

## **SCITUATE PLANNING BOARD      MINUTES      September 9, 2021**

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

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

Members absent: Stephen Pritchard

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

Location of meeting: Select Board Hearing Room, Town Hall, 600 C J Cushing Highway, Scituate.

Chair Burbine called the meeting to order at 6:30 P.M. The meeting was being recorded for airing on local cable television.

### **Documents**

- 9/9/21 Planning Board Agenda

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

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### **Continued - Public Hearing – Accessory Dwelling Special Permit – 137 Gilson Road Assessor's Map/Block/Lot 64-1-7**

**Applicant/Owner: Linda Barnhart LE and Bruce Barnhart Public Hearing – Special Permit**

### **Documents**

- PDF 137 Gilson Road-0, Cover page
- PDF 137 Gilson Road -1, Application
- PDF 137 Gilson Road-2, Deed
- PDF 137 Gilson Road -3, Death Certificate, Robert Barnhart
- PDF 137 Gilson Road – 4, Durable Power of Attorney
- PDF 137 Gilson Road – 5, Narrative
- PDF 137 Gilson Road – 6, Site Plan
- PDF 137 Gilson Road – 7, Compliance
- PDF 137 Gilson Road – 8, Request for Abutters
- PDF 137 Gilson Road – 9, Occupancy (not yet notarized)
- PDF 137 Gilson Road – 10, Real Estate Taxes Paid in Full
- PDF Assessors' Card
- PDF GIS Map
- PDF Transmittal- 137 Gilson Road
- DOC Water Department Comments dated 7.29.21
- Email from Sewer Department with comments dated 7.28.21
- DOC DRAFT Motion 137 Gilson Road

Attendees: Bruce Barnhart, Property Owner

Ms. Burbine read the legal ad into the record.

Mr. Barnhart indicated his parents have lived in the house for over 60 years. He said his mother is elderly and frail and spends much time in a wheelchair; they have narrow doorways, etc. in the house and they are struggling so they are proposing to build an accessory dwelling to be appropriate for his mother.

Ms. Joseph opined it meets the definition of an accessory dwelling;

- Suitably located
- Attached by a breezeway to the primary dwelling
- Below 40% for size
- Comments from Water and Sewer Departments
  - Water – separate water service required, \$14,000 connection fee, will need inspection
  - Sewer – privilege fee of \$8,000, recommended the dwelling have a separate sewer line all work done by licensed drain layer
  - All comments had been forwarded to Mr. Barnhart

Mr. Bornstein commented that the property lies within the Water Resource Protection District and there will likely be requirements for roof drainage and site disturbance. Mr. Barnhart said he did do a Stormwater plan and can share it if needed.

Ms. Joseph said there is a condition that there will be an infiltrator to the first 1” of runoff and a plan can be submitted afterwards as has been done with other accessory dwellings in the past.

Ms. Burbine commented that all exterior lighting needs to be down lighting, be careful of flood lights and it is nice that there are 3 entrances to this dwelling.

No public comment.

*Motion:*

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

1. On July 28, 2021 Linda Barnhart LE and Bruce Barnhart applied for a special permit for an attached accessory dwelling on the property at 137 Gilson Road.
2. According to the Town of Scituate Assessor's records and the deed, the property at 137 Gilson Road is owned by Linda Barnhart LE and Bruce Barnhart.
3. Based on a floor plan submitted by the applicant, the floor area of the proposed accessory dwelling will be approximately 972 sq. ft. The application indicates this is 39.6% of the total square footage of the primary dwelling which is 2,456 sq. ft. according to the Applicant and the Assessor's card. 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. The accessory dwelling is subordinate to the existing single-family home.
4. The Accessory dwelling unit will be a complete separate housekeeping unit and there will be only one accessory dwelling on the lot.

5. The property is in the Residential R-3 Zoning District and Water Resource Protection District. The proposed attached accessory dwelling structure meets all the required setbacks, building height and yard requirements for a primary dwelling.
6. The proposed accessory dwelling is to be located on the north side of the existing primary dwelling and will be connected to the primary dwelling by an open breezeway with a roof. Access will be via a door to the breezeway and from doors to the deck on the east side of the dwelling from the proposed bedrooms.
7. The appearance of the accessory dwelling will be in keeping with the appearance of the primary dwelling.
8. The Plot Plan for 137 Gilson Road, Scituate, MA dated 1/12/21 by C & G Survey Company, shows the location the existing primary dwelling and the proposed accessory dwelling. of the garage. A photograph provided shows there is room for 5 cars in the existing bituminous concrete driveway. This appears adequate to provide two parking spaces for the primary dwelling and two spaces for the accessory dwelling. Ample parking appears to be provided.
9. The owner has submitted a signed, notarized statement that he will be occupying one of the units at 137 Gilson Road.
10. The accessory dwelling will be serviced by Town water and Sewer. DPW requirements for water connections and sewer connections will be met.
11. The application meets the standards of the Scituate Zoning Bylaw for an Accessory Dwelling Special Permit.

Ms. Lewis seconded the motion; the vote was unanimously in favor.

Ms. Burbine moved to approve the Special Permit for an accessory dwelling at 137 Gilson 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 architectural plans by *Hing Fung* for the Barnhart Residence, 137 Gilson Road, Scituate, MA dated 6/4/21 consisting of a eight plan sheets including: Existing Basement/First Floor Plans A1.10, Existing Second/Roof Plans A1.11, Existing Elevations A1.12, Proposed Basement/First Floor Plans A1.13, Proposed Roof Plan A1.14, Proposed Elevations A1.15, Existing/Proposed First Floor Plan A1.16, Existing/Proposed South/North Elevations A1.17; Plot Plan for 137 Gilson Road in Scituate, MA by C & G Survey Company dated January 12, 2021.
2. The number of bedrooms in the accessory dwelling is limited to two 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 without further review by the Planning Board.
4. Upon occupancy of the accessory dwelling, the applicant shall provide a notarized affidavit that he is living in one of the dwelling units. A yearly certification that the owner occupies one of the dwelling units must be provided by March 1 yearly.
5. All requirements of the Board of Health, Building Department, Zoning Board of Appeals,

Department of Public Works, Fire Department and other Town agencies must be met prior to occupancy of the accessory dwelling.

6. The accessory dwelling shall conform to all applicable standards in the building, plumbing, electrical, mechanical, fire and health codes and bylaws.
7. Water connection must meet all requirements of the DPW Water Division for the accessory dwelling. The DPW is requiring a separate water service for the accessory dwelling, along with a \$14,000 connection fee and inspections.
8. The sewer connection must meet all requirements of the DPW Sewer Division for the accessory dwelling including an \$8,000 sewer connection fee. It is recommended that the dwelling receive a separate sewer line to avoid service issues with the primary dwelling. All sewer work shall be done by a licensed drain layer.
9. Any lighting installed shall be down lighting to not shed light on abutting properties.
10. 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 state and federal holidays. Construction includes idling of vehicles, delivery of materials to the site and all other construction activities. No parking of construction vehicles on a public way.
11. Runoff from the proposed accessory dwelling shall not be increased from the property.
12. As the site is in the Water Resource Protection district, runoff from the proposed accessory dwelling roof top must be designed to recharge the first 1 inch of rainfall with recharge attained through site design that incorporates natural drainage patterns maintained to the greatest extent possible. Rooftop runoff shall be routed through either infiltration devices having a three-foot minimum separation between the bottom of the structure and maximum groundwater elevation, grassed water quality swales, sheet flow over lawn areas, or constructed filters that remove nitrogen. A plan shall be provided to the Town Planner for approval prior to construction with a test pit included showing the maximum groundwater elevation.
13. Erosion and sedimentation control devices shall be installed to prevent any erosion or sedimentation from leaving the site during construction. Silt sock shall be used as necessary.

Mr. Bornstein seconded the motion as amended; a vote was taken and was unanimously in favor.

#### **Minutes**

#### **Documents**

- Meeting minutes 8.26.21.

Ms. Lewis moved to approve the meeting minutes for August 26, 2021.

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

#### **Accounting**

## **Documents**

PO #2202201 (\$3,250.00), PO #2202202 (\$1,043.60), PO #2202203 (\$130.00), PO #2202205 (\$126.00)

Ms. Lewis moved to approve the requisition of \$126.00 to Gatehouse Media for legal ad for 8 Jay Road, for \$130.00 to Chessia Consulting for peer review services at 18 Ford Place, for \$1,043.60 to Chessia Consulting for peer review services at 485 Country Way Residential Compound, for \$3,250.00 to Chessia Consulting for peer review services at 533 Country Way.

Ms. Lambert seconded the motion; a vote was taken and was unanimously in favor.

## **Liaison Reports:**

### **Select Board – reported by Ms. Burbine and Ms. Lambert:**

- Select Board will be supporting Article #9 - Master Plan endorsement
- Discussion on collection of money for Water and Sewer for accessory structures
  - Wording was incorrect - focused on dwelling, not use
  - Policy change not a zoning change
  - Building needs to be held accountable - if there is a sink, toilet there needs to be fees paid
  - New permitting system is supposed to make easier for people, Water and Sewer Divisions are part of sign off for building permits.

### **Planning and Development – reported by Ms. Joseph:**

- Article 9 – Master Plan endorsement
- Article 10 – Citizen Petition - Legislature to approve 3 marijuana establishment
- Article 11 – Citizen Petition – Zoning for Marijuana Establishments
- Town meeting October 26th
- Curtis Estates – sidewalk to be paved tomorrow
  - Stonewall not fixed prior; if sidewalk damaged developer will need to fix
- Next week Planning Board meeting September 16th
- Tuesday night DRC meeting – 6 MacDonald Place
- Drew continuing construction
- Toll – Seaside at Scituate - continuing construction
  - Walking the landscape next week
    - Town's Consultant and Ms. Lambert will be in attendance
    - Staking some of the additional 50 trees from the special permit
  - Not much of planting has been done according to the plan
    - Some planting omitted, some is bigger
  - Fencing previously approved in Phase 2 area
  - Much has died over the years some has been replaced
    - 3 wells on site
    - Some material is not planted that is why it has died
  - Grading at bottom of Lois Ann has not been done
  - Completion of project maybe Spring of 2023
    - 10 more building packs
    - Basins need to be addressed

- Woody plants along back side of town houses along the east marsh still under review
- Water complaint from Seventh Ave
- Single family home, near Tenth Ave with gutter issue is not happy
  - Yard was seeded, but not taking, needs be redone

### **Citizen's Petition - Zoning – Marijuana Establishments**

#### **Documents**

- PDF TC filed Packet Zoning Marijuana
- PDF STM Petition Zoning Bylaws 10-21-21
- PDF STM 10-26-21 Petition Marijuana Establishments
- DOC Proposed Zoning Amendments – Marijuana Sections ONLY - Redline
- Email from Town Counsel dated 8.18.21
- Email from Town Counsel dated 8.19.21
- Email from Rich Bowen dated 9.3.21
- Email from Town Counsel dated 9.7.21
- Email from Resident Barbara Quinlan dated 9.9.21
- DOC questions

Attendees: Keith Saunders, Proponent; Cindy Amara, Town Counsel

Ms. Burbine read the legal ad for the record.

Keith Saunders resident at 90 Summer Street and proponent of the petition opened by asking if there were questions from the Board.

Ms. Burbine read a letter from resident Barbara Quinlan into the record opposing the petition.

Ms. Burbine said she was concerned about the Citizen's Petition, neither for nor against marijuana dispensaries, but with the amount of time given to vet the bylaw. She opined it is not fair to the citizens of the town; more time is needed to sit with the proponents and the opponents to come up with a consensus for a bylaw. She opined the article should be indefinitely postponed to allow time for public participation, etc.; the petition should be discussed at the Annual Town meeting.

Mr. Saunders responded saying the Town has had 3 years to adequately consider this petition, from the time marijuana was legalized until now. He opined the town banned it without considering it, the petition was filed within the legal deadline; he interpreted Ms. Burbine's comment that the petition is too soon after 3 years of legal sales.

He argued the only thing the ban does is ban the Town from collecting the tax; the ban does not ban growing, possessing, sharing, or from turning it into foods/concentrates that are not labeled or packaged as they are in dispensaries. What reason is there to not collect the 3% tax on every dollar that is spent by Scituate residents every month on cannabis; people are going to Marshfield, Rockland and Hanover.

He responded to the comment in the letter regarding delivery; saying every doorstep in Scituate will be turned into a tax portal for another town, i.e. Rockland, Marshfield, Quincy or where ever. He

said 3% of the dollar goes out of the doors of Scituate to those other towns. He opined people are already buying it, what good reason is there not to collect the 3%.

Ms. Burbine respectfully disagreed that it is all about the 3% and that is why she feels there should be more discussion in an adequate public forum.

Ms. Joseph asked Mr. Saunders to provide a summary of what each of the petitioned article does.

Mr. Saunders said the first petition is to ask the Legislature to allow Scituate to accommodate 3 cannabis licensed businesses within the Towns borders. The second petition is asking the Planning Board where such business might be located so that they are following Massachusetts law regarding legal cannabis. He said essentially it is opening a small business, i.e. a licensed alcohol store, so people can come to Scituate and purchase it and pay taxes as it is legal in the entirety of the Commonwealth.

Ms. Joseph asked why the petition for the legislation versus an article to remove the general bylaw. Mr. Saunders said he is not an attorney and cannot answer that; unfortunately, Mr. Bowen their Attorney was not able to attend. Mr. Saunders went on to say that marijuana cannot be permitted without having a place to locate it. He said if the town does not vote to lift the ban then there is no reason to change the zoning; it only comes into effect if the town votes to eliminate the ban. He explained several different cannabis businesses that could exist, co-ops, delivery services, testing labs, etc.

Town Counsel, Cindy Amara, agreed with Ms. Burbine there should be more time to vet the zoning, i.e. locations, etc. so the best zoning article could be put forth. She does not understand the need for the legislation; currently there is a general bylaw that says "no marijuana" allowed in Scituate and there is a zoning bylaw that says "no marijuana" allowed in Scituate; to have marijuana allowed in Scituate the general bylaw and the zoning bylaws need to be removed. It would be in the town's best interest to put in a zoning bylaw that would provide regulations before a ban is taken away. A 2/3rds vote is needed at town meeting to change a zoning bylaw, to change a general bylaw a majority vote is needed at town meeting. She said there is no need for special legislation, some towns/cities have also put it to local ballot, but that is not a requirement. She does not understand or see the need to go to special legislation for something that requires a simple majority vote at town meeting. Going to legislation could potentially get rid of all the existing prohibitions even if the zoning wasn't passed. She does not know why the legislature would take on a petition from a town where it set forth a very elaborate scheme specifically preserving a lot of town input and local controls. She said she does not think it is necessary, warranted or that it would be acted upon.

Town Counsel also opined the number "3" is a policy decision; the statute says without going back to the voters for a ballot question and town meeting the number cannot be limited to less than 20% of the package licenses in the town; in Scituate that is 9. Mr. Saunders thought there were 30. Town Counsel said the math shows 2 would be allowed; the proposal is above the 20% allowed. Ultimately the number is a policy decision.

Mr. Saunders said he would defer everything legally to Mr. Bowen who is the attorney. He said they are trying to propose the places that are going to fit best. He said he paid for a cannabis study for the town in 2015 and the best comparison to a cannabis store is a gas station in terms of traffic. He spoke of several properties that were identified as the best locations based on access to neighboring towns. He said they are not asking the Board to change anything, if a liquor store, CVS can be

opened, etc. and it is within the parameters of the cannabis law in Massachusetts then why not be able to open a cannabis business.

Ms. Lambert disagreed with Ms. Burbine that there has been enough time to study this issue; dispensaries have grown exponentially across the state and so have tax dollars the towns are taking in. She indicated she saw Mr. Saunders explain his petitions to the Select Board. She opined part of this is a small business opportunity the Town needs to embrace; it is part of the Planning Board's role to provide economic incentives and identify where business should be located. The philosophical part needs be left at the door and it should be looked at from a business point of view. She opined leaving money on the table for a town like Scituate is "sinful".

Mr. Bornstein agreed with Ms. Lambert on the legality of the time frames. He said he would do his best to remain impartial, but did disclose that he voted against the initial ban and he still agrees with that opinion. He said an important part with delivery is that surrounding towns will be delivering to the residents in Scituate and that is something that needs to be kept in mind as the industry grows and develops and what kind of local controls might the community be able to have over the business. He wants to stick to facts as they apply to zoning and economical development and potential impacts to the Town.

Mr. MacLean also agreed with Mr. Bornstein, but the approval or disapproval is for Town meeting and he has no issues with the timing and the compliance of the timing. He did agree with Ms. Burbine that perhaps it may be more appropriate at the Annual Town meeting versus the Special Town meeting.

Ms. Lewis discussed the locations that were previously mentioned, i.e. Scarsilloni's Gas Station – (AKA Sunoco Station on 3A). Mr. Saunders said to wipe that out, it is not going to happen it was just identified as the ideal location from a previous study. Neither of the recommendations in that study are viable, but the recommendation was to get as close to 3A as possible to pull residents from nearby towns. He further explained some other areas, i.e. North Scituate, Scituate Racquet Club area, Scituate Harbor, etc. are business areas that could have marijuana establishments

Ms. Lewis asked how much a dispensary would bring in in a month. Mr. Saunders said it depends on the dispensary; Scituate would be a "destination" dispensary. Scituate does not have the traffic of Route 3 or the commercial density, but Scituate has its own niche. He opined Scituate can sustain a retail operation plus ancillary cannabis businesses, i.e. testing, cultivating cooperative. Ideally Scituate produces things here and brands them as "Scituate" like Vermont has done and Untold Brewery. He used Untold Brewing as an example; they survived COVID because they branded/marketed Scituate and sold to people in Norwell, etc., they didn't depend on people showing up. He said a cannabis business that built themselves on a similar model will bring in revenue from other towns and will do fine.

Ms. Joseph indicated that since this is a citizen petition the Planning Board is not able to change anything. She indicated some of her research shows that surrounding towns, Rockland and Marshfield have separate zoning bylaws for a dispensary versus a marijuana establishment and some items they have are not included in the proposed zoning. She questioned if this should be at the Special Town meeting; why not wait and work together to present something at the Annual Town meeting where there will be more people.



Mr. Saunders said there is no reason to delay; it has been three years and there has been plenty of time to study it and there is information from other states, i.e. Colorado, that when a dispensary is opened nothing really happens, nothing really changes except that more tax revenue is obtained.

Ms. Joseph asked how it was determined what areas would be suitable for these establishments; her understanding was it was based on where Micro-breweries could be located. Mr. Saunders said yes that was the design, to be in the commercial/business districts, anywhere you can produce a “neurotoxin like alcohol” you can produce a “neurogenerative like cannabis.”

There was discussion about pointing out on the zoning map where these establishments could be located. Mr. Saunders said that is not his expertise; that is for Mr. Bowen to address.

*Public Comments:*

Ms. Ann Marie Galvin, Scituate FACTS, said it seems clear about having different zoning for different business types, she referenced the municipal guidance document on the Cannabis Control Commission’s website describing the different license types some of which bring no revenue to the town. She spoke about the petition to special legislature to have three marijuana establishments in the town is a “bucket” term which applies to all the business types excluding medical. She said if the vote goes through there could be potential of no zoning in place.

Town Counsel explained if the vote is “yes” to the special legislation article, which she does not see any justification for, and if the town does not implement a zoning bylaw the town would be in a situation where the ban would no longer exist and with no zoning restrictions and marijuana establishments could go anywhere. She opined there should be a thought-out zoning bylaw ready to go. She added that she has not seen any special legislation come through in the time it would take to go to Annual Spring Town meeting. She opined special legislation will not get them a head of the game any sooner than waiting to Annual Town meeting where the Town could remove the general bylaw as well implement a zoning bylaw. She said both the ban and the zoning need to be removed and then new zoning needs to be in place to regulate and control where these businesses could go.

Ms. Burbine said this was her point that there needs to be more time to vet the process and that the special legislation disenfranchises the entire town of Scituate. She strongly feels that this should be put on hold to further discuss publicly and work on the zoning.

Ms. Lambert suggested that the proponent take a step back and reconvene with the Planning Board and write a bylaw that works; we don’t want to lose everything and it is really just a matter of a few weeks/couple of months. The Board is very vested in zoning bylaws and it would behoove Mr. Saunders to step back and work with the Board to rewrite the zoning bylaw that will address marijuana dispensaries, establishments, co-op, etc.; the Board is not asking to take the proposal off the table, but to step back and help write the bylaw.

Mr. Saunders said he does not write the bylaws, Mr. Bowen is responsible for that portion.

Town Counsel provided some additional insight that a Citizen Petition cannot be changed; it goes on the town warrant as is; she said her experience has been the town does not want to get in a situation where the zoning is being torn apart on the meeting floor and the outcome is a patchwork of a zoning bylaw; because of the process there is no real room to change and make amendments. She opined

from a legal prospective process, wise citizen petitions with zoning leave very little room for making something a better article.

There was further discussion that if zoning bylaw passes, but the legislation does not nothing can happen because there is still a general bylaw that prohibits marijuana establishments. There is no article on the town warrant to eliminate the general bylaw.

Ms. Freya Schlegel resident at 9 Westgate Lane commented the zoning proposed still requires a special permit to be approved by the Planning Board; approving the proposed bylaw does not allow for business to go anywhere, but says there are areas that are zoned for it and discussion about these controlled areas specifically can happen when something comes before the Board.

Ms. Liz Charlton resident a 4 Jawl Ave. said years ago a study was done regarding traffic around Cole Parkway and opined that this issue warrants a study be done; is it not unreasonable for residents to request a study on the impacts to the town. She opined the proponent has his study and the town should have time to do its study on the impacts. She does not feel residents have been able to do their homework.

Mr. Saunders said there is no sense in the town spending money for something that cannot happen.

Ms. Burbine said she would like to have the bylaw rewritten properly to present to Town Meeting in April along with the General Bylaw; if the proponent was willing we could start as soon as possible. Mr. Saunders said as soon as possible was three years ago. Ms. Burbine said Mr. Saunders has been studying this and the town should have the same advantage.

Mr. Saunders said they are not stepping back,” this is a war.”

Mr. MacLean added that having re-written bylaws is important because it gives a better baseline to work from in issuing the special permit and that is why the Board is asking for the bylaws instead of the special legislation.

Mr. Steve Bjorklund, a local developer, said he has about 39 years’ experience changing bylaws in Scituate and if there are mixed groups it will not pass; if the bylaw doesn’t pass it won’t go to town floor for 2 years. He opined the proponent should take to heart what the Board is recommending.

Mr. Saunders said he will talk to Mr. Bowen.

Ms. Mollie Good resident at 9 Berkshire Road said she does not think a decision can be made on economic development without considering the impact on the community. She is not in support of these articles; she is not sure what comes with the word “dispensary” anymore, she lives next to Greenbush Business District and that causes her concern. She is a mom and a teacher and dealing with the consumption of weed is an issue she deals with every day; the misconception is that weed is not that bad. She said there is scientific evidence that young adults who use marijuana before the age of 25 will experience brain damage; it effects learning and memory and is contributing to school failure; she just want to make sure we consider the impact on the town; do the benefits outweigh the costs. She is also concerned with the lack of law enforcements ability to regulate people who operate motor vehicles, she thinks kids are being put at risk by allowing these establishments. She opined we cannot ignore the philosophical in making a decision of this magnitude.

Mr. Craig Diaz resident at 168 Stockbridge Road questioned how the areas were picked; he is concerned because the Greenbush area seems like a dumping ground. He said they can't get swing sets for the kids in the community or sidewalks on Stockbridge Road. What is going to benefit the residents of the area? He said drug addiction has probably affected everyone in this town and we really need to look at this; he said when the T was coming there was concern about the "element" that was going to be brought to town, what kind of "element" will this bring. He questioned why Greenbush.

Ms. Stacy Leshner resident at 10 Berkshire Road said there should be a study done on the impact to the town; what is the economic benefit to Scituate when there are dispensaries going up everywhere. She does know if the dollars will be as much as it is thought. She does not want this in her backyard.

Ms. Lambert asked Mr. Saunders to take what Mr. Bjorklund has said under advisement; this needs to be a definitive bylaw before it goes to the town meeting floor to give it the best shot, otherwise it could take another 2 or 3 years.

Ms. Burbine reiterated the best shot of this going through is to pull back and rectify the bylaw proposed and the general bylaw and have it come forward in April.

The Board is happy to meet with the proponent prior to October 14<sup>th</sup> to go over their concerns and move forward.

Mr. Bornstein said he would like to know the rationale of why the proponent has chosen to go this route.

Mr. Saunders said more information will be coming from Mr. Bowen.

*Motion:*

Ms. Burbine moved to continue the public hearing for proposed zoning amendments for Article #11 – Marijuana Establishments to Thursday October 14, 2021 at 6:30 pm.

Ms. Lambert seconded the motion; a vote was taken and was unanimously in favor.

**Public Hearing - Stormwater & Site Plan Review Common Driveway – 533 Country Way  
Assessor's Map/Block/Lot 26-2-5  
Applicant/Owner: Marvell Homes, LLC**

### **Documents**

- PDF 4169 CD PERMIT FILING PKG 7-22-21
- PDF 4169 CD PERMIT PLAN 7-26-21 RED
- PDE 4169 SWP Application
- PDF 4169 SWP CVR LTR 7-26-21
- PDF 4169 SWP PLANS 7-26-21 RED
- PDF 4169 swr 7\_19\_21 RED
- PDF 4169 WS PLANS 3-23-21
- PDF 54760-232 Correct Deed
- PDF DPW Comments 6.21.21 for Form A

- Email dated 8.26.21 with Fire Department comments
- Email dated 8.25.21 with Fire Department comments
- Email dated 8.23.21 with Board of Health comments
- Email dated 8.16.21 with comments from abutter Tina Davin
- Email dated 8.17.21 with Board of Health comments
- DOC REV 1
- Email dated 8.19.21 with comments from WRC
- Email dated 9.3.21 with comments from the Water Department
- DOC Summary of issues from Chessia Consulting

Attendees: Steve Bjorklund, Applicant Representative; Greg Tansey, Ross Engineering;

Ms. Burbine read the legal ad into the record.

Mr. Tansey reviewed the plans for the common driveway and the stormwater permit.

- Common driveway
  - Meets regulations with turn around and spur
  - Proposed 14' width
    - Deputy Fire Chief requesting 16' width
  - Eliminating concrete retaining wall
    - Wall is in the town right of way
    - Wall causes the existing sidewalk to bump into Country Way
  - New retaining wall will be outside the right of way
  - New side walk will be installed
  - Location is in the approximate location of the existing driveway- 50' south
  - Have sight distances needed
  - Home orientation has the narrowest elevation facing the street
    - Visual impact less than if they were in the center of the lot facing the street and eliminates a curb opening

Ms. Joseph indicated there were comments from multiple Town Departments

- Water Department
  - Shut off locations to be addressed in the field during construction
- Fire Department
  - 16' of drivable surface for the driveway
  - 10% is maximum allowed grade for fire department
  - Asphalt paving is acceptable
  - 4% grading in the hammer head is acceptable
  - 30' deep and 20' wide hammer head with minimum turning radius 25' deep
- Board of Health (BOH)
  - Entire Lot 1 shown with the septic components
  - Does the septic conform for a new home
- Water Resource Committee (WRC)
  - Verification that the first 1" of runoff from the roofs is recharged per the Water Resource Protection District
- Abutter Tina Davin
  - Does the plan show the wetlands
  - Have the wetlands been approved by Conservation

- Can the existing driveway be used during construction
- How much fill will there be
- How much runoff will there be to Country Way
- Request for certain language on the deed similar to 529 Country Way

Ms. Joseph indicated the Town's Consulting Engineer, John Chessia, was not able to attend this evening. A summary of issues from the initial review was provided to the Board. Ms. Joseph recapped the summary; all issues in the report were previously provided to the applicant.

- Provide retaining wall details with the infiltration trench
- Sight distance should be based on the 85<sup>th</sup> percentile, measurement should be 15' back
- Zoning Table on the plans
- Will the Board require extension of survey 50' into adjacent properties?
- Does the Board want full detail of the roadway 100' each way?
- Proposed building dimensions foot prints are not provided
- Have the Wetlands been confirmed by Conservation
- 1 year storm needs to be modeled
- Control points should be adjusted to reflect existing drainage in Country Way and flow to the abutters
- Question poor or fair ground cover condition in the existing conditions
- Best data for time and flow calculations
- Roof ridge lines, down spouts and gutter calculations should be provided
- Concerns with the infiltration systems
- Swales do not meet design requirements and are very steep, more data needed to show compliance with DEP
- Clarify swale or sand filter
- Recharge to ground water several points need to be addressed
- Subsurface chambers are too close to infiltration chambers to function properly
- Mounting analysis requires more supporting data and documentation
- 90% TSS is required in the WRPD
- More data needed on erosion and sediment control
  - Concerns during construction
- Operation & Maintenance should be stand-alone document
- Snow stock piles – where will they be deposited
- Infiltration trench should have more frequent inspections than once per year
- Waterlines are below the infiltration systems
  - Not a concern to the Water Department
  - Concern to the Planning Board because if they break the homeowner would have to replace the infiltration system
  - Ideally utilities are supposed be under the common driveway easement

Mr. Bjorklund responded.

- Water tie-ins are always under the direction of the Water Department
  - Shut offs will go where the Water Department wants them
- WRC comment about first 1" of runoff is addressed in the Stormwater report
- BOH approved a prior septic plan for the original house

- BOH has been given new plans with the ANR, shows all setbacks.
- The applicant will provide the revised septic plans to the Planning Board

Mr. Bjorklund discussed the comment from the Deputy Fire Chief with regards to the 16' width requirement. He said the premise has been that if it is a 3 home common driveway, the width of pavement needs to be 16' and the Fire Chief can approve a width reduction to 14'; it has always been interpreted that if the driveway was a two-lot common driveway the width would be 14' of pavement and the Fire Chief could approve 12'. He said he understands the common driveway requirement is that it should be 16' wide, but there are numerous driveways that are 14' wide, i.e. the driveway next door and there is no issue with access and said driveway is longer and also has curves in it compared to this straight driveway. He would like to continue to work with the Deputy Fire Chief. He opines the Fire Chief does not want to go against the bylaw which states 16' width requirement because he does not want to go against what the Planning Board would want even though it is his determination. He provided another example down the road done by Mr. Frank Snow that is only 12' wide and there have been no issues with that driveway. He said he has done multiple driveways for two lots where the Planning Board has allowed 14'. He asked Board if they would consider a reduction in pavement, there is no access issue, there are 30' radiuses, the length of the driveway is 50' shorter than one next to it, these homes are right on the street and it is likely a fire would be fought from the street not up the driveway. He argued there are letters from previous Chiefs saying 14' is adequate and would the Board consider having that discussion.

Ms. Lambert asked if there were a fire in either of these houses, how wide Country Way is at that point; the street would essentially have to be closed. Mr. Bjorklund argued that there will be a new sidewalk and there are benefits to what Mr. Sheerin is proposing here that is helping the town as well. He opined if the 14' goes away it makes the drainage bigger and puts more pavement on the ground. He opined if the Board chimed in the Chief might be willing to say that 14' is okay.

Ms. Joseph indicated she has spoken with Deputy Elliot and he does not see any hardship in not having the driveway be 16' wide. She said she did a quick analysis and it is split about half are at 16' and half are 14', but anything before 2004 are all at 16'.

Ms. Burbine said that it is a rather steep driveway. Mr. Bjorklund said he discussed that with the Chief and he does not have issue with it; the current driveway at it highest point is at 13% so it is less than what is out there. He opined the only real issue is the 14' or 16'.

Ms. Burbine said they will take it under advisement.

Mr. Bjorklund indicated they addressed some comments from a Board member regarding the affidavit for the stormwater.

There was discussion about how much fill will be brought to the site; it is likely there will be more cut than fill, but the applicant will provide an analysis. Good material will have to be brought in.

Mr. Bjorklund indicated there was supposed to be a meeting to discuss Mr. Chessia's review with Mr. Chessia, Mr. Tansey and Ms. Joseph that did not happen, but they would like to reschedule.

*Public Comment:*

Ms. Tina Davin resident at 526 Country Way said she does not understand why the existing driveway can't be utilized. Mr. Bjorklund said the entire site is being driven by separating the two houses; the existing driveway goes right through one of the proposed houses, it would stuff two houses on to one side and that is not good design. He said there is no reason not to have the common driveway; this is the best layout and the room is needed to make the stormwater work.

Ms. Burbine addressed the cut in the stonewall to create viable access to create the two Form A lots; the driveway will not stay; it is going to go away and will ultimately be the stonewall back on the property.

Mr. Bjorklund explained the drainage and water flowing to the catch basin right where the driveway is going to be; there is less water coming off the site after the site is developed. There has been no surface flow from the storms what we have had. He assured everyone the water will be taken care off.

Ms. Lambert said there needs to be no water coming offsite during construction, not just once it is finished.

Ms. Joseph also said the applicant needs to have the right size sedimentation sumps during construction; no water can go off the site into the road.

Ms. Davin said that Mr. Sheerin built the houses next to this property across the street from her and water was not controlled; she is not convinced that it will be kept off her property. She provided a picture to Ms. Joseph of water flowing to her property. Water is her primary concern.

Ms. Burbine said that Board will make sure the water it taken care of.

There was discussion about a catch basin a little further north that is not working; Ms. Joseph said DPW is aware of the issues.

Mr. Bornstein asked if the entire site is going to be clear cut and graded. Mr. Tansey said he does not know if the entire site will be clear cut and graded, they are going to minimize the disturbance. It is not the intent of the developer to clear cut the area.

Ms. Joseph suggested that the erosion control and limit of work should be clearly noted on the plans.

Mr. Bornstein said that both the common driveway and site plan review bylaws referencing trees over 12" in diameter and preserving rural character need to be considered in permitting these 2 lots.

Mr. Tansey said there will be a lot of trees removed with the removal of the wall and installation of another wall. Ms. Joseph indicated the Scenic Road conditioned 6 trees are to be placed and a landscape plan could be done to show where the trees could be located to not impact the infiltration system.

There was discussion about when to continue the meeting in order to provide enough time for peer review, etc.

Ms. Joseph asked if all the new information can be to the Planning Board office by September 30<sup>th</sup> to be able to have the meeting on October 28<sup>th</sup>. The applicant agreed to have as much done as possible it might not be complete, but that depends on the back and forth with Mr. Chessia.

Mr. Bjorklund opined the regulations make no sense and it is making it very difficult for single-family home building.

There was continued discussion about the 16' versus 14' driveway.

Mr. Bornstein said from a low impact stand point 14' is better, but the regulations say the Fire Chief has to approve it; he is happy to discuss the environmental and site development benefits of less pavement.

Mr. MacLean said he would defer back to the Fire Chief and if the Fire Chief is deferring to the bylaw is the issue that he is able to perform his emergency duties with a 14' or 16' driveway; environmental 14' is better and if Fire is able to do what is needed at 14' he is happy with that.

Ms. Joseph indicated Fire says it is difficult with two fire trucks and an ambulance to pass at 14'.

Mr. MacLean said if Fire is more comfortable with 16', then it should be 16'.

The Board was not willing to draft a letter to Fire asking if Fire believed they could do their duties with a 14' paved driveway. The Fire Department has been adamant that 16' if required.

*Motion:*

Ms. Burbine move to continue the public hearing for Stormwater and the Site Plan Administrative Review Common Driveway at 533 Country Way until October 28, 2021 at 6:30 pm and to continue the time for action for filing with the Town Clerk until December 24, 2021.

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

**Documents**

- Email to the Board from Karen Joseph dated 8.27.21 with meeting materials for 533 Country Way and Marijuana
- Email to the Board from Karen Joseph dated 9.3.21 with meeting materials for 533 Country Way, Marijuana and 137 Gilson Road
- Email to the Board from Shari Young dated 9.3.21 with meeting agenda for 9.9.21 and draft minutes from 8.26.21
- Email to the Board from Karen Joseph dated 9.7.21 with meeting materials for Citizen's Zoning petition – Marijuana.
- Email to the Board from Karen Joseph date 9.9.21 with meeting materials for Citizen's Petition - Marijuana

These items were distributed to the Board electronically.

Ms. Lambert moved to adjourn the meeting at 8:52 p.m. Ms. Lewis seconded the motion; the vote was unanimously in favor.



Respectfully submitted,

Shari Young  
Planning Board Administrative Assistant

Rebecca Lewis, Clerk

Date Approved: September 16, 2021