaping to be maintained as well as the drainage and septic. He indicated he just received a new Title V inspection and the system passed. Their engineer, Coler & Colantonio indicated the system meets compliance as installed as of 8/24/2012. He submitted this inspection and a compliance letter from Coler & Colantonio. He reiterated that their company takes pride in the landscaping. His landscaper is an old friend and travels from the North Shore to the site. They have a local contractor maintaining the site and he can provide invoices if necessary. The unit owners are pleased with the landscaping and can attest to its completeness and maintenance as they are attendees of this meeting.

The drainage system has been checked and there is no accumulated sediment and the flow is adequate and it is operating as designed. There has been no need for maintenance. The septic system is being maintained and pumped out regularly by Peter Spencer, a local contractor. Mr. DiNanno indicated he is open to questions and future meetings and believes he has addressed the items in the Board's letter. He said of the 26 total units permitted, 20 are sold and 19 are owner occupied. He indicated they have a viable community where the occupants are pleased with the living conditions and the company takes pride in the presentation of the product.

Chairman Limbacher indicated that this is a unique site due to the cemetery. The Board took the owner of the cemetery's requests in making the findings and decision.

Town Planner, Laura Harbottle indicated that the Board sent a letter to Mr. DiNanno in June. There were four items mentioned that Mr. DiNanno ran through nicely tonight. The first was the mixed use building. She indicated that nothing absolutely requires it. She indicated that if the mixed use building is not built, it would need a modification. If there was an agreement not to build it, a special permit modification would be necessary and it might be a nice place to make a park. She suggests this as the market has not been great for a commercial use.

Ms. Harbottle indicated that the cemetery was an unusual situation as it was part of an assessment by a historic burial expert for the Town. The cemetery is privately owned. The assessment talks about wall repairs being needed and granite posts and chain being added. It would be hard to obtain CPC funds for this work, however it has been done in other towns for private cemeteries. Mr. DiNanno showed a diagram of how the cemetery would look. He would like for the fence and chain to be located off the wall. As the granite walls have shifted. Chairman Limbacher indicated that at some point after the cemetery was elevated, the voids in the wall were filled eliminating natural drainage and resulting in the walls being bowed. Ms. Harbottle indicated that the burial expert does not want the fence on the wall as it would be less secure for the wall and stones nearby.

Ms. Harbottle also indicated that arborvitae have been planted 30 inches from the cemetery wall. This will make it difficult to maintain the five foot easement and suggests moving the plants. She indicated that the walk has been installed. Mr. DiNanno said that it still needs to be compacted and be mulched and a final cleanup. Chairman Limbacher indicated he has been out to see the walk too.

Ms. Harbottle also indicated that the design of the sign is good. She indicated that she thought if the sign had something behind it people would see it as they walk by on Driftway. Mr. DiNanno handed out a copy of the proposed sign. There is discussion about what date should be on the sign. The family would like as old a date as possible as it will add to the historic value and prestige. She indicated the Scituate Historical

Commission is working on this as well as herself. The burial expert has recommended circa 1790 as it encompasses all the dates floated about.

Mr. Pritchard asked if there were supposed to be two signs. Ms. Harbottle said that the sign just discussed to be located by Driftway and another more interpretive sign by the cemetery. The interpretive sign could tell about the occupants including the lineage to a Mayflower descendant. Chairman Limbacher indicated that he and Ms. Harbottle share the same concern that progress is happening for completion and that was the reason for the letter. He feels that progress is being made in resolving loose ends. They indicated that the interpretive sign needs to be done. Mr. DiNanno said the developer is obligated to do one, but will do an interpretive sign if the Town wants. He indicated that Annette Markwood had a concern about the sign being out at the street and how people would understand where the cemetery is. Mr. Pritchard indicated the conditions indicate two signs.

Attorney Michael Loring indicated that he represents the Langley family, caretakers of the Clapp cemetery who also have the lot easement. He became involved a short time ago when Annette Markwood, daughter of Dorothy Clapp Langley, a deceased local historian, contacted him. The daughters promised their mother they would care for the cemetery after her death. He said it is true that Mayflower descendants are buried in the cemetery. It is historically significant to Scituate as some of its founders are buried there. Mr. Loring indicated he met with Annette Markwood and Mr. DiNanno at the cemetery this past August. They are the ones who maintain the cemetery. He indicated that the developer favors the design of the sign as it is now. Dorothy Clapps records' indicated the date was 1792 as three Clapp members died then in a small pox outbreak. He will leave it to the Historical Commission to make that determination. Mr. Loring indicated that as far as the fencing, the Langley's don't want the fencing in the walls, but rather set back from the walls with a chain. It is part of the plan, but it is the decision of the Clapp people because they own it. As far as the walkway plantings, they want something to fit in with what the developer has done on site which they think is good. He suggested strapping on the slope. He suggested that the handicapped access not be out at Driftway, but be closer to the cemetery for easier access and accessible parking in a couple of dedicated cemetery spaces. The Langleys would like the Board to look at that. Mrs. Markwood wants some evergreen plantings to break up the path going to the cemetery. Mr. DiNanno indicated it would be done within reason. Mr. Loring is pointing out that there is a curb cut at the street. Chairman Limbacher indicated it was a big step for the developer to meet with everyone to try to resolve the cemetery issue. What was envisioned was hard to do.

Mr. DiNanno said he had one more issue – the easement. He presented a draft access easement for the Board. He would like it reviewed so it can be implemented. He has no problem making a curb cut in the berm near the cemetery for better handicap access to the cemetery.

Mr. Taylor has walked through and thinks it is a great development. He is glad everyone is working together on the cemetery. He inquired about the design of the commercial building. Mr. DiNanno said it was consistent with the rest of the buildings and a design was submitted. Mr. Taylor indicated that he would like to see the commercial building go forward.

Mr. Monger indicated that he is glad people are working together to resolve the cemetery issues. They can come back with a plan once it is all resolved and if the Special Permit needs to be modified it can be. He would like to see the commercial building and two affordable housing units go forward. Since so much time has gone by, Mr. Monger thinks they may want to revisit the building. Mr. DiNanno indicated he would look at it and submit something to Ms. Harbottle. Mr. Monger feels that the Design Review Committee might be helpful in the design of the building. He reiterated the dates that Mr. DiNanno committed to earlier in the meeting. Mr. DiNanno said there was nothing specific in the decision, but he can focus on the commercial since the residential will be done soon. Mr. Monger asked what the bond was. Mr. DiNanno indicated \$50,000. Mr. Monger indicated it was the only carrot the Board had now. Mr. DiNanno indicated that the work is being done according to the Special Permit and they will start the final phase soon.. Mr. Monger asked Ms. Harbottle to look into the CPC funding.

Mr. Loring indicated that the Langleys want to turn the cemetery over to the Town. Mr. Monger said they

may be able to get CPC funds for the repairs as it seems like the cemetery belongs with the Town. Mr. Loring indicated they may look to other funding sources for maintenance too. Chairman Limbacher said there may be a way get funding, but there needs to be an understanding of who owns it first. Mr. Monger said there may be a way to craft a grant to include ownership study and a land court action. Ms. Harbottle indicated other towns have used CPC monies for private cemeteries and gravestone repair. Mr. Limbacher will provide information as to what the CPC has funded.

Mr. Vogel indicated looks forward to an agreement on the cemetery and believes progress is being made there and believes the commercial building and affordable housing should be provided. He believes that this commercial building will help the vision of Greenbush/Driftway where businesses feed off each other and create a thriving village center. Mr. Mercer is satisfied. Mr. Pritchard echos all the previous comments and feels the mixed use/affordable housing component of the project is valuable to the Town and he thinks they have done a good job with the development.

Chairman Limbacher thanked the Developer for coming and addressing the issues. Chairman Limbacher indicated the Town Planner will be available to help and he will be available too. He indicated that Mr. Loring has been a good point person. Mr. DiNanno thanked the Board and the Town Planner.

Public Hearing – Accessory Dwelling Special Permit – 5 Third Avenue

Assessor's Map/Block/Lot 34/9/1

Applicants/Owners: Susan D. & Jason B. Costello and Anne & Anthony J. Dionisio, Jr.

Documents

Application and deed for 5 Third Avenue Accessory Dwelling Permit dated 8/7/12

Existing Floor Plans for 5 Third Ave – Nadeau Residence prepared by the Sandcastle Group dated 12-7-2004

Floor Plans and Elevations for Costello/Dionisio 5 Third Ave consisting of 6 undated sheets

Transmittal from Laura Harbottle to Town departments dated 8/8/12

Decision by the Planning Board for the Accessory Dwelling Special Permit for 5 Third Ave dated 1/13/12

Site Plan Administrative Review decision for 5 Third Ave dated 1/25/2005 and letter to the Town Clerk dated 1/26/2005.

Chairman Limbacher indicated it was 8:35pm and opened the public hearing for an Accessory Dwelling Special Permit for 5 Third Avenue. Jason Costello indicated he was a partial owner and representing his family and the Dionisio family. He indicated he would like to expand the existing accessory dwelling and expand the third floor of the existing primary dwelling. He would like to add an exterior access from the second floor as a result of a preliminary discussion with the Building Inspector.

Town Planner, Laura Harbottle reviewed the square footages with Mr. Costello for the primary and accessory units. It was confirmed that the accessory unit is proposed to occupy the entire first floor, except for the foyer area. The third floor is proposed as a new kitchen and living area. There will be a recreation room of 294 sq. ft. in the basement. It was agreed that the area of the proposed accessory dwelling is 36% which is less than 40% of the primary dwelling.

Mr. Mercer confirmed that they are repurposing the existing structure. He indicated that he had been in the house previously and the third floor had a pool table and telescope. He also indicated he was a distant neighbor and wouldn't say any more except that it looked fine to him. Mr. Taylor had no questions. Mr. Vogel was fine with the project. Mr. Monger wanted to hold off on the Certificate of Occupancy until the primary dwelling was built as proposed so that the numbers all work. The Board has previously done this. Mr. Pritchard indicated he was fine with the proposal as long as the numbers agreed and that the work is completed. Chairman Limbacher concurred that the proposal makes sense.

Mr. Taylor read the proposed Findings of Fact concerning the accessory dwelling at 5 Third Avenue:

On January 13, 2005 the Planning Board approved a site plan administrative review authorizing

construction of an affordable accessory dwelling at 5 Third Avenue. On January 12, 2012, the Planning Board approved an Accessory Dwelling Special Permit for the property removing the affordable restriction. The accessory and primary dwelling footprints are the same as originally permitted.

On August 7, 2012, the new owners submitted an application for an Accessory Dwelling Special permit to increase the sizes of the accessory and primary dwelling units. The applicants propose to make the accessory dwelling unit 1,019 sq. ft. from 424 sq. ft. The accessory unit would be the entire first floor and contain 1 bedroom. The applicants propose to finish the vacant third floor with a kitchen and living room for the primary dwelling. The primary dwelling will have 3 bedrooms on the second floor and an exterior staircase would be added from the office area to the outside to provide for a secondary means of egress. 294 sq. ft. of the basement is proposed to be finished for a recreation room.

The plans submitted with the application are entitled Costello/Dionisio 5 Third Ave Sheet A0-1 Area Plans, Sheet A2-B Basement Floor Plan, Sheet A2-1 First Floor Plan, Sheet A2-2 Second Floor, Sheet A2-3 Third Floor and Sheet A4-1 Exterior Elevations. All sheets are undated with no preparer information. Also submitted were floor plans of the existing dwelling, A1 First Floor, A2 Second Floor and A2.1 Attic Plan, for the Nadeau Residence dated 12/7/2004 prepared by the Sandcastle Group, 600 Plain Street, Marshfield, MA.

The area of the proposed accessory dwelling will be 1,019 sq. ft. The area of the primary dwelling will be 2,786 sq. ft. The area of the proposed accessory dwelling is less than 40% of the area of the primary dwelling, so the area meets the requirements of 530.2 F for accessory dwellings.

An excerpt from a site plan for 5 Third Avenue shows an 18 to 20' wide driveway and the garage is approximately 22' wide. This appears adequate to provide two parking spaces for the accessory dwelling and ample parking for the primary dwelling.

The applicants have agreed that they are owners and occupy the property.

The application meets the standards of Scituate Zoning Bylaw Section 530 for an Accessory Dwelling Special Permit.

Mr. Monger moved to accept the Findings of Fact. Mr. Mercer seconded the motion. Motion was unanimously approved.

Mr. Taylor moved to approve the Accessory Dwelling Special Permit for 5 Third Avenue with the following conditions:

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.

The property at 5 Third Avenue shall contain a maximum of two dwelling units, the existing dwelling and the accessory dwelling as proposed. The footprint, number of bedrooms and/or square footage shall not be increased without prior approval of the Planning Board.

The owners of the property shall reside on the property as long as it contains an accessory dwelling unit. The owners of the property shall provide yearly certifications on October 1 of every year that they are residing on the property.

Except for any changes necessary to meet these conditions, any construction shall conform to the Area Plans, Basement Floor Plan, First Floor Plan, Second Floor, Third Floor and Exterior Elevations, for Costello/Dionisio 5 Third Ave submitted with this application.

No on-street parking shall be permitted.

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.

This Special Permit shall lapse within two years from the date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A, Section 9.

This Special Permit shall terminate if the use is not in accordance with this decision and conditions.

The Certificate of Occupancy for the Accessory Dwelling shall not be issued until the Certificate of Occupancy for the primary dwelling is obtained.

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

Liaison Reports

Mr. Taylor indicated that he did not attend the South Shore Coalition meeting this month as it was being held simultaneously with the Planning Board meeting.

Chairman Limbacher indicated that he has been to a few meetings of the Community Preservation Committee (CPC). Their website has been updated and it worth exploring. He said that he an Town Planner, Laura Harbottle were planning to attend the Selectmen's meeting on October 2 as the Selectmen are to vote if the zoning articles are going forward for the Special Town Meeting in November.

Mr. Vogel indicated that he will be going to the Waterways meeting in October.

Mr. Monger asked whether Mr. Pritchard should have some responsibilities. Mr. Pritchard said he had expressed interested in the Public Facilities Master Plan Steering Committee. The Board had previously recommended Mr. Limbacher be the Board's liaison, but Mr. Pritchard could go to the meetings as well. Mr. Taylor indicated that Mr. Pritchard could take over for him as liaison to the Public Building Commission.

Town Planner Report

Town Planner, Laura Harbottle, indicated that the Board received a letter from Ken Duval's attorney, Adam Brodsky on 87 Maple Street. They will be on the agenda for the next meeting. Mr. Monger indicated that he disagreed with Mr. Brodsky's assertion that no stormwater permit is needed. Land alteration increases the impervious area. Mr. Vogel agreed with Mr. Monger and indicated that if the runoff is increased so there is less pervious surface the resulting impact would be an increase in impervious surface. Mr. Pritchard asked if there was precedent. Mr. Monger indicated he feels it is in the bylaw. Ms. Harbottle indicated she had talked with the Building Inspector and he feels the same. Mr. Vogel indicated that the language in the state is the rate of runoff. Mr. Monger said land alteration affects on-site/off site drainage. There will be a discussion at the next meeting.

Mr. Vogel moved to adjourn the meeting at 9:10 pm. Mr. Monger seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard W. Taylor
Clerk