

SCITUATE PLANNING BOARD MINUTES May 13, 2021

Members Present: Ann Burbine, Chairman; Benjamin Bornstein, Vice Chairman; Patricia Lambert, Clerk; Stephen Pritchard, Rebecca Lewis and Bob MacLean, Alternate.

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 6:30 P.M. The meeting was conducted in compliance with the Governor's executive order modifying the Open Meeting Law regulations for remote participation during the COVID-19 health pandemic. The meeting was being recorded for airing on local cable television.

Documents

- 5/13/21 Planning Board Agenda

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

Roll Call to call the meeting to order:

A roll call vote was taken to open the meeting.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Bornstein - yes
Ms. Lewis – yes
Mr. MacLean - yes

Public Hearing – Scenic Road – 143 Border Street
Assessor's Map/Block/Lot LC Lot 17, 6-2-9 portion of
Applicant: Carl Christenson, The Carl Christenson 2007 Revocable Living Trust
Owner: The Lion's Head Trust

Documents

- PDF Border St. Scenic Road Site Plans
- PDF Border St Scenic Road_ Application Submittal
- PDF TC Filed Legal Posting 143 Border Street – Scenic Road
- Doc Transmittal 143 Border Street

Attendees: Deborah Keller, Merrill Engineers, Carl Christenson - applicant

Ms. Burbine read the legal posted legal notice.

Ms. Joseph pointed out there was a typo in the legal ad; it should be 36.3 **feet** of stone wall being removed not 36.3 **inches**.

Ms. Keller provided an over view of the project to the Board.

- Mr. Christenson purchasing a portion of the property, 17.3 acres
- Constructing a single-family home
- New Driveway required
 - Majority of frontage has stone wall across it
 - Tried to not impact any trees across the front of the property when locating position of the driveway
 - Keep the street view consistent
 - 13' wide driveway at the entrance
 - Shoulder width on either side
 - Gated entrance set back in the field
 - Mimic the stonewall across the front of the property
 - Setback approximately 34' into the site
 - Stakes along stonewall as to where the entrance would be

Ms. Burbine asked if the gate is for security purposes. Ms. Keller was not sure, but it would help people from driving down the driveway. Ms. Burbine has concerns about the access for the Fire Department. Ms. Keller said they will coordinate with the Fire Department.

Ms. Joseph indicated the opening in the stonewall seems reasonable; Border Street is a narrow scenic road and the applicant has tried to provide some extra room for visibility. She said the applicant will be replicating the stonewall with the gate and she recommends approval. The only jurisdiction the Planning Board has is the Scenic Road the remainder of the site/stormwater is under Conservation's jurisdiction.

Mr. Pritchard asked if the stonewall is in the Town's right of way (ROW); the front face is in the ROW. Ms. Keller said the stonewall technically straddles the property line.

Mr. Bornstein opined that so long as there is an effort to replicate the stonewall it seems okay. He did think the removal of the wall seemed a little wide, but understands the wider apron where the driveway enters the street. He questioned the removal of a few feet of wall from the edge of driveway to where the wall is being removed on either side and why it has to be removed; maybe for truck turning radius? He said so long as the aesthetic value of the area is retained he is okay.

Ms. Keller said that Border Street is so narrow and the wall is approximately 3.9' in height; they wanted to make sure pulling in or out of the driveway there is enough room and that it is setback enough to not impede any sight distances pulling out of the driveway. The opening of the wall is to provide the sight distance, the height of the wall as pulling out is close to eye height; if the wall was really close to the driveway it would obscure any sight distances and make it difficult to have larger vehicles pull in and out of the driveway.

Mr. MacLean said he was happy with it and understands the reason for the width. He said he has the same issue with his driveway either going to a busy road or a narrow road you cannot really nose out into the road so there needs to be wider driveway to have sight lines either way. He was good with the plan.

Public Comment:

Mr. Carl Christenson, commented the gate is really there for aesthetics to make it look like a traditional farm gate; it will not be closed or locked.

Motion:

Ms. Burbine moved to close the Scenic Road Act public hearing and to approve the application for removal of approximately 36.3 linear feet of stonewall in connection with the construction of a proposed driveway for a new single-family home for applicant Carl Christenson, Trustee, The Carl Christenson 2007 Revocable Living Trust. The stones removed will be reused if possible for the proposed stone wall at the proposed gated stonewall entry approximately 35 feet westward into the property as shown on a Site Plan by Merrill Engineers and Land Surveyors dated March 10, 2021 with revisions through 4/15/21 and a Front Entry Details Plan for 143-145 Border Street by Sean Papich landscape architecture as the new gated wall is to match the existing wall.

Mr. Bornstein seconded the motion; a roll call vote was taken and was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Bornstein – yes
Ms. Lewis – yes

**Continued - Public Hearing – Special Permit Accessory Dwelling – 129 Stockbridge Road
Assessor's Map/Block/Lot 54-1-41
Applicant/Owner: Kyle and Eunice Zarycki**

Documents

- PDF 12Zarycki, Tracy 129 Stockbridge Rd Scituate, MA 02066
- PDF Site Plan
- Doc Motion 129 Stockbridge Road A-D
- PDF Revised Site Plan

Attendees: Tracy Sharkey, Guaranteed Builders & Developers, Inc.

Ms. Sharkey provide the Board with an update since the last meeting.

- Revised plan, meeting required 40% square footage of existing dwelling
- Relocated accessory structure to the other side of the primary dwelling off Lynda Lane
- Added infiltration to address the Water Resource Requirements
- Building plans, 27.6 x 30 accessory structure

Ms. Burbine addressed the proposed parking in conjunction with the existing parking; if a car is parked in the parking area for the primary dwelling a car for the accessory dwelling will not be able to get out. She asked if there had been any thought to having a circular driveway on Lynda Lane so there would be an entrance and exit. Ms. Sharkey opined she thought the owner would be amenable to that and said it could be conditioned.

Ms. Joseph opined the major question the Board needs to opine on is if the accessory structure is subordinate to the primary structure; she agrees a circular driveway would be better. She indicated there was no test pit so although the infiltration was added it is unknown if it is three feet above ground water; the Board could condition. She also indicated the stockpile area needs to be surrounded by hay bail or silt sock or should be within the limit of work. She questioned if the accessory structure was pushed back or made even with the primary house if it might not be visible from Stockbridge Road and would that make it more subordinate.

There was discussion about the elevations and the new size. Ms. Joseph indicated the elevations had previously been sent. The Board was trying to determine the size of each dwelling.

Mr. Wayne Zarycki, father of Kyle Zarycki, said there are three cars parked in the driveway now and there is plenty of room for access to get out without having a circular driveway; he said they could park on the other side of the house if needed.

There was discussion if the accessory dwelling is roughly the same height as the primary dwelling; it was indicated yes.

Mr. Pritchard opined it looks like there will be two separate houses on the lot as opposed to a primary dwelling and an accessory. Ms. Burbine and Ms. Lambert agreed.

Mr. Bornstein was okay with it based off the floor plans and the elevations that have been provided. He does think it looks less subordinate. He is more concerned with the layout of the parking lot and that the standards for stormwater within the Water Resource Protection District (WRPD) be upheld, i.e. test pits should be done and soils should be evaluated. He is okay with the building itself and defers to the Board on how to handle the parking.

Ms. Lewis asked about the sizes of the structures and if the accessory dwelling meets the requirements even if it does not look like it does. Ms. Joseph indicated it does meet the requirements, the accessory dwelling is 825 sq. ft., 39.17% of the total square footage of the primary dwelling at 2,210 sq. ft., the assessor's card has the square footage at 2,106; it is less than 40%.

Mr. Pritchard asked if the entire lot is in the WRPD; yes, the entire lot is in the WRPD. He agreed with Mr. Bornstein that the Board should make sure the infiltrators work and he is not inclined to condition that.

Ms. Burbine said there is still some work to be done; to be truly subordinate the dwelling should maybe be pushed back 10'-15' on the lot and potentially there should be a circular driveway and stormwater/infiltrators need to be addressed. It might behoove the applicant to provide the Board with some comparisons of what is going to be built and what exists as far as height, etc. The Board was all in agreement.

Ms. Sharkey indicated the existing home is at least a half a story taller than the single story a structure; the existing home is 23'-25' in height. She referenced page A3 of the plans with the existing home, it is a cape style with a full shed dormer on the back. She opined it is pretty large in volume compared to the structure being proposed. She indicated the stockpile area is noted with staked straw wattle and any place there are materials that could erode will be contained along the site with straw wattle. She indicated the soils were pulled and did not show any ground water, they did do soils mapping; Ms. Sharkey is a soil evaluator so she can verify with a test pit and engineer if needed. She said they do have the straw wattle detail and they have used an infiltration system that they typically use with this type of soil and impervious addition; this is a smaller single story home and does meet the requirements for square footage, the driveway is what the owner proposed but it could be made a little larger if owners do not want an additional curb cut and there is an additional driveway on the other side of the main home that is not shown on the plan. She opined they have addressed everything and said they did submit a side by side comparison it is just not in this last set.

Ms. Joseph said the Board needs to decide if the location makes it subordinate; it does meet the requirements for size.

Ms. Burbine opined it looks like there are two houses on one lot; if it were pushed back behind the existing house that might solve some issues. She thinks there is some information missing and suggested the hearing be continued.

Ms. Pritchard said he would agree; the existing frontage is really on Lynda Lane not Stockbridge and it looks like two separate houses. He also agreed that the ground water level should be confirmed.

Ms. Lambert agreed the meeting should be continued.

Mr. Bornstein thought things could be hashed out with conditions.

Ms. Lewis said there is still the driveway issue, she is not sure she has issue with the size and it being subordinate. There was discussion if the accessory structure could be pushed back.

Mr. Pritchard thought there were too many things to leave as conditions. Ms. Burbine agreed.

Ms. Joseph recapped the items to be addressed by the applicant; test pit for ground water, look at moving the accessory dwelling on the lot so it would appear to be more subordinate in location and relook at the parking.

Ms. Sharkey asked who would be witnessing the test pit. Ms. Joseph said it is on "your honor" but all the information, soil evaluation sheets need to be provided. Ms. Sharkey needs to speak with owner about demonstrating that 2 cars for the accessory structure and 2 cars for the primary structure can fit and be shown on a plan and review the location of the structure on the lot. She also said she would provide a side by side of the existing home with the proposed accessory structure.

Mr. Pritchard indicated he may not be available for the June 10th meeting.

No public comment.

Motion:

Ms. Burbine moved to accept the applicant's request for a continuance of the accessory dwelling public hearing for 129 Stockbridge Road until June 10, 2021 at 7:30 pm with a date to file with the Town Clerk by June 30, 2021.

Ms. Lewis seconded the motion; a roll call vote was taken and was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Bornstein – yes
Mr. MacLean – yes

Form A – ANR Plan – 168B Stockbridge Road
Assessor's Map/Block/Lot 54-2-14-A
Applicant/Owner: Stephen A. and Mary Ann Gabriel

Documents

- PDF 128B Stockbridge Rd ANR Plan 04-27-21 Stamped
- PDF Application ANR
- PDF Highlighted ANR Plan
- PDF Memorandum in Support of ANR Approval
- Doc Transmittal 168 B Stockbridge Rd – ANR
- PDF Applicant memo 1
- PDF Applicant memo 2
- Jpeg Driveway 168B Stockbridge 5.6.21
- Email date 5.11.21 images of driveway
- Doc Draft Motion
- Doc Draft Motion Revised
- Email dated 5.11.21 with pictures of roadway
- Doc DRAFT Motion Form A 168B Stockbridge Road

Attendees: Ed Valanzola, Attorney; Craig Dias, Property Owner 168 Stockbridge Road, Daniel P. Broderick, Attorney for Mr. Dias

Mr. Valanzola representing Steve and Mary Ann Gabriel provided an overview to the Board.

- Long driveway down Stockbridge Road leads to 2 houses
 - 168B Gabriel Home
 - Craig Dias Home
- Documents have been provided with history of the homes prior to the 1950's
- Dias home built in the 1920's
- Gabriel home built later
- Access is over a right of way from Stockbridge Road
- Mr. Valanzola referenced a color-coded plan which had been provided to the Board
 - Parcel D – in purple is Right of Way – has a deed

- Parcel C – provides access to both properties, but there is no record/deed of access
- Mr. Dias owns all the land with the exception of 168B Stockbridge Road, owned by the Gabriel's
- Doing 4 things
 - Mr. Dias giving an easement to the Gabriels for Parcel C for ingress and egress for access to 168B
 - Parcel A and Parcel B – noted in yellow – Mr. Dias granting to the Gabriels
 - Parcel A has the Gabriel's shed located on it
 - Parcel B is Gabriel's front yard and has part of gravel driveway on it.
 - Parcels being conveyed from Dias to the Gabriel's, has been like this for decades
 - Accomplishing what is on the ground now
 - Clarifying easement rights over Parcel C for access to the property at 168B
 - Parcel D may be redundant because there is a recorded deed
 - The recorded deed for Parcel D shows the right of way in slightly different location to what is on the ground now. The plan shows what is on the ground.
 - Parcel C is a new right of way (ROW) being created
 - Access to both parcels Dias and Gabriel
 - Agreement for maintenance, plowing, pot holes, etc., future may asphalt understand number of things to be done with the Town prior to that action
- Has been a long process to get this agreement – tricky to find boundary markers

Mr. Pritchard asked if there is any reason for the Board to opine on Parcel D. He is worried that Parcel D is cutting over into the neighbor's property. Mr. Valanzola said what is shown on the plan is what exists out there today, the other faint line on the plan drifts even further over into the neighbor's property. He said they are just using what exists, actual site conditions that have been used for decades. Mr. Pritchard said if the ROW already exists the Board does not want to endorse anything different. Mr. Valanzola said the Board is not endorsing the ROW the Board is endorsing the property 168B and adding the two parcels to it to make it larger that is the ANR Plan; it has frontage on a way that is passible for emergency vehicles, etc. He opined the Board is not giving an opinion to either Parcel C or Parcel D or if valid easements have been created or there is a ROW, the Board is being asked to consider the actual site conditions and the actual road way that is used to by both parties, or they would be land locked, is it sufficient for ANR approval.

Mr. Dias resident at 168 Stockbridge Road said he thought Parcel D on the plan was owned by the Town; he did not know there was a ROW, he thought the Town owns the small 10,000 sq. ft. parcel. Mr. Valanzola did not know. Mr. Pritchard said if the parcel owners are not represented correctly how can the Board endorse. Mr. Valanzola said the Board is only endorsing the house lot 168B. Mr. Pritchard said there has to be access and that is Parcel C. Mr. Valanzola indicated Parcel C is owned by Mr. Dias and he is creating an easement. Mr. Pritchard said the easement is only to the lot line and then the existing ROW already exists, but the access road is not on the ROW; it overlaps it.

Mr. Valanzola said they are not trying to create any new areas this has been there, this is what exists and has been there pre-zoning, especially for Mr. Dias's property and the Gabriel property in 1957-58. ANR approval is appropriated here because a subdivision is not being created; the Boards determination is if the way is sufficient.

Ms. Joseph indicated the existing 40' ROW is on a plan from 1927, it existed prior to zoning, the assessor's card indicates 168B Stockbridge had a house there since 1920; same as Mr. Dias's land a house was present on the land from the 1920's. She does not know how the lot at 168B was created in +/- 1957 the assumption is an 81L but a record has not been found. She said the applicant is adding a little more land to the property so the shed will fall on the property and the access, the gravel drive will fall on the property and make a definitive easement for Parcel C for the driveway to have access. The driveway must have existed in the 1920's.

Mr. Pritchard's concern is that if there is a deed that has a ROW, that the access is not within the actual ROW. Mr. Valanzola said it is less than the actual ROW. Mr. Pritchard said it drifts outside of the ROW according to the drawing. Mr. Valanzola said they have not been able to definitively mark the ROW.

Ms. Lewis said the ROW matches what is actually out there. Mr. Valanzola said they have provided the existing site conditions. He referenced Exhibit A in his memorandum. Mr. Valanzola said they are not relying exclusively on the ROW, parties have been using the area to drive back and forth for over half a century and therefore have created an easement, easement by prescription, easement by necessity, easement by right, could be any of those, none of the property owners in the area have ever contested the use of the driveway as it exists. Mr. Valanzola said it would be their fight to fight if someone ever complained about the road on their property, there would be adverse position issues. It has been used for decades so even if it doesn't mirror the deeded ROW if the applicants were to say dig up the current roadway to fit in the deeded ROW it would create more issues. He opined these are the conditions that people in the area and the landowners have lived with more than 50 years and he does not think that any Land Court would say the easement does not exist by use and by prescription. Mr. Pritchard said the Board is trying to ascertain if there is adequate access from a lot it seems like there would be if Parcel D was wide enough to encompass the existing ROW to provide access. Mr. Valanzola said it would be a slippery slope to try and create the ROW as it was created years ago; his experience is that an easement has been created because it has been used over many years. He said they are presenting an ANR plan for the lot and the Board just needs to determine there is sufficient access. If at some point Parcel D is shown to not be a valid easement/ROW it is his client's problem and Mr. Dias problem.

Ms. Burbine summarized the discussion; Parcel D has existed before recorded zoning, this is legitimizing the driveway to the existing homes, Parcel C. Mr. Dias has given Mr. Gabriel an easement and has put the shed, etc. on the property. She indicated Town Counsel has been consulted. She opined the Board needs to approve this ANR Plan.

Mr. Dias said the Parcel D was owned by his Aunt and has been in the family since 1927; the back taxes were never paid so it was taken by the Town 6-8 years ago. He just wanted to give the history.

The Board is not trying to legitimize anything they are just trying to determine adequate access.

There was continued discussion about the access and the ROW. Mr. Valanzola said it is not the ROW they are relying on for access; it is the roadway/driveway as it has been used for the last 60-70 years. He explained that if there was no recorded ROW this would be a lot easier, because it would be considered and easement by prescription, by-right, by necessity, by adverse possession, etc. because it has been used for decades. He opined this recorded ROW is making it confusing and could be argued that it has been abandoned because it has not been used for decades; that is why they

have stuck with what is on the ground; he opined he could defend it much more easily if necessary. He said that outside of Parcel D he could defend.

The discussion was brought back to focus on Parcel C; Parcel C has been used for decades. Ms. Burbine said Mr. Dias is transferring land Parcel A and Parcel B to the Gabriels and granting them an easement on Parcel C. Ms. Burbine does not see the issue, as the Board is voting on an ANR not on the easements.

Mr. Pritchard shared his screen and discussed a highlighted plan. The plan highlighted the deeded ROW versus the on the ground roadway.

Ms. Lewis said there is now an easement, forget the ROW, there is now an easement that has been used for years and years. There was an original ROW, but now it is off the original ROW and the applicant is correcting it. She said if the property is ever sold this will let the owners know this is the ROW not the original one. If 168B ever sells a new owner would know exactly where the ROW is to get to the house; that is why the applicant is doing this, it is not incorrect it just happens over time. Mr. Valanzola indicated that no one owns Parcel D it is just the right to pass over it; as they are showing it is how they have been passing over it for decades, as Mr. Pritchard has highlighted the plan shows the ROW that is on record in the deed, but it has not been used and Mr. Valanzola does not believe he could defend it if ever necessary. There is an argument that what lies outside the on the ground ROW has been abandoned; no one has been using it so how can it all the sudden create a ROW going through it, Parcel D has been used for decades and decades. He is not sure how banks/mortgages, etc. have approved this and thought the access was sufficient, but he opines they have to create something with the existing conditions on the ground and what is being used; most of what is being used falls within the recorded ROW and he is more comfortable defending what has been used for decades versus what has been recorded and not used.

Ms. Burbine said we are trying to legitimize Parcel C.

Mr. Pritchard said he is not trying to legitimize anything; he is only looking at what has been presented and does this ANR have adequate existing access. He said the applicant is saying it has adequate access because it has taken as right of use property that wasn't really in the ROW and that is what should be relied on. If Town Counsel is okay then he is fine.

Mr. Valanzola said the ANR is adding to 168B, Parcel A and B. Mr. Pritchard said that Parcel A and B only work with Parcel C and D. Mr. Valanzola said it would be nice to not have Parcel D, but there are only two ways to get to Stockbridge; the ROW that would need to be created now and would need to go over other peoples land or the use what is on the ground; his legal opinion is the later is the better way to go.

Ms. Joseph indicated she spoke with Town Counsel; Counsel opined there is no issue with Parcel A and Parcel B being joined to 168B, Parcel C is just trying to create an easement to provide legitimate access to the 168B. Ms. Joseph said the Assessor's card indicate there were homes there in the 1920's so it would be assumed that a driveway existed in 1920. She referenced pictures provided to the Board showing a gravel driveway that is level; it appears to have adequate width, grade and construction for the proposed use of access to the existing houses, there are also utilities that have been there for decades. She said she did not discuss with Town Counsel that Parcel D does not sit totally within the ROW. Ms. Joseph opined it seems the applicant is trying to right something that has been being used for decades and seems like a very legitimate thing to do. The Board does not

have to opine on Parcel D at all. Town Counsel has reviewed the DRAFT motion and has concurred.

Motion:

Ms. Burbine moved to endorse as Approval Not Required a Plan of Land 168B Stockbridge Road Scituate, MA stamped by Michael A. Coleman, P.L.S. of A-Plus Construction Services Corporation for applicant/owner Stephen A and Mary Ann Gabriel as the division of the tract of land shown on the accompanying plan is not a subdivision because every lot shown on the plan has frontage of at least the distance presently required under the Scituate Zoning Bylaw on the private right of way off Stockbridge Road (Parcel D) which existed prior to the effective date of the Subdivision Control Law (August 3, 1947) and the gravel driveway leading from Parcel D to the lot which has existed on the ground since prior to 1947 and is being formalized into an easement (Parcel C) and has adequate width, grade and construction to provide for the needs of vehicular traffic in relation to the proposed use of the land served thereby and for installation of municipal services to serve such land and buildings currently existing and that the division of the tract of land shows a proposed conveyance or change in lot line which does not alter the existing frontage as required under the Scituate Zoning Bylaw. Planning Board endorsement of this plan is not a determination of as to the conformance with zoning regulations.

Ms. Lewis seconded the motion; a roll call vote was taken and was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Bornstein – yes
Ms. Lewis – yes

**Form A – ANR Plan – 626 Chief Justice Cushing Highway
Assessor's Map/Block/Lot 31-02-11A and B
Applicant/Owner: Thomas Laperle**

Documents

- PDF 4206 ANR application 5-5-21
- PDF 4206-FMA Signed
- PDF Assessors card A
- PDF Assessor's card
- PDF GIS Map
- Doc Transmittal 626 CJC Hwy
- Email dated 5.10.21 with comments from Sewer Division
- Jpeg Grade change close up 2 5.6.21
- Jpeg Guard Rail and grade change 5.6.21
- Jpeg Guard Rail and grade change 3 5.6.21
- Jpeg 626 CJC 2
- Jpeg Guard Rail and grade change 2 5.6.21
- Email dated 5.5.21 with ANR Authorization
- Doc DRAFT Motion Form A 626 CJC D

- Doc DRAFT Motion Form A 626 CJC WD
- PDF Excerpt ANR Handbook

Attendees: Paul Mirabito, Ross Engineering; Jeff De Lisi, Attorney

Mr. Mirabito presented the plan to the Board. Mr. De Lisi assisted by sharing his screen and providing additional comments.

- ANR plan for Parcel 1 dividing into Lot 1, Lot 2 and Lot 3
- All lots have frontage on Chief Justice Cushing Highway (CJC), a State Highway
- Wetlands shown on the plan were confirmed by the Conservation Commission on April 6, 2021
- Parcel 1 – not a buildable lot, 100’ set back along CJC Hwy and conservation does not allow building within 100’ of a wetland
- Lot 1, 2 and 3
 - Frontage on CJC Hwy
 - Existing house shown on plan on Lot 2
 - Existing barn shown on plan on Lot 3
 - Driveway from CJC Hwy that services the existing house and barn
 - Not shown on the plan, but approximate location along the property line of Lot 1 and Lot 2
 - Mr. Mirabito said per the regulations the driveway does not have to be shown
 - Guard rail along the frontage with the exception of the driveway openings
 - Guard rail starts at 616 CJC Hwy, Habitat for Humanity property
 - Guard rail broken for driveway of 616 then continues to break for driveway at 626 CJC Hwy and then begins again through the rest of the property
 - Existing driveway is in the approximate location of the Mass Highway Property (MHP) Boundary on the plan
- Note 7 on the plan says the Lots are not buildable until there is a Common Driveway Permit issued
- The future proposal for the Common Driveway would be to keep it in the existing location so as not to have to go to Mass DOT for a new break in the guardrail.

Mr. De Lisi said there is technical frontage, frontage does not presently provide access to all three lots as a result of a man-made structure, Mass DOT Guardrail, except in the location between Lot 1 and Lot 2 where a common driveway would be proposed in the future. Mr. De Lisi said he recognizes the issue of access, there is frontage, but there is question of adequate/actual access. He referenced the ANR Handbook and case Corcoran Vs. Planning Board of Sudbury, Mass SJC, the case involved wetlands between the public road and the buildable portion of the lot; the applicant had technical frontage but proposed to have a common driveway. The proposed common driveway was shown on the plan, not a note on the plan; the Planning Board denied, the Court of Appeals upheld the denial and the SJC overturned saying that a “Planning Board cannot deny an ANR endorsement where other permitting approvals maybe necessary before practical access exists from the way to the building site.”

Mr. De Lisi said they are asking for the Board to recognize there are future regulatory permits that are necessary for practical access; they are seeking endorsement of the plan to then go in with a

common driveway application. They are being called “non-buildable lots” until and unless a special permit is received.

Ms. Joseph said she does agree that the plan shows technical frontage; it does not show practical access; there is a guardrail and there is an opening in the guardrail. She indicated she asked why the guardrail or the opening in the rail could not be shown on the plan to show there is practical access. She referenced a different case law Poulos VS. Braintree; practical access has to exist on the ground in order to have ANR endorsement. Mr. De Lisi said in that case a common driveway was not proposed.

Ms. Burbine asked why the proposed common driveway and the guardrail were no shown on the plan. Mr. De Lisi opined because it was thought that the Note 7, 8 and 9 would suffice.

The Board does not believe the notes suffice; Mr. De Lisi said they need to go back and show those items on the plan.

Ms. Burbine did not consider there to be viable access; it is a State highway and there is guardrail in front of two of the lots. She suggested the application can be either withdrawn without prejudice or it can be voted not to endorse.

Mr. De Lisi showed a 2007 ANR Plan for Lot 1C1, Habitat for Humanity House, the applicant was the Town of Scituate there is a guardrail along the entire length of the lot except for what is now the break for the driveway that at the time did not exist. The Board did sign that plan, he said the issue with Mass DOT is they will not consider opening or widening the guardrail unless the lot actually exists. He said it is kind of a chicken and egg situation. He opined that since the Board will have jurisdiction on these lots, it is reasonable for the Board to consider that the vital access is subject to future permitting and the Board can sign this plan.

Ms. Joseph and Ms. Burbine disagreed with Mr. De Lisi; Ms. Joseph said she does understand why the break in the guardrail and the driveway cannot be shown on the plan so the Board can see that there is some type of viable access. Mr. De Lisi agreed. Ms. Joseph said the Board cannot just rely on Mr. Mirabito’s description on where things might be. Mr. De Lisi agreed and asked for a continuance.

Ms. Joseph said she does not recommend a continuance as ANR’s can’t be continued, but recommends a withdrawal and filings fees will not need to be paid again. Mr. De Lisi agreed.

Motion:

Ms. Burbine moved to accept the Applicant’s request to withdraw without prejudice the Form A Plan of Land in the Town of Scituate 626 Chief Justice Cushing Highway dated April 28, 2021 and waive new application filing fees.

Ms. Lewis seconded the motion as amended; a roll call vote was taken and was unanimously in favor.

Ms. Burbine - yes

Mr. Pritchard – yes

Ms. Lambert – yes

Mr. Bornstein – yes
Ms. Lewis – yes

Minutes
Documents

- Meeting minutes 4.8.21
- Meeting minutes 4.22.21

Ms. Lambert moved to approve the meeting minutes for April 8, 2021 and April 22, 2021.

Ms. Lewin seconded the motion; a roll call vote was taken; the vote was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Bornstein - yes
Ms. Lewis – yes

Accounting
Documents

PO #2108820 (\$199.50), PO #2108717 (\$2,697.00), PO #2109285 (\$5,106.10), PO #2109309 (\$250.32)

Ms. Lambert moved to approve the requisition of \$199.50 to Bradford Merritt for return of unexpended guarantee funds for 0 Country Way/0 Rear Country Way, for \$2,697.00 to Charles Fagan for unexpended guarantee funds for 60 Country Way, for \$5,106.10 to Horsley Witten for peer review services at Seaside at Scituate, for \$129.36 to Gatehouse Media for legal ad for 533 Country Way Scenic Road, for \$120.96 to Gatehouse Media for legal ad for 141 Driftway Scenic Road

Ms. Lewi seconded the motion; a roll call vote was taken and was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Bornstein – yes
Ms. Lewis – yes

Liaison Reports:

Ms. Lambert discussed an Open Meeting Law Violation with the Public Buildings Committee that she filed as a resident, not a representative of the Planning Board. She has not heard back from the State. Meetings are “public meetings” not “public hearings”, but there is no way for the public to attend/participate in the meetings. She said she hears almost everyday from the neighbors to the Senior Center. She did not feel the Committee handled the situation very well; it was decided that the Committee would provide a telephone line for the public. She commented that the Committee

did not really know about the decision filed by the Planning Board on the Senior and have not been paying attention to it.

Mr. Pritchard asked if that means there are conditions the Senior Center is in violation of. Ms. Lambert said you would assume so; the lighting is too bright, there are no dimmers; Mr. Kirby from Vertex has not addressed that yet; there are noise violations, light spillage and light pollution and people in and out of the property all day and night. She felt the Committee was dismissive and did want to hear from anyone else about the project.

Ms. Joseph indicated the results of the testing for the lighting has not come back yet.

Ms. Lambert said the refrigeration unit on the roof is very loud and vibrates all the time; they have put some kind of fencing around it to try and mitigate the noise. She said the neighbors are not happy with this project.

Ms. Joseph said she has forwarded any complaint on the sound, etc. to the project team and Steve Kirby; they are trying to address the issues.

Ms. Lambert said she did get the agenda for the next PBC meeting, but there is still no information on how to participate except to email Town Hall, but it does not say who.

Planning and Development – reported by Ms. Joseph:

- Engaged Consultant to work on Lot Shape Bylaw for Fall Town meeting
- Drew Company
 - Received \$60K for the Boards' pedestrian Greenbush Fund
 - Starting construction on Monday
 - Trellis' on original first concept design are not in final design plan
 - Parking is going to be all concrete and Boston Ivy will grow on it
 - Will be coming in for Surety for offsite roadway improvements 5/27
- 18 Ford Place
 - Received \$25K for the Board pedestrian Greenbush Fund
 - Not doing baseline noise, will be shut down and fined if there is a complaint
 - Still working on gutter sizing with Mr. Chessia
 - Will be signing off on building permits
- Seaside at Scituate – ongoing
 - Test pit results of 3 basins should be available in next couple of weeks
 - Results will determine what corrective action needs to be taken
 - Work in Hatherly Road hopefully done by Memorial Day
 - Dropped road about 10" to correct all the puddling
 - Vertical curb will be smoothed out when final top coat done
- 0 Country Way – Residential Compound
 - Bought by Anthony Nadar
 - Do not have Curb Cut permit
 - Do not have Surety
 - Not authorized to start
 - Authorized to do test pits prior to grubbing
- 48-52 New Driftway - plans for endorsement coming in – June 10th
- Next meeting continued public hearing for Scenic Road 533 Country Way

- Site Plan Administrative Review for Inly School – adding a Toddler Building
 - Under Dover Amendment can only regulate certain things
 - Mr. Bornstein will be recusing himself from this hearing
 - Converting and existing single-family home into the toddler facility

Documents

- Email to the Board from Shari Young dated 5.7.21 with meeting agenda 5.13.21 and draft minutes for 4.8.21 and 4.22.21
- Email to the Board from Karen Joseph dated 5.7.21 with meeting materials for 129 Stockbridge Road Accessory Dwelling, 168B Stockbridge Road ANR, 143 Border Street Scenic Road and 626 Chief Justice Cushing Highway ANR.
- Email to the Board from Karen Joseph dated 5.10.21 with meeting materials for 626 Chief Justice Cushing Highway.
- Email to the Board from Karen Joseph dated 5.11.21 with meeting materials for 626 Chief Justice Cushing Highway, 168B Stockbridge Road and 129 Stockbridge Road.
- Email to the Board from Karen Joseph dated 5.13.21 with meeting materials for 168B Stockbridge Road and 626 Chief Justice Cushing Highway.

These items were distributed to the Board electronically.

Mr. Pritchard moved to adjourn the meeting at 8:21 p.m. Ms. Lewis seconded the motion; the vote was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Bornstein – yes
Ms. Lewis -yes
Mr. MacLean - yes

Respectfully submitted,

Shari Young
Planning Board Administrative Assistant

Ann Burbine, Chair

Date Approved: May 27, 2021