

## **Scituate Planning Board, July 11, 2013**

### **SCITUATE PLANNING BOARD**

#### **MINUTES**

July 11, 2013

Members Present: Stephen Pritchard, Vice Chairman; Eric Mercer and Robert Greene, Alternate Member.

Members Absent: William Limbacher, Chairman; Robert Vogel and Richard Taylor arrived at 8:15 pm in time to read the motion for 61 Border Street.

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.

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

#### **Documents**

- 7/11/13 Planning Board Agenda

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

Site Plan Waiver – 159 – 161 Front Street – Wm Raveis offices

Assessor's Map/Block/Lot 50/1/33

Applicant: BLCR Holdings, LLC

#### **Documents**

- Application and supporting materials for Site Plan Waiver
- Transmittal letter to departments dated 6/13/13
- Traffic Rules and Regulations comment dated 7/11/13
- Photograph of Front Street additional parking
- Photograph of Front Street parking lot

David Friend, Manager of the William Raveis Real Estate office in Scituate, was present for the applicant. He indicated the parent company purchased the property in November with the intent of converting the upstairs apartment to office space. He said the Building Commissioner indicated he must come to the Planning Board as this would be a change in use. He indicated that they were not adding additional employees, but just looking to use the upstairs space for conference rooms. Mr. Pritchard indicated that the Board can grant a waiver if they deem the application is minor in nature. He indicated a majority vote is required.

Ms. Harbottle indicated that in order to convert the 2 bedroom apartment to office space, the Building Department wants to make sure that the Fire code is met and there is handicap access. She indicated that parking on site is tight now and one additional parking space is required to meet the change in use from residential to office. Ms. Harbottle indicated that she took pictures of the parking that showed stacking in the rear lot and a converted space in the front. She indicated that the Traffic Rules Committee had concerns that it is a small site and hard to maneuver with frequent ins and outs. Ms. Harbottle suggested the applicant may be able to lease a parking space from a nearby property. Mr. Friend said that they have 19 employees, but they are generally transient. He said they generally only meet once a week on Tuesday

morning at 9:30 am. He indicated they are not adding people for the second floor. He said that the former tenant used the parking on the left side of the building.

Mr. Pritchard asked Mr. Friend to review the parking on site. Mr. Friend indicated that there were four spaces based on the first floor office and second floor apartment. Ms. Harbottle said they need an additional space based on the usage. Mr. Mercer asked if the Board denied the waiver and asked for a formal site plan, what would the Board receive. He indicated that he saw no problem with converting the second floor to two conference rooms. Mr. Pritchard expressed the concern that there would be nothing to prevent the space to be converted to offices. Ms. Harbottle suggested a condition could be put on the approval. Mr. Pritchard was concerned that the condition stay with the building if it was sold. Mr. Greene had no issue with conference rooms upstairs, but did acknowledge concern about the parking. The Board discussed capping the number of employees, but agreed not to. Mr. Friend expressed the need to be able to use the upstairs space.

Mr. Mercer moved to approve a Site Plan Waiver for BLCR Holdings, LLC dba William Raveis Real Estate for conversion of the second floor of 159 – 161 Front Street from an apartment to office space with the following conditions:

1. The upstairs shall be limited to two conference rooms rather than individual offices. Any further change to the upstairs shall require approval of the Planning Board.

Mr. Greene seconded the motion. Mr. Mercer, Mr. Pritchard and Mr. Greene voted for the motion. Mr. Friend asked if would be acceptable to have a resource room in the 4' x 8' closet on the second floor. This would be for computers, printers, copiers and a fax. Mr. Mercer indicated that they shouldn't tempt fate.

#### Stormwater Permit – 61 Border Street

##### Documents

- Site Plan 61 Border Street Sheets 1-4 prepared by Grady Consulting, LLC revised dated 6/28/13
- Administrative Stormwater Review for Low Impact Projects Design Calculations prepared by Grady Consulting revised dated 6/28/13
- Letter from Amory Engineers dated 6/28/13
- Stormwater application received 5/29/13
- Revised Stormwater Application and Materials dated 6/28/13

Kevin Grady, Kristen Lilly and Michael Kenny were present for the applicant. Mr. Pritchard informed the audience that this application was made under the Town of Scituate Stormwater Bylaw and Regulations. He indicated that slopes over 15% are proposed to be altered so an application and a public meeting are necessary. He indicated approval is by a majority vote. Mr. Grady indicated that approximately 17,000 sq. ft. of land is to be disturbed including some slopes over 15%. He indicated there is no increase in the peak rate or volume of runoff from pre-development to post development. Mr. Grady said the lot is sloped from Border Street to the Gulf River and the site does contain some poorly drained soils. He indicated that he has addressed the comments from the peer review of Amory and that the state regulations don't require this size lot to be subject to the Stormwater regulations or address volume.

Mr. Grady indicated there were four subsurface drainage system components. The first was a subsurface system to attenuate the front half of the roof and the driveway. The drainage goes to a low point in the driveway and goes to an underground stone system with an emergency overflow that goes overland. The second system takes the rear half of the roof and discharges it into a subsurface system. The third and fourth systems attenuate the 100 year storm so there is no runoff or volume increase. The third system overflows overland to the fourth.

Ms. Harbottle indicated that Amory Engineers have reviewed the system and after changes were made have found the system acceptable. She indicated the lot is very tight with not a large buildable area. A special septic system has been designed and approved. Ms. Harbottle indicated she discussed the swale

on the east side of the property and asked that it be regraded to not discharge water onto the abutting property. Mr. Grady said he could add a small berm. Ms. Harbottle also asked for clarification to be added to the drawings for location of the details for the front drainage system. Ms. Harbottle indicated an Operation and Maintenance Plan has been submitted, but the site does have limitations so the Board may ask to review the system in a couple of years to make sure it is functioning as designed.

Ms. Lilly expressed a concern about that type of condition as she is a gardener and wants a beautiful landscape that she won't have to tear up in a few years. She was concerned that this is being harsh as there are certain guidelines in place now. Mr. Pritchard indicated that a review doesn't mean tearing up. He said a review may suggest modifications, but hopefully it won't be anything if the system works as designed. Mr. Mercer indicated that the Board is just asking the applicant to take the risk on the design. If the engineer has accurately predicted things, there should not be a problem. Mr. Grady indicated he would like to see the language as they have an Operation and Maintenance Plan and it is a large investment for someone meeting the regulations.

Mr. Kenny indicated that the peer review engineer and their engineer have concurred the system will work. He indicated they have spent considerable time and money improving the previous plans for the site to make it better fit with the land. He indicated they have had a nice looking home designed that will look nice on the site. Mr. Grady indicated the septic system was approved before the stormwater application. Mr. Mercer indicated he looks forward to the applicant coming back in a couple of years and confirming their site works and looks excellent too. Mr. Pritchard asked for clarification on how the drainage in the front driveway works. Mr. Grady confirmed that there is an inlet at the low point that takes water into a sediment forebay.

Joseph Bonomi of 53 Border Street asked if review was going to be required in a year or so. Michele Bonomi, the owner of 53 Border Street, indicated she was okay with the project, but wants to see review in future. Mr. Mercer indicated he supports the review and it shouldn't be an issue if the system works as expected. Mr. Pritchard concurred. Mr. Greene indicated he thought the system would work as designed. Ms. Harbottle indicated that plans get approved and sometimes not all of the maintenance is done so it would be a motivator for a review condition in a couple of years. Mr. Mercer indicated that if things are fine in a few years the condition could be waived.

Mr. Taylor arrived at 8:15pm in time to read the motion: move to approve a Stormwater Permit for 61 Border Street as it meets the objectives of the town of Scituate Stormwater Bylaw and Regulations with the following conditions:

1. Constructions shall comply with the Stormwater Permit Application dated 5/24/13, the Site Plan #61 Border Street Scituate, MA Sheets 1-4 dated 5/24/13 with revisions through 6/28/13 prepared by Grady Consulting, LLC, Kingston, MA except as may be modified to conform to the conditions below.

2. The applicant shall meet all of the requirements of the Building Dept., Board of Health, Conservation Commission, DPW, Fire Department and other town agencies as well as all state and federal regulations.

3. Prior to obtaining a foundation permit and any land disturbance:

- A new grading plan shall be submitted to show that the swale from the driveway to the back of the house will be regarded to keep water on site.
- Additional spot grades from Border street up the driveway to the house shall be added.
- The site shall be staked to show the house, driveway and drainage improvements shown on the plan. The Town Planner shall be notified 48 hours in advance so an inspection can occur.

4. In order to ensure proper long term maintenance of the stormwater system:

- A copy of the Operation and Maintenance Plan for the stormwater management system will be provided to the first owner of the home. If the property is under agreement, the developer shall provide the Planning

Board a copy of the contract with an engineering firm for a minimum of an hour meeting with the future homeowner for the purpose of explaining the function of the system and reviewing required maintenance for the driveway. This meeting shall occur within thirty days of the approval of the permit and prior to the issuance of a building permit.

- A signed Single Family Home Homeowner's Agreement re. Operation and Maintenance of a Stormwater Management System shall be provided to the Planning Board within forty days of the approval of this permit and prior to the issuance of a building permit.

5.A crushed stone construction entrance shall be required and installed prior to any further work on site. It shall be a minimum of 50 foot long x 12 feet wide x 12 in deep. It shall be maintained throughout construction to prevent sediment from reaching the road. Additional erosion control, such as silt fence and/or haybales placed prior to a precipitation event, may be needed to prevent sediment from reaching the road, adjacent properties or wetland resources during construction.

6.No on street parking shall be permitted during construction.

7.If blasting is required, debris from blasting will be removed from the site at the end of each day.

8.A pre-construction conference will be required including the site contractor, the blasting contractor and a representative of the Fire Department if blasting is required, the Director of Public Health, the Town Planner and Conservation Agent.

9.Construction inspections will be provided as follows:

- All inspections for the Town shall be performed by the Town Planner. All inspections shall be documented with written reports that describe compliance with the approved plan(s) and supporting application documents and construction specifications. Any variation shall be noted.

- The Town Planner shall be notified 48 hours prior to staking, installation of the drainage system and finish grading for the purpose of inspecting the work.

- The Town Planner shall be notified upon completion for an inspection to determine compliance with the conditions prior to issuing a Certificate of Completion (COC) indicating that the project has been completed in compliance with the conditions set forth in the Stormwater Permit and Bylaw.

10.Any plan changes or changes from the proposed materials shall be submitted to the Planning Board to determine if the changes are insignificant or require a permit modification through the Planning Board. The Stormwater Management approved shall not be changed without prior written approval of the issuing authority.

11.As-Built Plan stamped by a registered surveyor and registered professional engineer who designed the stormwater system shall be submitted to the Planning Board within thirty days of the completion of the work. This plan shall include the construction conditions of the stormwater management system, grading, house and driveway. The AS-Built Plan must be submitted prior to obtaining a Certificate of Completion and Certificate of Occupancy.

12.The Stormwater permit and the Operation and Maintenance Plan shall be recorded at the Registry of Deeds.

13.As noted in the Single Family Home Homeowner's Agreement, prior to the transfer of the property, the owner shall provide to the subsequent owner and the Planning Board an inspection report certified by a Professional Engineer as described above showing compliance with the Operation and Maintenance Plan.

14.The Planning Board may exercise the option to request a review of the function of the system within two years of the approval of this permit.

Mr. Mercer questioned the additional erosion controls part of condition 5. Mr. Grady said the contractor should take the precaution. The condition was left as worded. Mr. Mercer seconded the motion. Motion was

unanimously approved.

Form A – Summer Street and Thomas Clapp Road

Assessor's Map/Block/Lot 17/3/5A

Applicants: Richelle Saunders, Executrix of Estate of Elsie Cohen

#### Documents

- Application and Plan of Land in the Town of Scituate, MA Thomas Clapp Road dated 2/26/13 prepared by Ross Engineering Co., Inc. for the Estate of Elsie Cohen c/o Richelle Saunders
- Transmittal to Town departments
- Email dated 7/1/13 from Laura Harbottle to Paul Mirabito with email from Patrick Gallivan, Conservation Agent dated 6/27/13
- Original Lot 5 Plan dated 5/18/05 384 Thomas Clapp Road
- Planning Board driveway determination for Lot 7 Summer Street dated 8/14/2008 with excerpt of plan
- Picture of slope off Summer 1
- ANR handbook Adequacy of Access

Mr. Mirabito indicated the proposed ANR lots were in the west end by Ichy's corner. He said the 3 children, whose father was Ichy, are looking to divide the land. He indicated they have gone to the Conservation Commission to have a house permitted on Lot 7. He indicated the small parcel is to be given to 64 Summer Street so their driveway will be on their land. He said the plan was pretty straightforward.

Ms. Harbottle indicated that it sounds easy to understand; however, with the lot of land to be divided there are issues with wetlands and their location. She indicated that with a Form A the Board has to determine if there is frontage on a public way and is it sufficient. She said Summer Street would appear to provide frontage. Ms. Harbottle indicated the second item the Board must consider is access to the buildable part of the lots. She said the plan runs into a little problem there as there is little space between the setbacks, the wetlands and the frontage. Ms. Harbottle indicated that several years ago the applicant applied to the Conservation Commission for a driveway and the Commission indicated they could not approve it. Mr. Mirabito indicated that under the Subdivision Control Law the plan is not a subdivision and the Board has to sign the plan. Ms. Harbottle indicated the Commission has not allowed the plan. Mr. Mirabito indicated that Lot 7 was appealed. He said the wetlands were flagged and the line used by the Order of Conditions dated January 13, 2009 is good until 2016 under the Permit Extension Act. Mr. Pritchard asked if the Board had the approval. Ms. Harbottle read from the Commission's order conditions 57 and 58 which allowed no wetlands filling and asked for a new plan. Mr. Mirabito indicated there is no new plan yet, but access to the upland will be over the Small's land via an easement. He indicated it has taken 3 years to work out an agreement with the Commission.

Ms. Harbottle indicated that the Board would like to see access. She asked Mr. Mirabito how Lot 6 will get across the wetlands. Mr. Mirabito indicated that it has no bearing on the Planning Board issue. Mr. Mercer indicated he thought the frontage is illusory. He said there was no way to cross the wetland. Mr. Mirabito indicated it was subject to a permit from the Conservation Commission and if the wetland is crossed it needs to be replicated. Mr. Mercer indicated that as soon as he saw an approval from the Commission he would approve the plan. He said the access is illusory now. Mr. Mirabito said the Board is assuming that someone wants to build on the lot. Mr. Mercer indicated that the applicant was trying for 2 lots. He said access for Lot 7 can be achieved through the neighbor's property, but for Lot 6 the only way of access is through the wetlands. He reiterated his position that access is illusory. Mr. Taylor indicated a lot does not have to be buildable. Ms. Harbottle indicated that the ANR Handbook talks about frontage and access.

Mr. Mercer said he would like to see evidence of an easement and approval from the Conservation Commission. He said the contours to the site adjacent to the road are steep and the land is marshy. Mr. Mirabito indicated he has been practicing 42 years and knows the Subdivision Control Law. He said a parcel does not have to be buildable. He also said the Planning Board regulations indicated the wetlands need to be shown and they are. He said some Boards want the lots created before other permits are issued. He indicated other permits are the applicant's risk. Mr. Mercer reiterated that the frontage borders

wetlands and he is not sure it is true frontage. He indicated he would like Mr. Mirabito to show him that the frontage provides access as that is the purpose of frontage. Mr. Mirabito argued that this is the first step in the process.

Ms. Harbottle said that usable practical access should be present. Mr. Mirabito indicated that the Wetlands Protection Act says that if crossing a wetland is the only access it needs to be granted unless it will be a confiscatory taking. He said this would be a confiscatory taking too. Mr. Mercer indicated that once the Board is convinced there is a way from the frontage to the upland, then they could consider the application. Mr. Mirabito indicated that this is a division of land that the Board should sign. Ms. Harbottle concurred that it is a division of land, but indicated the Board does not need to endorse it prior to Conservation approval. Mr. Mirabito asked if he comes back with three 90 foot lots, would the Board approve the plan. Mr. Mercer indicated the frontage must be real. Mr. Pritchard indicated the applicant must demonstrate that practical access exists. Mr. Mirabito asked if a letter from the Commission would be sufficient as it costs 10 to 15,000 for a real application. Mr. Mercer indicated that at a minimum a letter would be required. He suggested that Mr. Mirabito withdraw the current application. Mr. Mirabito said he didn't see why he should convince the Board that he can cross the wetlands. Mr. Mercer indicated that Mr. Mirabito was seeking a benefit and he should assume the risk not the Board. Ms. Harbottle indicated that case law must be considered by the Board. Mr. Pritchard indicated that practical access to the upland must exist for endorsement based upon case law and this includes access for fire, police and vehicles.

Mr. Mirabito indicated he would withdraw the application without prejudice. The Board indicated they may consider waiving the fee next time. Discussion occurred about what was the ultimate goal of the property. Mr. Mirabito indicated it was to sell the lots. The Board suggested several alternatives including a common drive through Lot 4 or a bridge. Mr. Greene moved to accept the applicant's request to withdraw without prejudice the application for a Form A Plan for the Estate of Elsie Cohen dated 2/26/13. Mr. Taylor seconded the motion. Mr. Pritchard, Mr. Mercer, Mr. Taylor and Mr. Greene voted in favor of the motion.

## Accounting

### Documents

• PO # 13008524 (\$676.95), PO # 13008523 (\$450.00), PO # 13008525 (\$660.00), PR # 13009381 (\$1,509.00), PR # 13009417 (\$1,897.50), PR # 13009418 (\$3,067.50), PR # 13009419 (\$410.04)

Mr. Taylor moved to approve the requisition of \$676.95 to Amory Engineers, P.C. for professional engineering services for 543 Country Way, for \$ 450.00 to Amory Engineers, P.C. for professional engineering services for 214 Clapp Road, for \$666.00 to Amory Engineers, P.C. for professional engineering services for 61 Border Street, for \$1,509.00 to Murphy Hesse Toomy & Lehane LLP for legal services for Deer Common, for \$1,897.50 to Chessia Consulting Services for peer review for 305 Country Way, for \$3,067.50 for Chessia Consulting Services for peer review for 305 Country Way and for \$410.04 to Gatehouse Media for legal ads in the Scituate Mariner for 75 Moorland Road, Greenfield Estates and the Scenic Road Hearing for 305 Country Way. Mr. Greene seconded the motion. Motion was unanimously approved.

## Minutes

Mr. Greene moved to approve the meeting minutes of 6/13/13 and 6/27/13. Motion was seconded by Mr. Mercer. Motion was unanimously approved.

## Liaison Reports

Mr. Mercer inquired when the Board should start working on the medical marijuana bylaw. Ms. Harbottle indicated the Board should really start now for the Annual town Meeting in 2014. Mr. Mercer said he would like to receive input from other Town agencies including Health, Police, Fire, Schools, the EDC, Selectmen, traffic, security and the local medical community. He wants to make sure a potential company has a good

business plan and knows what they are doing. Ms. Harbottle indicated that the state will have an open period for applications and then they will choose the candidates. Mr. Mercer indicated these facilities have a high cash flow and they may need additional town services perhaps at a fee. The Board indicated they would like this discussion on a separate night from a Board meeting. Mr. Mercer indicated he was interested in the zoning, but the town must decide if they want to advocate for a facility. Ms. Harbottle indicated the Board's responsibility will be the zoning issue. She said from the meeting last December, there was a concern about kids and the locations being away from young people. Mr. Mercer asked if someone from the state could come and talk to the town. Ms. Harbottle said she would inquire. She indicated she would set up a meeting with Mr. Mercer and Mr. Taylor after July 23 to discuss the issue.

#### Town Planner Report

Ms. Harbottle indicated she is working on many big projects including:

- Sea Level Rise – trying to show economic impacts. Will be a presentation to the Selectmen at the end of September
- Open Space Plan – work is progressing
- EDC Market Study – working with MAPC and EDC
- Web blast for changes to Flood Insurance Rate Maps – Many flood zones are changing and flood elevations are increasing. Insurance rates are going up.

Mr. Taylor asked about the commercial aspect of the Riverway Project. Ms. Harbottle said she has been in touch with the developer who is trying to sell the rights to the commercial component.

#### Old Business and New Business

##### Documents

- Background and staff recommendations dated 7/9/13 for the meeting on 7/11/13
- Attorney General letter from the 2013 Annual Town Meeting

These items were distributed to the Board electronically.

Mr. Greene moved to adjourn the meeting at 9:40 p.m. Mr. Mercer seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph  
Planning Board Secretary

Richard Taylor, Clerk