

SCITUATE PLANNING BOARD MINUTES March 14, 2019

Members Present: Ann Burbine, Chairman; Stephen Pritchard, Vice Chairman; Patricia Lambert, Clerk, William Limbacher and Benjamin Bornstein, alternate Rebecca Lewis.

Others Present: Karen Joseph, Town Planner; Shari Young Planning, Administrative Assistant

Members absent:

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

Location of meeting: Selectmen's Hearing Room, Town Hall, 600 C J Cushing Highway, Scituate

Chairman Burbine called the meeting to order at 7:00 P.M. The meeting was being recorded for airing on local cable television.

Documents

- 3/14/19 Planning Board Agenda

ACCEPTANCE OF AGENDA: Chairman Burbine indicated there was a posted agenda. Mr. Limbacher seconded the motion for the posted agenda and the vote was unanimously in favor.

**Continued Public Hearing – Special Permit – Accessory Dwelling Unit – 185 First Parish Road
Assessor's Map/Block/Lot 44-3-60
Applicant/Owner: Kelly & Susan Killeen**

Documents

- Email from Water Department dated 3.6.19
- PDF TC filed Stormwater Permit 185 FP

Attendees: Kelly Killeen, Applicant/Owner.

Mr. Killeen discussed some outstanding issues from the last meeting.

- ZBA approved the increase in square footage; decision has not been written yet
 - Existing nonconforming lot, lot is undersized
 - Section 810 of bylaw allows increase of under 20% in square footage anything over 20% requires ZBA Special Permit
- Lighting located above the doorway on exterior stairs will only used when stairs being used
- Exterior of dwelling will be board and batten finishing
- Plan to address the stairs by making them softer, 6.5" rise
 - Will try to bring the grade up on the walkway as well

Ms. Joseph advised that the Water Department indicated there would be a meter pit for the project. She also indicated that the ZBA met on February 28, 2019 and the decision has not been filed yet, but there are no conditions on the approval.

Motion:

Ms. Lambert moved to make the following Findings of Fact:

1. On December 27, 2018, Kelly and Susan Killeen applied for a special permit for a detached accessory dwelling on the property at 185 First Parish Road.
2. Based on a floor plan submitted by the applicant, the floor area of the proposed accessory dwelling will be approximately 720 sq. ft. This is 46% of the total square footage of the primary building which is 1,562 sq. ft. This meets the size requirements of 530.2F of the zoning bylaw for accessory dwellings as the bylaw allows 750 sq. ft. or 40% of the total square footage of the primary dwelling, whichever is greater and is subordinate to the existing single family home.
3. The Accessory dwelling unit will be a complete separate housekeeping unit and there will be only one accessory dwelling on the lot.
4. The proposed detached accessory dwelling structure meets all the required setbacks, building height and yard requirements for a primary dwelling.
5. The proposed accessory dwelling is located at the rear of the property. New exterior stairs are provided on the side of the proposed building. The proposed accessory dwelling will be screened from the road by a landscaped courtyard.
6. The Proposed Accessory Dwelling Details Sheet showing a Site Plan and Proposed Addition for the property shows a gravel driveway with one parking space behind the proposed accessory dwelling and parking for three vehicles to the west side of the existing primary dwelling which appears capable of providing two onsite parking spaces for the accessory dwelling.
7. The owner has submitted a signed, notarized statement that he will live on the property as his primary residence.
8. The accessory dwelling will be serviced by an existing septic system onsite which is deed restricted for four bedrooms. There are three bedrooms in the primary dwelling and one in the accessory dwelling. A connection to Town water will be provided and it will comply with the Town requirements for a water connection. Stormwater runoff from the roof area of the accessory dwelling will be directed to a subsurface roof infiltration system while stormwater runoff from the driveway and other areas will flow overland in an easterly direction. An administrative Stormwater Permit has been issued dated 2/27/2019 through the Planning Office.
9. The applicant has filed for a finding under MGL Ch. 40A, Section 6 with the Zoning Board of Appeals as the property lot area is less than the required lot area for the Residence R-2 District and there is an increase of more than 20% of building area. The ZBA voted to approve the Section 6 Special Permit on 2/28/2019.
10. The application meets the standards of the Scituate Zoning Bylaw for an Accessory Dwelling Special Permit.

Mr. Pritchard seconded the motion; the vote was unanimously in favor.

Ms. Lambert moved to approve the Special Permit for an accessory dwelling at 185 First Parish Road with the following conditions in addition to the standard conditions for accessory dwellings approved by the Planning Board after a public hearing on 12/17/15:

1. Except for any changes necessary to meet these conditions, any construction shall substantially conform to the Site Plan entitled Site Plan and Proposed Addition 185 First Parish Road, by CHA Companies and stamped by Kelly Killeen, P.E. dated 11/10/18;

Architectural Plans by OCO Architectural Design dated 11-14-18 consisting of 5 sheets including 185 First Parish Road Overall First Floor Plan, C101; 185 First Parish Road Enlarged First Floor Plan, A102; 185 First Parish Road Second Floor Plan, C103; 185 First Parish Road Elevations, C104; 185 First Parish Road Front, Rear & East Elevations, C105.

2. The number of bedrooms in the accessory dwelling is limited to one in the location and size indicated on the floor plan submitted with the application.
3. No further expansion of the accessory dwelling floor area is allowed due to the size of the accessory dwelling. The attic storage space cannot be converted into additional living space and shall be accessed from the exterior of the dwelling per the plans.
4. The accessory dwelling shall conform to all applicable standards in the building, plumbing, electrical, mechanical, fire and health codes and bylaws.
5. A meter pit is required to be installed per the Water Division for the accessory dwelling.
6. Any lighting installed shall be down lighting to not shed light on abutting properties.
7. Construction work shall not begin prior to 7:00 am weekdays and 8:00 am on Saturdays and shall cease no later than 7:00 pm or sunset whichever is earlier. No construction shall take place on Sundays or legal/federal holidays. Construction includes idling of vehicles, delivery of materials to the site and all other construction activities.
8. This Accessory Dwelling Special Permit is conditioned on receiving the Zoning Board of Appeals Section 6 finding decision.
9. The standard conditions for accessory dwellings approved by the Planning Board on 12/17/15 shall be conditions of this decision and shall be included for recording at the Registry of Deeds.
 - A. The applicant shall meet all requirements of the Building Department, Board of Health, Department of Public Works, Fire Department, Water Department, Conservation Commission and other town agencies.
 - B. The property shall contain a maximum of two dwelling units, the primary 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.
 - C. The owner of the property shall reside on the property as long as it contains an accessory dwelling unit.
 - D. The Planning Board may require an on-site inspection for conformance to the approved plans and these conditions prior to the issuance of a Certificate of Occupancy for the accessory dwelling.
 - E. An Accessory Dwelling Special Permit Certification of Ownership and Occupancy signed by any new owner shall be provided to the Planning Board within seven

days of the closing of the sale of the house. It is recommended that this be signed at the closing.

- F. At any time, at the request of the Planning Board the owner shall provide a notarized affidavit indicating that either the primary or accessory unit is owner occupied.
- G. No on-street parking by occupants of the primary or accessory dwelling shall be permitted at any time.
- H. Construction vehicles/equipment shall not idle, be parked, stored, loaded or unloaded in the street.
- I. 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.
- J. 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.
- K. The Planning Board reserves the right to review compliance with this special permit at any time. This Special Permit shall terminate if the use is not in accordance with this decision and its conditions.

Mr. Limbacher seconded the motion; there was discussion to add a condition the special permit either terminates or is only valid upon final receipt of the Zoning Board of Appeals written decision.

Mr. Bornstein seconded the motion as amended; the vote was unanimously approved.

Continued Public Meeting – Site Plan Administrative Review – Municipal Water Treatment Plant Well 17A - 90 & 96 Tack Factory Pond Drive
Assessor's Map/Block/Lot: 42-4-8
Applicant/Owner: Town of Scituate - Water Division

Document

Motion:

Ms. Lambert moved to accept the applicant's request to continue the public meeting for the Site Plan Administrative Review for the Municipal Water Treatment Plant Well 17A 90 & 96 Tack Factory Pond Drive until April 11, 2019 at 7:00 pm. and to continue the time for action for filing with the Town Clerk until April 26, 2019.

Mr. Pritchard seconded the motion; the vote was unanimously in favor.

Vote Zoning Reports for 2019 Annual Town Meeting
Amend Zoning Map to Extend Humarock Village Residential Overlay District
Amend Flexible Open Space Development Bylaw
Greenbush-Driftway Zoning Bylaw and Zoning Map Amendment

Article 22: Flexible Open Space Development

The Planning Board hereby reports that in accordance with MGL Ch. 40 A, a public hearing was held on this article on February 7, 2019 and closed on the same date. On March 14, 2019, the Board voted unanimously to support passage of the Article at the April 8, 2019 Annual Town Meeting.

The changes to this article allow for language to be added allowing a Homeowner's Association Trust to be incorporated as a method of protecting open space in a Flexible Open Space Development. There are currently three options for protection of open space in a Flexible Open Space Development: i.) donation of the open space to the Town for Conservation purposes; ii.) donation to a conservation trust; iii.) or by a deed restriction accepted by the Commonwealth of Massachusetts Office of Energy and Environmental Affairs. The existing three options are not always available for every project and the proposed new method provides a viable alternative that will allow for protection of open space within these developments. The Planning Board supports this article.

Mr. Pritchard moved to accept the report. Mr. Bornstein seconded the motion; the vote was unanimously in favor.

Article 26: Citizens Petition - Humarock:

The Planning Board hereby reports that in accordance with MGL Ch. 40 A, a public hearing was held on this article on February 7, 2019 and closed on the same date. On March 14, 2019, the Board voted unanimously to support passage of the Article at the April 8, 2019 Annual Town Meeting.

The changes to the Zoning Map will allow for the extension of the Humarock Village Residential Overlay District to extend to the full parcel identified on the Town of Scituate Assessor's Maps as Parcel ID: 72-19-15. The expansion of the Humarock Village Residential Overlay District to this parcel would allow for potential redevelopment of the site. The Planning Board supports this article.

Motion:

Mr. Limbacher moved Article 26 be sent to Town meeting. Mr. Bornstein seconded the motion; the vote was unanimously in favor.

Article 23 – Greenbush/Driftway Zoning Amendments:

The Planning Board hereby reports that in accordance with MGL Ch. 40 A, a public hearing was held on this article on February 28, 2019 and closed on the same date. On March 14, 2019, the Board voted unanimously to support passage of the Article at the April 8, 2019 Annual Town Meeting.

The changes to the Zoning Map and Zoning Bylaw will allow for development in the Greenbush-Driftway area to follow new zoning that will replace the existing Village Business Overlay District, Business and Commercial zones in the Greenbush-Driftway area. The new zoning has seven sub districts that will promote traditional development patterns and allow for mixed use, quality open spaces, complete streets and a vibrant pedestrian environment in the area. The zoning is based on the Greenbush-Driftway Vision Plan and included a series of public meetings that the Economic

Development Commission and Planning Board held to receive public input. Existing zoning districts and overlay districts for water supply and environmental protection will be maintained. The Planning Board supports this article.

Ms. Joseph indicated there would be a small tweak to the map because one of the properties is in two zones because the Assessors maps are a year behind and will be updated at the end of April; 6 MacDonald Terrace will be in one zone. This does not affect the proposal.

Mr. Limbacher moved to approve the report on Article 23. Mr. Pritchard seconded the motion; the vote was unanimously in favor.

Old Business, New Business, Correspondence, Administrative Items, Update

Vote on street acceptance report to Board of Selectmen for Blanchard Farm Lane

Document

- PDF Blanchard Farm Lane As built Plan
- PDF Recorded Cert of Action BFE
- Doc Blanchard Farm Lane Deed Description

Mr. Limbacher reported that Street Acceptance Committee voted to support/recommend a report to the Board of Selectmen in support of acceptance of Blanchard Farm Lane. There is a contingency that maintenance is done per the agreement and provided to the Board by the Homeowner's Association.

Ms. Joseph indicated that no maintenance reports have been submitted at this time and that the Planning Board should condition the maintenance reports be provided prior to Town Meeting. She said this may not make the upcoming Town meeting due to some statutory timelines of notification the need to be made prior to Town meeting. This could be on the Fall Town meeting and not impact concerns centered on plowing since winter is almost over.

There was discussion about voting for street acceptance and why the Board would do so without having received any of the required reports on the annual maintenance as specified under the conditions of the Certificate of Action. The Board must make a recommendation and decided to proceed with the vote and add in conditions to their recommendation.

Motion:

Ms. Lambert moved that the Planning Board recommend to Board of Selectmen and 2019 Annual Town Meeting that the street of Blanchard Farm Lane be laid out in accordance with MGL Chapter 82, Section 21 – 24 and be accepted by Town Meeting to become a public way in accordance with layout plans dated March 6, 2019 subject to documentation being provided that there is full compliance with the Operation & Maintenance Plan prior to Town meeting.

Mr. Pritchard seconded the motion; the vote was unanimously in favor.

Minutes **Documents**

- Meeting minutes 2.28.19

Ms. Lambert moved to approve the meeting minutes for February 28, 2019.

Mr. Pritchard seconded the motion; the vote was unanimously in favor.

Accounting

Documents

PO #1908508 (\$878.00), PO #198496(\$1,650.00), PO #1908474(\$450.00), PO #1908493(\$146.23), PO #1908758 (\$132.66), PO #1908757 (\$104.52)

Ms. Lambert moved to approve the requisition of \$878.00 to Chessia Consulting Services, LLC for peer review of 36 Barker Road Stormwater Permit, for \$1,650.00 to Merrill Corporation for peer review services for Curtis Estates/90 Ann Vinal, for \$450.00 to Merrill Corporation for peer review of 185 First Parish Road Stormwater Permit, for \$146.23 to J&R Graphics for office supplies, for \$132.66 to Gatehouse Media for legal ad for 247 Driftway, for \$104.52 to Gatehouse Media for legal ad for 21 Cole Parkway(aka 1 Cole Parkway).

Mr. Pritchard seconded the motion; the vote was unanimously in favor.

Liaison Reports:

CPC – reported by Ms. Burbine:

- Rescinded their rescission for money for a parcel of land with Maxwell Trust
 - Piece of land does not have a clear title
 - Rescinded \$389,000, have kept it on the books
 - Plan to review in 6 months, September
 - Plan to review in March 2020
- Scituate Little League sent a letter regarding artificial turf for the high school fields and health concerns.
 - Mr. Novak refuted all the Little League's health concerns
 - Recreation has been working on the proposal for 2 years

DRC – reported by Ms. Joseph:

- Meeting with Drew Company
 - Reviewed sketch plans requested by DRC at their last meeting
 - Comments relate to massing and proportion

Planning and Development – reported by Ms. Joseph:

- **Toll Brothers:**
 - Water has been staying on site
 - Foundations in for model units
 - Working on parking with construction trades and keeping everyone on site
 - Street signs, no parking signs on Hatherly Road and NPDES sign going back up
 - Expediting pedestrian activated light on Hatherly Road to address summer traffic
- **Curtis Estates:**
 - Released 5 lots as voted in January
 - Met with applicant
 - Applicant to provide SWPPP inspection reports
 - Applicant to provide written response for drainage complaints from the abutters

- Likely to be ground water not surface water
- Letter from engineer that will certify that water is being kept on the site, rate and volume has not changed
- **50 Country Way:**
 - Sewer pipe upgraded offsite
 - Projecting occupancy in 3 weeks of Building A
 - Sewer Division requesting walk through to verify number of bedrooms
 - Some work still to be done with emergency egress, plantings in the island
 - Units (4) cannot go on subsidized housing inventory until full occupancy of all the buildings
 - Gunther Tooties – moving along, have received no complaints

Mr. Pritchard requested a status update on the RFP for the water study being conducted by DPW.

The Board also discussed North Scituate and the lack of business in the area noting that another business is closing its doors at the end of March.

- On April 24th there will be a meeting to discuss the grant money for visioning of North Scituate with stakeholders, business owners and property owners

Form A-ANR – 227 Chief Justice Cushing Highway

Assessor's Map/Block/Lot 52-1-1

Applicant/Owner: Country House Realty Trust, Geoffrey P. O'Brien, Trustee

Documents

- PDF ANR 2 LOTS form a submittal 24X36
- PDF doc021351201921134359
- Doc Transmittal dated 2.25.19
- Photos dated 3.11.19

Attendees: Rob Gugliotta, Morse Engineering, Inc.

Review of the plans:

- Division of land to 2 lots, in the R-1 residential zone
- Lot 1:
 - 63,613 sq. ft., 43, 464 sq. ft. of upland
 - 284' of frontage on Chief Justice Cushing Hwy, 3A State Highway
 - 392' of frontage on Judge Cushing Road a private way
- Lot 2:
 - 254,981 sq. ft., 198,870 sq. ft. of upland
 - 1,014' of frontage along CJC Highway
- Both lots exceed the required 40,000 sq. ft. of lot area and 100' of frontage
- Access would be on Judge Cushing Road

There was discussion on whether the frontage on Chief Justice Cushing Highway was illusionary; there is a guard rail that is not on plan and wetlands. Photos were provided by the applicant and Ms. Joseph.

Ms. Joseph maintained that the plan is insufficient because it does not meet the regulations required. She opined there is not enough information on the plans for the Board to make a determination of adequate access and frontage.

- Guard rail on Chief Justice Cushing Highway not on the plan
- Not enough information regarding Judge Cushing Way to show that it is a way
- Regulations state there should be existing and proposed streets, ways and easements be shown
 - Questionable if there is supposed to be a turning easement radius cul-de-sac where the existing septic system is on the restaurant property is
- Location of bounds not shown
 - Boundaries of the land subject to the Conservation Commission; boundaries have not been approved
- Location of easements
- Not all zoning districts are shown on the plan
- Any ZBA decisions regarding variances, etc. are not shown
- Stone wall on Chief Justice Cushing Road not shown

Ms. Joseph opined that there may be access and frontage, but the plan at this time does not provide sufficient information for the Board to make a determination. Ms. Joseph provided the Board with some plans from previous years of the property. She opined the Board would likely want the wetlands approved by the Conservation Commission because a plan from a few years ago shows a much greater area of wetlands.

Mr. Gugliotta said that Judge Cushing Road is not a scenic road, the stone wall is in disrepair, wetlands have been delineated by Brad Holmes, both lots exceed required amount of upland area. He also said that when a project is proposed for the area the applicant would go before the Conservation Commission at that time

Ms. Joseph maintained that wetlands should be approved by the Conservation Commission because there could be an impact to the lot area.

Mr. Limbacher opined the applicant needs to have all required information and meet all the standards on the plan for approval.

The Board discussed the procedure for an ANR and what is necessary for them to determine the adequacy of frontage. Mr. Pritchard asked why Ms. Joseph feels the standards are not being met.

- Not sure all the existing and proposed streets, ways and easements are shown
 - Only the edge of Chief Justice Cushing Way is shown
 - Bounds not clearly shown
 - Question from former plans regarding a slope and turning easement not shown on the plan

Mr. Gugliotta argued that the Subdivision Rules and Regulations do not state the pavement needs to be shown and said he has 2 plans with pavement shown and 2 without the pavement shown. He pointed out the boundary markers on the plan.

Three options were discussed on how to proceed at this point: approval, denial and ask the applicant to withdraw and come back with more information on the plan.

Mr. Bornstein opined he was more inclined to proceed with the option of withdrawal; that the current plan is deficient for him to sign off on.

Mr. Pritchard opined if the Board sends someone to come back, it needs to be clear what they need to come back with. What the Board feels is missing is the rest of the street, some detail of what exists particularly with respect to access.

Ms. Burbine asked the applicant to withdraw the application and return with the Judge Cushing Way shown and where it meets Route 3A and the houses that exist on Judge Cushing Way.

Mr. Gugliotta said he will withdraw the application.

Motion:

Ms. Lambert moved to accept the applicant's request to withdraw the ANR for 227 Chief Justice Cushing Highway without prejudice.

Mr. Bornstein seconded the motion; the vote was unanimously in favor.

Comments on 0 Beacon Road in front of Donnelly Property

Document

- PDF Letter from Mr. De Lisi dated March 1, 2019

Attendee: Jeff DeLisi, Attorney; Paul Mirabito, Ross Engineering; Mark Donnelly, Property owner

Mr. De Lisi provided background on the property:

- Mr. Donnelly owns 2 land court registered lots on Beacon Road
- Beacon Road is between Jericho and Barker Roads
- Paved surface of Beacon Road extends from Jericho to about 60' in front of Mr. Donnelly's property
 - Total length of Mr. Donnelly's frontage needs to be 100'
- Over the summer remaining 40' in front of Mr. Donnelly's lot was improved
 - Road cleared and left as compact gravel
 - Cleared off under growth and vegetation
 - Scrapped off unsuitable material
 - Replaced area with stone and gravel, was then compacted and then repeated – a couple feet deep
 - Made a suitable driving surface
 - Fire Department came down with ladder truck
- Existing utilities in Beacon Road

Mr. De Lisi provide the Board with a photo and explained three different areas noted on the image, Mr. Donnelly's property, Beacon Road extended all the way to Barker Road (area of road that was improved last summer) and 32 Barker Road condominium driveway and parking area. He provided additional background.

- Merged lots meet all dimensional requirements under zoning requirement for a modest single family dwelling

- ANR filed and withdrawn prior to last meeting
 - Question of frontage on the 40' portion of the road that was never constructed

Mr. De Lisi indicated they are looking for an advisory opinion for the Building Inspector on a building application permit that is forth coming. He said the advisory opinion is if the roadway is adequate for emergency vehicles and utilities; utilities already exist and the Fire Department was there with the ladder truck and submitted a letter indicating they were able to traverse the area with no difficulties.

Mr. De Lisi referenced several letters from concerned abutters about widening the road and potentially paving the road. He indicated that Mr. Donnelly has no intention of widening or paving the road; the road would stay as it is today.

Ms. Joseph indicated the Building Inspector has a right to determine frontage. The road is no longer a paper street because of the improvements made, there is sewer and water in the road, a fire truck has access. The Fire Department would like a turning area on the property permanently unimpeded, 20' wide x 30' long. She indicated this could be a recommendation the Board might makes to the Building Commissioner with the issuance of a building permit.

There was discussion if Beacon Road is still a paper street or a dead end; with the crushed stone laid out it is no longer a paper street and technically not a dead end. The gravel parking area for the condominiums and Beacon Road do not connect. There were additional questions about who owns what in the area. Mr. De Lisi had a Land Court plan that shows out Beacon Road from Jericho to Barker; he pointed out the area that had been cleared on Beacon Road. He opined under the Derelict Fee Statute anyone who owns along a private way owns to the mid-point of the private way subject to the rights of others to pass and repass unless they own to the other side then they have the full way and have the right to improve it. Mr. Donnelly improved the entire width of the road; statue reference Chapter 183, Section 58.

Mr. De Lisi indicated Mr. Donnelly will construct the turnaround in accordance with the Fire Departments recommendations, he does not want to encourage the road as a thru way thus he did not pave it, but he cannot preclude it. Mr. De Lisi said there is no physical impediment from traveling from Jericho to Barker. He said the Condominium's parking lot and driveway are laid out on top of Beacon Road based on the Land Court plan of the condominium. With the condition as it is now, one could drive from Barker to Jericho, but it does look like a driveway.

Public Comments:

Mr. Paul Dardinski resident at 32 Barker Road, Unit 4 said he does not have a problem with Mr. Donnelly building on the property, but wanted to clarify that the area was previously grass where people walked to the beach down Beacon Road. He was upset that there was zero communication between Mr. Donnelly and the condominium owners about what he intended to do. He said gravel was filled in on half of the property that condominium association owns. He does not want to see the area paved. He said the paper road part of Beacon has been maintained by the Condominium Association, plowed and mowed.

Ms. Joseph acknowledged there were several comment letters from owners in the Condominium.

Mr. Adam Brodsky, Attorney for Katherine Levin, resident at 32 Barker Road, Unit #2 said that Ms. Levin has no issue with Mr. Donnelly constructing a house on his property, but he constructed a new section of road on property he does not own without permission of the property owners or other authorization from the courts. Mr. Brodsky indicated that the condominium association owns two lots, 387 and 386 which are directly across from one of Mr. Donnelly's lots, lot 368. He said that Mr. Donnelly does not own the fee in Beacon Road; it is not mentioned in his chain of title. Additionally a portion of Beacon Road from the middle of lot 386 all the way through to Barker Road is an undeveloped paper street. Mr. Brodsky argued the Derelict Fee Statute only gives him rights to half of Beacon Road in front of his property. He said without a surveyed plan he does not know how the Board can determine adequacy. He indicated that the gravel appears to extend beyond Mr. Donnelly's property into the undeveloped right of way that is in front of the condominium association's property. Mr. Brodsky suggests that Mr. Donnelly does not have the automatic right to improve the entire length of the way. He argued that Mr. Donnelly has the right to make reasonable improvements where it is the means of passage to his home. He cited several case law studies demonstrating his point.

Ms. Burbine surmised the issue with the neighbors/condominium association is that the road could become a potential through way and be paved.

Mr. De Lisi said the issue before the Board is if the road is adequate for the intended purpose of the use of the lot for a single family dwelling.

Mr. Brodsky said that his client, Ms. Levin, does not want the newly constructed road to be a through way. He opined there are ways of extinguishing rights of others and that there is a mechanism to ensure that it does not become a thru way. He indicated his client would like there to be a condition that the road is not further improved and could not be paved.

Ms. Joseph indicated the Board needs to provide recommendations to the Building Commissioner for a consideration of a building permit; the Building Commissioner determines frontage. Her recommendation is that the Board recommends a 20' wide x 30' deep unimpeded gravel turnaround be provided on Mr. Donnelly's property, any conditions the Board would like for the gravel portion of the road, and that a stormwater permit may be necessary.

Mr. Donnelly addressed some of the concerns from the neighbors at 32 Barker Road. He said he had spoken with the Building Department and Fire Department regarding the condition and frontage of the road and a turn around might be necessary on the property; he indicated the plans show a turnaround on his property.

On behalf of Ms. Levin, Mr. Brodsky suggested that the Board recommend to the Building Commissioner to not issue a building permit until an application is made to the Planning Board to determine the adequacy of the way to approve the new section of road.

There was additional discussion on who has fee in the roadway and the use of the Derelict Statute. During the discussion it was noted that there was not clear access between Mr. Donnelly's property and the Condominiums parking area prior to the improvement of the road, there was grass and a railroad tie in the road.

Ms. Joseph indicated that because it exists on the ground now it is no longer a paper street.

Mr. Scanzillo said the property/roadway had been staked by an engineer prior to work being done to the mid-point of the roadway; he said they only excavated to that point in the road. He indicated that Mr. Donnelly had gotten consent from the abutting neighbor up gradient to improve the road beyond his property to extend up to the railroad tie.

Ms. Levin opined that Mr. Donnelly did go over the half way point of the road for excavation and that he already has access from his property to Beacon Road and did not have to come all the way up to Barker Road. She maintained that Mr. Donnelly made his own access at the end of the paved portion of the Beacon Road and did not need to go all way the up to Barker Road and that he did go over the half way point. .

There was discussion about that private land rights and the interpretation of the Land Court plan showing the way; the way needs to be on the ground in order to get a building permit, however it does not need to be on the ground prior to the Subdivision Control Laws. There was discussion about putting about plantings or a gate

Mr. De Lisi said they would be fine replanting where needed, but they cannot put a gate because it would impede the right of others.

Ms. Burbine said that she likes connections and feels they are very important, but she does not think that people will use this as a cut through. She opined that a sign be placed at the bottom of Jericho Road "Not a Thru Way" and that will resolve the issue; some verbiage could be made to ensure that Mr. Donnelly has a sign erected and that the gravel be maintained in perpetuity. Mr. Brodsky opined that it should be a private agreement recorded in the chain of title to ensure the conditions don't change. The Board does not have the authority on that matter. Mr. Donnelly opined all he has done is improve the safety for all residents on Beacon Road and the appearance is that it is a dead end road at the end of his property.

Ms. Burbine indicated that the Board is not responsible for enforcement; their prevue is to provide recommendations to the Building Commissioner for his determination of a building permit, i.e. 20' x 30' unimpeded gravel hammer head turn around on the property, the Board could have an easement that would follow the chain of title, sign at Jericho Road and Beacon "Not a Thru Way" and at Barker Road.

It was discussed that there was no need for a sign at Barker Road. Mr. Donnelly would need to work with DPW to pay for a sign to be placed at Jericho and Beacon Roads.

Ms. Paula Delany resident of 32 Barker Road, Unit 1 asked if the residents in the condominium would have a means of appeal if they discover there is unwanted traffic. The Board indicated they would need to go to the Traffic Rules and Regulations Committee.

Mr. Bornstein opined the applicant and abutters will need to work out how the gravel will be maintained and how snow plowing will work.

Motion:

Ms. Burbine moved the Planning Board would like Building Commissioner to consider the following comments in his determination of the building permit application:

- A 20 foot wide by 30 foot deep unimpeded gravel hammerhead turnaround or an area sufficient to the Fire Department must be provided on the property to provide sufficient room to accommodate the town's ladder truck. We recommend an easement to the town be provided for the turnaround area.
- A Stormwater Permit may be necessary for the lot if 25% of the undeveloped lot is impervious this includes compacted dirt and gravel as they are considered impervious or there is over 1,000 sq. ft. of land disturbance on undisturbed or natural slopes greater than 25%.
- An As-built plan must be submitted after construction showing the turning area. Maintenance shall be provided.
- A sign be placed at the junction of Beacon and Jericho that it is not a thru way
- Gravel areas shall not be paved and remain gravel in perpetuity.

Mr. Pritchard seconded the motion as amended; the vote was unanimously in favor.

Documents

- Email to the Board from Shari Young dated 3.8.19 with agenda 3.14.19
- Email to the Board from Karen Joseph dated 3.11.19 with materials for 185 First Parish Road, 227 Chief Justice Cushing Highway and Zoning.
- Email to the Board from Karen Joseph dated 3.12.19 with materials for 0 Beacon Road and Blanchard Farm Lane.
- Email to the Board from Shari Young dated 3.12.19 with minutes from 2.28.19.
- Email to the Board from Karen Joseph dated 3.13.19 with information for Blanchard Farm Lane
- Email to the Board from Shari Young dated 3.14.19 with information for 0 Beacon Road

These items were distributed to the Board electronically.

Ms. Lewis moved to adjourn the meeting at 9:24 p.m. Ms. Lambert seconded the motion; the vote was unanimously in favor.

Respectfully submitted,

Shari Young
Planning Board Administrative Assistant

Patricia A. Lambert, Clerk

Date Approved: April 11, 2019