

Planning Board, January 12, 2012

SCITUATE PLANNING BOARD

MINUTES

January 12, 2012

Members Present: Mr. William Limbacher, Chairman, Mr. Dan Monger, Vice Chairman, Mr. Eric Mercer and Dr. Nico Afanasenko.

Members Absent: Robert Vogel, Richard Taylor.

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 7:30PM. He announced the meeting was being audio recorded and asked if there were any other recordings being taken. There were none. Mr. Monger arrived at 7:59 PM.

Documents

1/12/12 Planning Board Agenda

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

Minutes

Dr. Afanasenko moved to approve the Dec 8 and Dec 20, 2011 meeting minutes. Mr. Mercer seconded the motion. Motion was approved unanimously.

Accounting

Documents

P.O. # 12003971 (\$1,437.50), P.O.#12004152 (\$360.36), P.O.#12004134 (\$115.16), P.R.# 1200477 (\$2,475.34), P.R.#1200495 (\$973.88), P.R.#12004498 (\$633.88)

Dr. Afanasenko moved to approve the requisition for \$1,437.50 to Chessia Consulting Services for peer review for the Stormwater Permit for 8 Border Street, for \$360.36 to the Patriot Ledger for the legal ad for the Scenic Road hearing for 8 Border Stree, for \$115.16 to Community Newspaper Co. for the legal ad for the Accessory Dwelling Special Permit for 5 Third Ave, for \$2,475.34 to Amory Engineers for construction monitoring for Tilden Estates, for \$973.88 to Amory Engineers for construction monitoring for Tilden Estates and \$633.88 to Amory Engineers for construction monitoring for Sam Tilden Farm. Mr. Mercer seconded the motion. Motion was unanimously approved.

Town Planner Report

Town Planner, Laura Harbottle, indicated that she will be presenting the Board information on the fee schedule with suggested increases within the next few months. She also suggested the Board may want to review the procedure in which the consulting engineer fees are collected and collect more money up front so that delays do not occur in reviews when money is not deposited in a timely manner by the applicant. She indicated the consultants are working on the Drainage Workshop which will likely occur in April or May of this year.

Documents

Application and supporting documents for Special Permit for an Accessory Dwelling Unit w/letter to Town Depts

Floor Plan for Accessory Dwelling Unit

Deed Rider for 5 Third Ave for Affordable Accessory Dwelling Unit

Undated anonymous comment

Disclosure from Eric Mercer

Chairman Limbacher opened the hearing for a Special Permit for 5 Third Avenue at 8:00 PM. Attorney Michael Hayes was representing applicant/owner Bob Nadeau who was also present. Mr. Hayes indicated that Mr. Nadeau's application indicated that there is currently an affordable accessory unit within the dwelling. This was granted in 2005 by Site Plan Administrative Review. There is no Special permit. The unit met all the requirements of the bylaw back then. Mr. Nadeau had intended to live in the house, but a job relocation is forcing him to sell the house. Mr. Nadeau and Town Planner, Laura Harbottle were working on a marketing plan for the unit when the relocation plan put things on hold. The house has been on the market since last spring. There is a potential buyer, but they do not want to purchase the home with the affordable accessory dwelling. The proposed buyers want to live in the main home and have an accessory dwelling unit for the wife's parents. They will not purchase the home unless the affordable part is removed from the accessory unit.

Chairman Limbacher informed the applicant that the Special permit will require four votes and there are four members present and if the applicant desires the hearing could be continued. Mr. Hayes thanked Mr. Limbacher and raised a question that procedurally can the Board amend a Special Permit that is non-existent. Chairman Limbacher sees two items here. The first being a Site Plan Administrative Review that has condition of a deed restriction. The second is an application for a Special Permit for an accessory dwelling. There are two separate actions. The first being to remove the affordability restriction. The second to act on the Special Permit. If the Site Plan Review is modified that is a majority vote. A Special Permit requires 4 out of 5 votes or all 4 votes if 4 are present.

Mr. Mercer read a disclosure that was filed with the Town Clerk indicating that he looked at the house over 90 days ago and chose not to buy it and has had no further contact with Mr. Nadeau. Donna Chase is the listing agent for Mr. Nadeau and is Mr. Mercer's buyer's agent on another transaction. Mr. Limbacher asked if it appears to be a conflict of interest. Members and the Town Planner indicated that they did not see this as a conflict of interest.

Mr. Hayes indicated they would like to go forward and appreciate the disclosure and ground rules and that time was of the essence. Mr. Hayes indicated that if the Board is amenable to Mr. Nadeau's request, that under Chap 184 Sec 32 the Selectmen also have to vote to remove the affordability restriction. There is time pending on the Selectmen's agenda for Jan 24 if the Board approves the request. Mr. Hayes gave the Board a copy of the applicable Massachusetts general law. Mr. Hayes indicated that within the deed restriction the affordability is granted through the Board of Selectmen.

Mr. Limbacher questioned if the Board wanted to handle the deed restriction first, then the Special Permit. The Board agreed to handle the deed restriction first. Town Planner, Laura Harbottle, confirmed the affordable unit was approved in 2005 by Site Plan Administrative Review and there was no affirmative market plan in place by the Housing Authority. The Town is still waiting for the state to approve the Housing Trust's Plan that the Selectmen approved. There is a deed restriction in place, but it was not a condition of the Site Plan Administrative Review (SPAR). Nothing really has taken effect for the deed restriction as Mr. Nadeau's aunt was there for several years and the affordable unit cannot be for a relative.

Mr. Monger indicated the deed restriction part should probably go to the Selectmen as it was not part of SPAR decision that can be modified. Mr. Hayes agrees. There was discussion of how the Board should proceed with the Special permit. There was consensus that the Board could proceed with the Accessory

Dwelling Special Permit and a vote could be contingent on the affordability requirement being removed by the Selectmen. No action would be required from the Planning Board on removing the deed restriction. If the Board of Selectmen do not remove the affordability requirement, Mr. Nadeau's relocation company will not take possession. The board felt this addressed the affordability requirement at this juncture.

As for the Special Permit, the square footage of the accessory dwelling is the same, access is the same and parking is the same. Mr. Hayes went through the standards and criteria in Sec 530.2 a – i of the Zoning Bylaw and indicated that each and every condition is met for the Accessory Dwelling Special Permit. Town Planner, Laura Harbottle indicated that the unit has previously been occupied and the livable area is less than 25% without the basement or the attic. The driveway provides ample parking. She concurs that all of the conditions of Sec 530 have been met. There were no additional questions from the Board or the public.

Dr. Afanasenko moved to make the following findings of fact concerning the accessory dwelling unit at 5 Third Ave:

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 December 6, 2011, the owner of the property applied for approval of a special permit for an accessory dwelling where the income of the occupant would not be restricted. This accessory dwelling would have the same footprint as the affordable accessory dwelling previously approved.

The plans submitted with the application are entitled 28 X 43 Custom Colonial Single Family Dwelling and include Sheets 2 - 1st Floor, 2A - 2nd Floor, 2B - Attic, and 3 - Elevations. The title block identifies them as prepared by Keiser Industries Inc. of Oxford, Maine, for Nadeau, dated 1/14/05, with revisions through 2/16/05. Sheet 2 shows the location of the approved affordable accessory dwelling as it was constructed. Based on these plans the affordable accessory dwelling is approximately 445 sq. ft. in area.

The area of the proposed accessory dwelling will be the same area as that of the affordable accessory dwelling, 445 sq. ft. This is less than 750 sq. ft., so the area meets the requirements of 530.2 F for accessory dwellings.

A site plan for 5 Third Avenue by Ross Engineering Co., shows a 20' driveway and 22' wide garage on the property. This appears adequate to provide two parking spaces for the accessory dwelling and ample parking for the primary dwelling.

The applicant has agreed that he and his successors in title will live on the property.

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

Motion was seconded by Mr. Monger. Motion was unanimously approved.

Dr. Afanasenko moved to approve the Accessory Dwelling Special Permit for 5 Third Ave with the following conditions:

The applicant shall meet all requirements of the Building Department, Board of Health, Department of Public Works, Fire 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.

Except for any changes necessary to meet these conditions, any construction shall conform to the Sheet 2

of plans entitled 28 X 43 Custom Colonial Single Family Dwelling by Keiser Industries Inc. of Oxford, Maine, for Nadeau, dated 1/14/05, with revisions through 2/16/05 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 be conditioned upon the applicant taking all steps necessary under Massachusetts General Laws to remove the current affordability restriction on the accessory unit.

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

Public Meeting - Stormwater Permit – 8 Border Street formerly 172 Gannett Road
Public Hearing – Scenic Road Public Hearing 8 Border Street
Assessor' Map/Block/Lot 7-8-2-D-R

Documents

Letter dated 1/9/12 from Attorney William Ohrenberger asking for an extension until 2/9/12 for the Scenic Road Public Hearing and the Stormwater Permit Public Meeting

Chairman Limbacher indicated he was in receipt of a letter from Attorney Ohrenberger asking for an extension of the two hearings until Feb 9.

Mr. Monger moved to accept the applicant's request to continue the Scenic Road Act Public Hearing and continue the Planning Board's discussion of a Stormwater Permit for alteration of land as shown on the revised Subsurface Sewage Disposal Plan (Sheets 1 - 4) by Grady Consulting, LLC dated December 28, 2011 to February 9, 2012 at 8:00 pm. Motion was seconded by Dr. Afanasenko. Motion was unanimously approved.

Site Plan Administrative Review – Riva Pizzeria
22 Country Way
Assessor's Map/Block/Lot 53-5-33
Applicant: John C. Cole

Documents

Site Plan Administrative Review Application with plan and abutter notification dated 1/4/12
Memorandum from Director of Public Health dated 1/9/12
Letter from Frank R. Snow dated 1/12/12 to William Limbacher regarding Riva Pizzeria

Mr. John Cole and Shawn Harris were present for the applicant. Chairman Limbacher asked Mr. Cole to indicate what has changed since the last meeting. Mr. Cole indicated he was looking to move his business, located in North Scituate, to another location in Greenbush on Country Way.

Mr. Limbacher indicated that at the last meeting Mr. Cole was given a homework assignment to come back with a plan of what was happening in the interior and to the parking. Mr. Monger indicated the concern on parking was that if it was to be a take-out and delivery place the parking is adequate, but if it was to be a restaurant the parking was not adequate unless there were other spaces on the property. Mr. Cole said there is no intention of a restaurant. This is take-out and delivery with the 5 parking spaces. He will open at 4pm and close at 9 pm. Mr. Monger inquired if there were to be tables. Mr. Cole indicated there would be benches for waiting and it is not set up for dining in.

Town Planner, Laura Harbottle, indicated that she has a draft motion with a few conditions on parking and inside seating. She indicated the Board received a letter from the abutter Frank Snow with some concerns

regarding traffic. Mr. Snow indicated that the Traffic Rules Committee hasn't looked at this proposal yet. Ms. Harbottle said if the Board wanted to be extra careful they may want to wait for Traffic Rules. Mr. Snow does not want parking on his lot. This is a busy location, but Chairman Limbacher indicated that the hours of operation of the businesses there are all different. He agrees with Mr. Snow that No Parking signs on the side of the building would be helpful. Mr. Limbacher is satisfied with the parking. Mr. Harris indicated he agrees with Mr. Snow about the signage.

Mr. Monger indicated he had no concern with the parking as long as the inside seating was addressed so that it did not become a restaurant. After discussion on tables, chairs and seating, the suggested wording of the business will not operate as a dine in restaurant was accepted. Mr. Limbacher asked if there were any questions from the public. Jim Trenz, an abutter, had a question about the easement behind the building. The easement is for access to the back and he has concerns regarding fire access for the Backyard Burger and this establishment. Easement is supposed to be open at all times. He would like to see no parking signs for the pizza establishment there. The easement is one lane. Mr. Harris has two parallel spots behind the building. Mr. Trenz doesn't want to see cars block the access for him or Fire access for the Burger Bar. After discussion, it was agreed that a condition could be added that the emergency access behind the building must be maintained. It was agreed that the applicant can only control his operations so that proposed wording could say that parking for Riva Pizzeria will not interfere with the access easement to 20 Country Way.

Dr. Afansenko moved to make a finding that the attached site plan by the applicant titled Riva Pizzeria, 24 Country Way meets the requirements of the Town of Scituate Zoning Bylaw Section 770.6, Site Plan Review Standards of Review to a degree consistent with a reasonable use of the site for the purpose permitted by the regulations of the district in which the land is located, and approve the attached site plan subject to the following conditions:

There shall be no other parking on Country Way other than the five pull in spaces shown on the plan and no parking on Ford Place.

The establishment shall not operate as a dine-in restaurant.

Signs shall be no larger than those existing and similar in style to those used at Riva in North Scituate.

Site Plan approval shall lapse after two years from the grant thereof if a substantial use or construction thereof has not sooner commenced except for good cause. Such approval, for good cause, may be extended in writing by the Planning Board upon written request of the applicant submitted to the Planning Board at least 60 days prior to the expiration of the two year period.

Use of 22/24 Country Way will not interfere with access to the easement behind 22/24 Country Way serving adjacent property.

Mr. Monger seconded the motion. Motion was unanimous in favor.

Discussion occurred about the Economic Development Commission study and its correlation with the survey. Funding for the study and survey needs to occur simultaneously to obtain the best and most meaningful results for Scituate.

Public Meeting - Stormwater Permit

49 Booth Hill Road

Assessor's Map/Block/Lot

Applicant: Mario Sindone Applicant's Representative: Cavanaro Consulting

Documents

Stormwater Permit Application, Stormwater Report, Operation and Maintenance Report, Drainage Calculations and Site Plan dated 12/6/11 prepared by Cavanaro Consulting for applicant Mario Sindone.

Stripped lot jpg picture

Memorandum from Jennifer L. Sullivan dated 1-4-12

Cavanaro review response dated 1/12/12 with revised drawing PD entitled Proposed Dwelling 49 Booth Hill Road Scituate, MA dated 1/12/12.

Brendan Sullivan from Cavanaro Consulting and applicant/owner Mario Sindone were present. The lot was originally part of the lot next door. Mr. Sullivan indicated that they addressed all of Beals & Thomas' comments which were minor in nature. They changed the drawings to incorporate a 5 foot grass strip between the superelevated drive and the stone trench to provide for pretreatment on the downhill side of the driveway. The water will discharge to the stream. There is a level spot at the end of the driveway adjacent to Booth Hill Road. Town Planner, Laura Harbottle indicated that the comments from Beals & Thomas were minor in nature and the applicant has addressed them. She thought the one trench was better than two especially for maintenance, cost and treatment. The lot had been previously stripped, but it is not affecting the stormwater. She did not see a reason why the permit could not be approved. The applicant has responded to all of Beals & Thomas' concerns.

Chairman Limbacher asked about the change in elevation and if there was going to be more fill at the top. Mr. Sullivan indicated the fill will be kept on site. Mr. Limbacher inquired if there would be vegetation and was told there would be landscaping. The driveway is intended to be a fully paved drive with less flow in rate and volume in the post development condition so there will be less flow to the street. As this is a steep hill, the Board indicated that any snow will have to be stored on the lawn as it cannot go across the street. Chairman Limbacher confirmed with Ms. Harbottle that she was satisfied that all of Beals and Thomas' comments had been met.

Dr. Afanasenko moved to approve the Stormwater Permit for 49 Booth Hill Road with the condition that construction comply with a plan entitled Proposed Dwelling 49 Booth Hill Road Scituate, MA prepared for Todd Amelang by Cavanaro Consulting dated 12/6/11, revised 1/12/12. Mr. Monger seconded the motion. Motion was unanimously approved.

Mr. Mercer moved to adjourn the meeting at 9:22 pm. Dr. Afanasenko seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Dr. Nico Afanasenko, Clerk