

Scituate Planning Board, February 7, 2013

TOWN OF SCITUATE MASSACHUSETTS

SCITUATE PLANNING BOARD

MINUTES

February 7, 2013

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

Members Absent: Stephen Pritchard, Alternate Member.

Others Present: Ms. Laura Harbottle, Town Planner.

See Sign-in List for names of others present at this meeting.

Location of meeting: Selectmen's Hearing Room, Town Hall.

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

Documents

- 2/7/13 Planning Board Agenda

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

Public Hearing - Zoning Articles for Annual Town Meeting on April 9, 2013

- Medical Marijuana Use Regulations
- Flexible Open Space Development
- Village Business Overlay District
- Accessory Dwellings

Documents

- Legal ad for Zoning Articles
- Memorandum from William Limbacher to Joe Norton dated 1/17/13 with the Zoning Articles sent to the Board of Selectmen

Chairman Limbacher opened the public hearing by indicating the hearing content would be identical to the legal ad published in the paper and available in the Planning Board and Town Clerk's offices. He indicated he would like to do Accessory Dwellings first as he sees people in the audience for that part of the hearing. Chairman Limbacher indicated that the proposed Accessory Dwelling Bylaw proposes changes to Sections 200, 420 and 530 of the zoning bylaw. Some of the changes proposed include eliminating the affordable accessory dwelling provision, changing the accessory dwelling provision in the business district to the Village Business Overlay District and adding a certification process for accessory dwelling owners. There were no immediate questions or comments from the Board.

Deborah Berk of 202 Old Oaken Bucket Road asked if the changes would affect them as they had the first affordable accessory dwelling in the Town and are interested in keeping it going forward. Mr. Monger indicated that their unit would be grandfathered and the changes would not affect them. Ms. Berk indicated Ms. Harbottle was a big help to them in having the unit permitted and it would be nice if it could be counted

on the Town's affordable inventory list. Mr. Monger indicated that the Town is so far away from the 10% mark that one unit will not make a difference. He also indicated that the state puts a lot of barriers in doing affordable units with them dependent on deed restrictions and covenants. Steve Bjorklund indicated that when the original bylaw was passed by the Town, an accessory dwelling could not be done on a non-conforming lot unless it was an affordable unit. Mr. Monger indicated that the affordable accessory unit provision was not being used. Chairman Limbacher indicated that last year there was an accessory dwelling that needed the affordable provision removed to sell the house and it had to go to the Board of Selectmen after the Planning Board.

Joe Joyce of 39 Ocean Avenue was very concerned about going to the proposed language of the net floor area of the Accessory Dwelling shall not exceed the lesser of 40% of the net floor area of the Primary Dwelling or 900 square feet as well as the proposed required annual certification and an accessory dwelling unit permit not being transferable to a new owner. He indicated that if he wanted to leave a house with an accessory unit to his son, it would require a new certification and he doesn't see the need for that. Mr. Monger indicated that the certification will help check to make sure owner's occupy part of the dwelling as required preventing two rental units. Mr. Joyce is concerned that the lesser of 900 square feet or 40% of the net floor area will make the size of accessory units too small. He indicated that accessory units are good for families where divorce occurs. He said he hasn't known the bylaw to be abused.

Mr. Vogel indicated that the size requirement has been carefully considered. Under the existing bylaw, an existing 1,000 square foot house could have a 750 square foot accessory unit which is nearly doubling the house size and making the accessory unit subordinate as required difficult. Mr. Monger indicated that the new bylaw will require smaller houses to have smaller accessory unit. Mr. Joyce indicated he was concerned about the size of an accessory unit not being sufficient and if he had known the Board was working on this issue he would have brought floor plans for the Board to see. Chairman Limbacher indicated that this is the public meeting to comment on the proposed changes before Town Meeting. Mr. Taylor indicated that lot size was considered, but the Board thought the proposed change was the best option for the Town. Mr. Mercer concurred. Mr. Monger indicated that the proposed square footage is more liberal than other surrounding towns and generous for its intent of an apartment. Mr. Joyce indicated that it is not a lot of space for a mother and 3 children and thinks that the Board should consider increasing the square footage. Mr. Monger said 900 square feet is 150 to 200 square feet larger than most towns. Mr. Vogel reiterated that the subordination issue is complex with different lot sizes and easier when two dwellings are on a lot. Mr. Joyce reiterated that the square footage is too restrictive and he is not opposed to everything else.

Mr. Bjorklund asked for a clarification of Section 530.4 as it says on the transfer of ownership a new permit is needed and it needs to be by the fee owner. Mr. Monger indicated that is why the language was put in about a transfer prior to becoming the owner. Mr. Bjorklund indicated the wording should be changed so that someone with a valid Purchase and Sales agreement could apply. The Board concurred and will make changes in Section 530.2 to reference Section 530.4. Mr. Joyce indicated he would be scared stiff to purchase a home with an accessory unit and thinks the changes are unnecessary and the certification overly bureaucratic. Mr. Monger indicated that upon change of ownership is the best time to check that the dwellings are owner occupied. It is similar to the Title 5 concept. Mr. Bjorklund asked why the procedure couldn't be similar to the Conservation Commission where the permit is recorded in the chain of title and a new owner could write a letter to the Planner indicating they are occupying the home. Mr. Monger indicated the new procedure is intended to help people comply with the bylaw and to help keep the character of the neighborhoods and to keep the accessory units proportionally sized. He indicated that some of the proposed changes result from the Garden Road issues. Jeanne Brouillette of 38 Garden Road said she is comforted by the certification process and that someone will know when they purchase a dwelling with an accessory unit that a portion of the dwelling will need to be owner occupied.

Mr. Bjorklund suggested that the accessory dwelling definition should change to add a business if the accessory dwellings are going to be allowed in the Village Business Overlay District. The Board concurred and will make the change. Mr. Joyce commented that he does not believe most people are abusing the current bylaw and does not see a need for the new owners to come back to the planning Board. Chairman

Limbacher indicated that it may seem heavy handed, but the Board does not want to see multiple rentals on a lot. Mr. Mercer indicated it would be a personal commitment for new owners to keep the permit as intended. Mr. Monger concurred indicating it offers protection for a buyer as well and will make people comply with an issued permit.

Nancy Larkham of 38 Garden Road thanked the Board for quantifying subordinate. She believes it is important for the Board to tell owners of accessory dwellings that they need to live in the dwelling and feels it would be a minor point in selling a home to obtain a permit. She indicated now there is no recourse if the people rent the two units out. Mr. Bjorklund indicated the neighbors should complain if they see an owner not living in a dwelling with an accessory unit as it is part of the conditions to live there. He indicated the Town Planner could write a letter. Ms. Harbottle indicated it is a matter of who has the authority for enforcement and she is not the Zoning Enforcement Officer. Chairman Limbacher indicated enforcement ability exists in Town Hall.

Barbara McFadden of 35 Garden Road indicated she was grateful to the Board for the proposed changes. She indicated she watched the 12-20-12 meeting and saw that the condition of the length of time the primary dwelling had to be owned was removed and wondered why. Mr. Mercer indicated that a family with in-laws could come in and seek this arrangement and the Board did not want to eliminate that possibility. The Board generally wanted the provisions to be able to apply to new lots. Nancy Larkham expressed concern that accessory dwellings are not multi-family housing.

Chairman Limbacher indicated there are often times that an in-law may need to be taken in with short notice and the Board did not want to preclude those circumstances. Ms. McFadden also asked why the Board took out the shared parking. She indicated that she understands that if something had to be sacrificed she prefers the parking as she believes the new limits on square footage are better for the Town. Chairman Limbacher indicated that conditions imposed on a special permit can control parking and driveways. Ms. McFadden asked how the Garden Road people can help. Chairman Limbacher indicated they should come to Town Meeting and speak to all the townspeople. Susan Elias asked if the bylaw doesn't pass, does it revert to the old one. The board concurred.

The resultant changes to the bylaw from this portion of the public hearing include adding business in the accessory dwelling definition, changing Sec. 530.2A to include proposed new owners as identified in Sec 530.4A, and under Sec 530.4A adding a "d" to proposed in the eighth line.

Village Business Overlay District – Chairman Limbacher indicated that the bylaw proposed is the same as the legal ad and the copies that have been in the Planning Board and Town Clerk's offices. The proposed change would replace the final sentence of Section 560.4 and reads as:

Frontage requirements in the underlying zoning district(s) may be reduced by a vote of four out of five members of the Planning Board as long as the existing frontage is determined to be adequate for traffic circulation within the site, traffic safety, parking and access for the vehicular traffic expected to be generated by the use(s) on the site. The Planning Board may require review by a traffic engineer or similar qualified professional prior to making this determination. In accordance with M.G.L. c. 44, § 53G, the applicant may be required to deposit fees for the employment of such a traffic engineer or similar qualified professional, and any unexpended fees shall be returned to the applicant. In all other cases where dimensional requirements are not specified, construction must meet the requirements of the underlying zoning district. There were no questions from the Board or questions from the public.

Flexible Open Space - Chairman Limbacher indicated that the bylaw proposed is the same as the legal ad and the copies that have been in the Planning Board and Town Clerk's offices. Chairman Limbacher read the proposed wording as follows:

A. Lot Area and Lot Width.

Each lot shall be at least of a size and width, in the opinion of the Planning Board, capable of supporting construction of a single or two-family dwelling, its accessory structures, and an individual sewage disposal system, unless a viable alternative method of sewage disposal is proposed.

Mr. Bjorklund inquired as to what the change was. The Board indicated lot width has been added for

clarification purposes. Ms. Harbottle indicated that the Building Commissioner asked for the clarification in the bylaw. There were no further questions from the Board or public.

Medical Marijuana - Chairman Limbacher indicated that the bylaw proposed is the same as the legal ad and the copies that have been in the Planning Board and Town Clerk's offices. He indicated the zoning bylaw proposed changes include Section 200 – Definitions and Section 491 – for a Temporary Moratorium on Medical Marijuana Treatment Centers until May 1, 2014 to give the Board time to study and adopt regulations after the Department of Public Health (DPH) issues their regulations on or about May 1, 2013. Scituate needs time to review any proposed DPH regulations before determining what is right for the Town. Town Counsel has reviewed the moratorium and agrees it is a logical approach. There were no further board or public comments.

Mr. Vogel indicated he did not want to re-open the Accessory Dwelling discussion, but questioned if upon reapplication for an existing accessory dwelling by a new owner if there could be some type of wording that the continuation of use by the new owner could be by right to avoid another process. Ms. Harbottle indicated that it can't be by right as it is already a special permit. Mr. Mercer suggested seeing how the bylaw works. The Board agreed that Mr. Vogel's idea would need further legal research and there wouldn't be time to do it before the next meeting. Mr. Monger moved to close the public hearing on all four zoning articles. Motion was unanimously approved. Upon further discussion, the Board agreed that the proposed wording has overwhelming benefits and if a technical amendment is needed in the future, the Board will do one. Mr. Monger moved that the Planning Board make a recommendation that the Annual Town Meeting to be held on April 9, 2013 adopt the proposed zoning amendments for a Temporary Moratorium on Medical Marijuana Treatment Center, and for changes to Flexible Open Space Development, the Village Business Overlay District and Accessory Dwellings per the language filed with the Town Clerk on 1/18/13 as amended at the public hearing held on 2/7/13 as the changes are minor and within the scope of the legal advertisement. Mr. Vogel seconded the motion. Motion was unanimously approved.

Form A - 36 Tichnor Place

Assessor's Map/Block/Lot 45/2/21

Applicant/Owner: Deborah Emmett Pike and Steven W. Emmett

Documents

- Letter from Town Counsel dated 9/13/12 on the Effective Date of the Subdivision Control Law in Scituate
- Form A Application with applicant's backup and plan prepared by Ross Engineering Co., Inc. for 36 Tichnor Place
- Pictures taken by Town Planner on 1/17/13
- Information previously requested by Planning Board 11/27/89
- Water Dept Comment received 2-6-13

Paul Mirabito was present along with Mrs. Emmett-Pike who owns the land along with her husband. Mr. Mirabito indicated the ANR plan was filed under the Subdivision Control Law Section 81 L. He indicated the Emmetts have owned the land since 1984 and some buildings on the land were constructed in the 1880's. The existing office was previously a doctor's house. The property had another house that was previously sold. The existing dwelling proposed to be located on the small lot was for carriages. The Assessor's card shows the building as old. Two buildings on the site are dated to 1895 according to the Assessor's records. Mr. Mirabito showed the Board pictures that were dated from 1911 and from 2013. Mr. Mirabito indicated that the picture shows a chimney that dates to the early 1900's. He indicated that the radiator had curly queues which also date to the early 1900's. Back then, the harbor could be seen from the farms in this area. Ms. Harbottle indicated she went to the site and it was hard to see which house was the subject of the ANR. She asked to see pictures of the outside of the house which Mr. Mirabito produced.

Mr. Vogel asked about the intention of the subdivision as the small 5,000 square foot lot could be sold as a separate lot. The applicant indicated it was mostly for estate purposes. Mr. Vogel was concerned about creating a new non-conforming lot. Chairman Limbacher indicated the Town passed a bylaw. Mr. Mirabito indicated that this will be a legal nonconforming lot. He said setbacks do not have to be respected and

zoning relief will be need if the applicant wants to do anything on the lot.

Ms. Harbottle indicated access is down a narrow dirt private way. She indicated that two cars cannot pass by together. Mr. Mirabito indicated that people do drive down Tichnor Place. Chairman Limbacher indicated that the road is gravel and narrow, but it has access. Mr. Taylor moved to endorse as approval under the Subdivision Control Law Not Required a plan of land in the Town of Scituate located at 36 Tichnor Place prepared by Ross Engineering Co. Inc. for Steven W. Emmett and Deborah Emmett-Pike dated January 22, 2013 as the division of the tract of land shown is not a subdivision because two or more structures were standing on the property prior to the date the Subdivision Control Law went into effect in the Town of Scituate which Town Counsel has determined is August 3, 1947 and one such buildings remain standing on each of the proposed lots. Mr. Monger seconded the motion. Motion was unanimously approved.

Accounting

Documents

- Memo to the Planning Board from Laura Harbottle dated 1-29-13 regarding a transfer from the Planning Board Guarantee Deposit Account to the General Fund

Mr. Taylor moved to transfer \$75,250.81 from the Planning Board Guarantee Deposit Account to the General Fund per the memorandum from the Town Planner to the Planning Board dated 1/29/13. Mr. Monger seconded the motion. Motion was unanimously approved.

Minutes

Mr. Taylor moved to approve the 1/24/13 meeting minutes. Motion was seconded by Mr. Monger. Motion was unanimously approved with Mr. Mercer not voting as he was not present at that meeting.

Liaison Reports

Chairman Limbacher indicated he went to the Conservation Commission's Open Space meeting with the Conway School representatives. He indicated the Mt. Hope building was full and that it was an interesting discussion about the west end open space. He also indicated that he did not attend the last Public Facilities Master Plan Steering Committee meeting as that was the night the CPC did some voting on proposed projects.

Town Planner Report

Town Planner, Laura Harbottle, indicated that the EDC application for the DLTA grant is ready to go under the Town Administrator's signature. She indicated it would be good to have a Planning Board letter of support for this application. She also indicated that the Sea Level Rise project will also be starting. Kleinfelder out of Cambridge, MA has been selected to do the study. Ms. Harbottle indicated she is working on information for the website. Mr. Vogel indicated that the NOAA website is very helpful and there should be a link on our website to it. Ms. Harbottle issued draft reports for the zoning articles to the Board. She asked the Board to review them for the next meeting. Mr. Monger asked that they also be sent electronically.

Old Business and New Business

Documents

- Background and staff recommendations dated 2/1/13 for the 2/7/13 meeting
- CPTC 2013 conference material
- Email from W Good to Karen Joseph et al dated 1/25/13 on the Tree Removal Hearing
- 2-5-13 DRT update

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 9:18 pm. Mr. Monger seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk