

SCITUATE PLANNING BOARD MINUTES February 12, 2015

Members Present: William Limbacher, Chairman; Stephen Pritchard, Vice Chairman; Richard Taylor, Clerk; Robert Vogel, Robert Greene and Ann Burbine, Alternate member.

Members Absent: None.

Others Present: Ms. Laura Harbottle, Town Planner.

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

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

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

Documents

- 2/12/15 Planning Board Agenda

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

Presentation Draft Housing Production Plan – Karen Sunnarborg, Consultant

Documents

- 1/7/2015 Draft Housing Production Plan

Karen Sunnarborg was present to present the Draft Housing Production Plan. She indicated that the plan is an update to the 2008 plan to revisit housing strategies. She indicated that Scituate's goal for housing has been to provide housing for all residents of all ages while preserving historic assets and neighborhoods. She indicated the definition of affordable housing used in the plan is the Chapter 40 B definition where the units must be subsidized, 25% of the units are restricted to households below 80% of the median income (for Scituate \$61,000 for a family of 3), restrictions are present in perpetuity and there is affirmative marketing. She indicated the affirmative marketing can have 70% community preference. She said that Scituate has 7163 housing units of which 310 or 4.3% are affordable which is below the state required 10%.

Ms. Sunnarborg said that the plan has required components of an executive summary and needs assessment. She said that the priority needs are rental housing. She indicated that many people in town are paying more of their income than statistics indicate they should for both rental and ownership housing with Scituate having a high cost of ownership housing. She indicated that the affordability gap is about \$90,000 for the median level and the gap is increasing. She said that there are few properties in town under \$300,000 and that there is no assisted living in town despite the aging of the population. Ms. Sunnarborg indicated that ¾ of Scituate's homes were built before 1970 and need repairs such as lead paint removal, septic system improvements and deferred maintenance.

Ms. Sunnarborg said that the Town needs to produce ½ of 1% or 36 housing units in 12 months to be able to defer 40 B projects. She said towns do not receive demerits if they do not meet their housing goals. She said that the affordable housing strategies are continued from the previous plan and include conducting education campaigns, securing professional support, assess new housing

resources, create a town property inventory and encourage training for Board and Committee members. She suggested several Planning and Regulatory reforms to include:

- Adopting inclusionary zoning
- Adopt housing guidelines
- Allow residential development under more conditions
- Amend the accessory apartment bylaw
- Allow starter homes on nonconforming lots
- Pursue tax title properties
- Change permit fee policies
- Explore the use of 40 R/40 S

She indicated that many towns with inclusionary zoning have density bonuses. She said that the towns of Needham and Sudbury have developed guidelines which suggest locations and types of housing that are preferred. Ms. Sunnarborg said that Scituate allows accessory dwellings above commercial uses which is beneficial as accessory dwelling provide diversity in housing; however, it is hard to have them be on the state list as they would need to be deed restricted and provide housing to non-family members. She indicated that some towns waive or reduce fees for affordable developments and commended the town for pursuing 40 R.

Ms. Sunnarborg said that to achieve housing production the Town may need to:

- make public property available for affordable housing,
- support private development in line with local guidelines,
- support new infill housing,
- convert existing housing to affordable housing

She said the next step is for the Town to finalize the plan and then the Planning Board and Board of Selectmen will need to vote to approve the plan prior to its submittal to the state for their approval.

Ms. Harbottle said that the Selectmen are interested in 3 bedroom units. Ms. Sunnarborg said that the state added a requirement in 2013 that requires 10% of new affordable development must be 3 bedrooms. Ms. Harbottle said that Scituate has a Housing Trust and the declaration of trust should go beyond just management of the trust fund and include the Housing Partnership with the trust.

Public Hearing – Zoning Articles for 2015 Annual Town Meeting

- Building Height Definition and Side Setback in FEMA Flood Zones
- Greenbush/Driftway Area Smart Growth Overlay District – 40 R
- Accessory Dwellings
- Change P.D.D. to increase the maximum number of units allowed and eliminate references to a property-rated formula to establish residential density

Documents

- Legal ad published in the Scituate Mariner on 1/29/15 and 2/5/15
- 1/22/15 Proposed Building Height Bylaw amendment
- 1/26/15 Proposed Greenbush-Driftway 40 R Zoning Bylaw
- Proposed 40 R Smart Growth District Boundary
- 1/26/15 proposed changes to accessory dwelling bylaw
- 11/10/14 Draft Planned Development District
- Email dated 2/11/15 on building height amendment from Bob Vogel to the Board

- Powerpoint Presentation by the Planning Board

Chairman Limbacher opened the public hearing. The first article heard was the Citizen Petition to change the Planned Development District (PDD) by increasing the number of units allowed and eliminating references to a property-rated formula to establish residential density. Attorney Frank Colpoys Jr., Dick Bochenek and Ron Jennault of the Scituate Country Club Condominium Association and Paul Mirabito were present. Attorney Colpoys indicated they were looking for support of the Board for the proposed zoning change. He indicated the development was built in the late 1980's and under the current code the limit of units is 40 in the district. He said that 36 units are presently built and 4 are located down the street at Kent/New Kent Street. He said they would like to be able to add 1 more building with 8 units for a total of 48 and eliminate pro-rationing. Attorney Colpoys said that it would only affect this area. Mr. Jennault said Scituate Country Club has not taken an official vote on the project; but at their October 2014 meeting, it appeared that a majority of the members were in favor of the project. He said project would be beneficial as it would raise capital to do repairs without increasing fees and make the campus look like new. Attorney Colpoys said they would need to come before the Board for approval if the bylaw is changed.

Ms. Harbottle said the zoning was written in the 80's with requirements including giving something back to the community for the increased density. She asked if there was going to be anything given back to the community besides tax revenue and if there had been a discussion with abutters. Mr. Jennault said there would be an abutter meeting in February or March. Ms. Harbottle asked if they had estimated the increase in tax revenue to the Town. The team indicated the revenue had not been calculated, but would probably be substantial. Mr. Taylor and Mr. Pritchard clarified that the change only affects this area. Ms. Harbottle said that was correct, but other areas could apply for a PDD Subdistrict B. Attorney Colpoys said that this was the only Subdistrict B in town. Mr. Pritchard asked if this would put an additional load on the sewer. The team indicated that they will need to seek permission to connect to the sewer.

Mr. Greene indicated it looks like the building should have been there all along and was amenable to the 48 units. Ms. Burbine said she was pleased that the neighbors would be involved and concluded they were looking for the endorsement of the Board to go before Town Meeting. Chairman Limbacher said he would be in favor of allowing them to go forward at Town Meeting. Mr. Vogel said the building probably should have been built when the original development was done. Mr. Taylor moved that the Planning Board make a positive recommendation to Town Meeting for the Citizen Petition article amending Section 490.3 of the zoning bylaw, Planned Development District uses. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Chairman Limbacher indicated that the Greenbush/Driftway Smart Growth Overlay District-40 R would be the next article discussed. Mr. Vogel narrated the PowerPoint presentation. He said the 40 R district is proposed as an overlay district for part of the Greenbush Village Business Overlay District south and east of the MBTA tracks which does not include Country Way. He indicated 40 R would be another development option in this district and is designed to promote smart growth with increased density development close to transit stations. He indicated that 40 R provides incremental increases in density, maximum building height and percent affordable housing required. He said the design controls presently would be the same as the Village Business Overlay District (VBOD) as would parking for area consistency. He indicated the Town would receive a lump sum incentive payment when the zoning is adopted and \$3,000 per unit when units are brought on line. He said the 40 R option provides a less rigorous permitting process, more affordable housing and offers state payments. Ms. Burbine offered that the VBOD process is a special permit and if it is appealed then

the Town needs to provide defense dollars where as in 40 R the appellant needs to fund any appeal. Ms. Harbottle indicated that the incentive payment to the Town for the zoning adoption would go to the general fund and that it would need to be returned to the state if the units were not built. She estimated the incentive payment would be \$300,000 to \$350,000.

Mr. Taylor asked about the water and sewer infrastructure issue and the potential number of units that the Town must certify that capacity is available for. Ms. Harbottle said it is still an issue as now the Town must say there is adequate infrastructure for the zoned development. Mr. Pritchard asked if the sewer issue is no different than in the VBOD. Ms. Harbottle said that now the Town is on the spot to say that the sewer capacity is actually available. Selectman Curran said that there is no definitive resolution and the Board of Selectmen as Sewer Commissioners would need to approve every project.

Ms. Harbottle said that the Board of Selectmen brought up several issues at their recent meeting including adding the transfer station in the 40 R district. She said that that property would need to be divided as the solar array would not be considered developable land. She said the Board of Selectmen are looking for some affordable units to be 3 bedrooms and wouldn't want to exempt small projects from the affordability requirement as 20% is needed in the entire district. She said they were also concerned about having the design criteria in place prior to approval. She indicated that she does not have a status update of the draft application and the grant for the design guidelines. Ms. Burbine commented that there are some guidelines as the VBOD criteria have been incorporated in the bylaw. Ms. Harbottle said more landscaping and green area needs to be addressed. Ms. Burbine questioned if the Selectmen understand that town Meeting would be the one to approve the 40 R bylaw, but the guidelines are approved by the Planning Board with state approval. Selectman Curran said it was unclear to the Selectmen that the VBOD criteria were the same as 40 R. Mr. Pritchard said that in the VBOD Special Permit the design is reviewed by the Design Review Committee which offers great flexibility. He said the 40 R guidelines in the bylaw are something the developer must meet. Mr. Vogel said that either way, the same general review criteria will be met. Mr. Taylor said that the guidelines must be done correctly and not rushed.

Chick Fagan of 60 Country Way asked how the bounds of district were selected. Mr. Taylor said that the Metropolitan Area Planning Council (MAPC) did a study for the town and their recommendation was that Country Way was more of a lower density residential area and that a transit area centered by Driftway and New Driftway could create a gateway to the Town with a 40 R district. They recommended the area not be too large and that it be where the transit and infrastructure are located. Mr. Pritchard added it is also where part of the VBOD is located. Mr. Fagan said he was part of the VBOD area and it seems now that that is gone. Mr. Vogel said that the 40 R option provides an incremental increase of 21 to 25 units. Ms. Burbine said that the board has previously discussed that subdistricts with different density and criteria could come later as Country Way is different than the other side of the tracks. Mr. Fagan remarked the Hoffman property was in the district. Mr. Taylor said that the consultant looked at the larger pieces of land east of the tracks and thought there was more potential for a gateway village center. Chairman Limbacher asked if Mr. Fagan was suggesting both sides be incorporated in the 40 R. Mr. Fagan responded that there is development on Country Way and it would seem the potential is now being taken and shifted away .

Bill Ohrenberger said that in his opinion once a 40 R district is enacted, there is no incentive to have other subdistricts. He said that the areas along Country Way offer the most potential to be developed soonest with the properties of Mr. Fagan, Fitts Mill, Reynolds and Mr. Ford. He said these properties will be developed in the next 5 years and thinks the Board is being driven by the MBTA

parcel putting their eggs all in one basket. He said that if the Stoughton team does not meet all the MBTA's criteria, then the MBTA could retract their purchase agreement. Attorney Ohrenberger said that a lot of work went into developing the VBOD and fears that the 40 R district will not be expanded if enacted. Mr. Pritchard said that the Town can vote to expand the district, but only so much incentive money is given to the Town. Mr. Taylor said that if all the VBOD is included in the 40 R district now, the Sewer Commissioners would need to sign off on the capacity. Attorney Ohrenberger said there is no appreciable difference in density and the sewer issue is already there. Mr. Vogel said that the VBOD is already in place and the sewer capacity as related to that is not under discussion. Attorney Ohrenberger said that it is not an appreciable difference in density so it is not a sewer flow issue. Mr. Taylor said that the state is essentially asking the Sewer Commissioners to pre-approve a certain number of units. Attorney Ohrenberger clarified that his understanding is that the state will not provide the incentive money if the sewer capacity is not there. Ms. Harbottle concurred. He said it is not right for the state to usurp the Sewer Commissioner's authority. He said the Town has historically authorized sewer one project at a time and this would potentially mess up the current sewer prioritization plan. Selectman Curran and Chairman Limbacher agreed.

Mr. Pritchard said there are other issues with Country Way including density, existing residential uses, road capacity and proximity to the public drinking water supply. He indicated that all of these issues brought MAPC to recommend a slightly lower density along Country Way was desirable. Attorney Ohrenberger said that he thinks 40 R is good; but there would need to be an exemption for existing buildings in the district for setback as most of them are set back more than 15 feet and 40 R would necessitate tearing them all down. He said any language added that "may" waive a setback doesn't work as it is the same as special permit. Ms. Harbottle said in the VBOD there is language waiving setbacks on corner lots and maybe some language similar to that could be added for existing buildings in the 40 R district that are to be converted to mixed use. Attorney Ohrenberger said his building at Herring Brook is already set back 300 feet so it is a non-starter as is the Drew property and most other buildings in the district. He said "may" doesn't work. He said there needs to be tangible criteria. He said economically it doesn't work to have to tear down buildings. Mr. Pritchard said it sounds like Attorney Ohrenberger would want to stay with the VBOD for flexibility sake. He asked if Attorney Ohrenberger was looking for a broader set of criteria. Attorney Ohrenberger said the 15 foot maximum setback just doesn't work and he does not see clients expending engineering money as there is so much uncertainty until a development is actually filed. Mr. Pritchard said that the goal was not to tell someone how to redevelop their property, but to have continuity in the district. Mr. Taylor indicated that Attorney Ohrenberger is assuming that all existing buildings will be reused in development and some in actuality may be torn down. He said that the Board is trying to create a streetscape and it may be possible to erect new buildings in front of existing ones.

Chris Ford said that 40 R was discussed several years ago prior to the VBOD being implemented. He said that in December, he asked Ms. Harbottle if he could switch to a 40 R and there was no indication that he could not. He indicated it seems inequitable to him now that he is not in the proposed district. He said he is on the cusp of approval of his project under the VBOD and it would have been nice to have the 40 R possibility. He said it is unfair that he is on the wrong side of the tracks. He said that a 40 R requires no public benefit so more units could be obtained. He said he is not convinced he shouldn't have the right. Mr. Vogel indicated that 40 R was originally discussed for the MBTA site, but there was an inclination to go for the larger area as proposed. He said the Board didn't want to extend it to Country Way, based on public input, without seeing how it worked. He said that tonight he is hearing that 40 R would be a benefit to Country Way landowners. Mr.

Fagan said Country Way is easier to develop as buildings are already close to the street, parking could be behind and traffic navigates the street easily. He said that was what smart growth was. Attorney Ohrenberger said that in all likelihood the MBTA will require that the part close to the public way is where the parking should be located and not behind a proposed building. Mr. Taylor said the Board tried to contain the district due to the sewer infrastructure issue and the salability at Town Meeting.

Ms. Burbine suggested that there are many logistics to deal with and the Board has been trying to do this quickly. If the district is expanded, she said the zoning hearing would need to be re-advertised. She said she is concerned about gentrification and people being forced out of the area as a woman on Jenkins Place expressed in December. Attorney Ohrenberger said the area on Country Way has been a business zone for a very long time. He asked if the 40 R is tied to transportation, shouldn't the parking be less and where is the 400 feet measured from. The Board said it was from the train platform. Attorney Ohrenberger suggested 400 feet is for a more urban area and 1200 to 1500 would be more appropriate here.

Ms. Harbottle said at this point in the timeframe of town Meeting she did not think it would be possible to expand the area and re-advertise if the district was going to be enlarged. Attorney Ohrenberger suggested asking Town Counsel. Mr. Taylor said that Ms. Burbine pointed out that when people came to the public meeting before they were not in favor of having the district along Country Way. He said the consultants looked at the area and thought the best potential was where the district is shown now and that is the recommendation the Board took. Chairman Limbacher said if those present tonight are suggesting work on a new center is going to come soon, it will come on the Country Way side of the train tracks. Ms. Harbottle said that this is a lot of change to come up now and if the Board is that uncertain maybe the article should be postponed. Mr. Vogel said he agreed as the initial impetus was for the MBTA parcel and they may not go the 40 R route so he suggested withdrawing the article and putting it out this fall and really figuring out where the district should be and necessary design guidelines. Ms. Burbine said the Selectmen don't like to do zoning at fall town meetings. Selectman Curran said it was her sense that the Selectmen don't want to rush this decision and due diligence should be done. Chairman Limbacher said it appears the opportunity for the MBTA parcel does not exist and they will file under the VBOD. Ms. Burbine said if the Board waited they would have the summer to do the design criteria instead of relying on the VBOD criteria and the Board could look at the frontage issues. Chairman Limbacher said the Board is not doing the due diligence it did with the VBOD Overlay District. Mr. Taylor asked what the downside was if the article does not move forward. Chairman Limbacher suggested the downside is mitigated by the special permit process. Mr. Taylor said it seems beneficial to take the time and do the right job. Mr. Pritchard said the Board needs to work on the 40 R. Mr. Vogel said a developer is going to want all of the information on the table before they commit to a new set of regulations. Ms. Burbine said that if it goes forward there will be a lack of understanding by Town Meeting and the bylaw could go down in defeat. Chairman Limbacher said that is not going to happen asked if the Board wanted to indefinitely postpone the article.

Mr. Vogel moved to Indefinitely Postpone the 40 R zoning article. Mr. Taylor seconded the motion. Motion was unanimously approved.

**Continued Public Hearing – Mixed Use Special Permit in the Village Business Overlay District
-50 Country Way**

Assessor's Map/Block/Lot: 53-5-3 and 3B

Applicant/Owner: 50 Country Way Trust, C. Christopher Ford, Trustee

Documents

- 2/4/2015 Request for continuance from the applicant

As Mr. Ford was present for the zoning public hearing, so the Board took this item after the 40 R discussion. Mr. Taylor moved to accept the applicant's request to continue the public hearing for the Mixed Use Special Permit in the Village Business Overlay District for 50 Country Way until March 12, 2015 at 7:30 p.m. and to continue the time for action until April 17, 2015. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Zoning Public Hearing continuation

Chairman Limbacher began the discussion of the accessory dwelling article to change the maximum size. Ms. Harbottle indicated that definitions for net floor area and primary dwelling are added for definition, accessory dwelling criteria have been added to define subsidiary in mass, scale and architecture to deal with the subordinate issue and the size has been changed to be a maximum of 900 square feet or 40% of the primary dwelling, whichever is less. She said that the Board decided on 900 square feet based on a lot of thought and public discussions and acknowledged it will not make everyone happy. She indicated that a majority of the approved accessory dwelling are over 900 square feet; only 4 or 5 of the 50 plus accessory dwelling permitted in Town are extremely large. Mr. Vogel said in comparison to other towns, 900 square feet is more generous than many.

Joe Joyce said that he thinks differently and doesn't think this is the way to solve the problem as there may be a legitimate need for an accessory dwelling over 900 square feet. Mr. Pritchard asked if there was a way to provide a waiver provision for legitimate need. Ms. Harbottle said it could be done. Mr. Vogel was concerned that lot size and primary dwelling size may not coincide and that the Board wants to avoid the appearance of 2 houses on 1 lot and he does not think the Board should be sociologists in determining need. Mr. Pritchard agreed mass, scale and the architecture of the lot need to work. Mr. Taylor said that the Board always comes back to the 900 square feet.

Mr. Taylor moved to make a positive recommendation to Town Meeting that the changes to the accessory dwelling bylaw be approved as written. Mr. Pritchard seconded the motion. Motion was unanimously approved.

The final article for the hearing was the Building Height Definition and Side Setback in FEMA Flood Zones. Mr. Vogel said that the Building Commissioner and himself believe the wording "or the repair and restoration of structures damaged or destroyed by accidental causes" should be removed from the proposed language as the impact would be to allow this definition to be used for accidental causes such as a fire to a house 4 miles inland which is not the intent of the bylaw. He said it is a redundant sentence as if a home is more than 50 % damaged in the Flood zone it must be elevated anyway. Ms. Harbottle said that the bylaw provision should apply to an existing home that has been torn apart and torn off its foundation and there is a right to rebuild it under zoning. Joe Joyce said that he believes the bylaw would apply as long as the height from sill to ridge is not changed. The house could be elevated. Mr. Vogel surmised that the wording may not be perfect for every instance, but having the language will help with the height requirements in FEMA Flood Zones.

Mr. Taylor moved to recommend the changes to the building height zoning bylaw based on the strike out of the clause "or the repair and restoration of structures damaged or destroyed by

accidental causes,” to Town Meeting. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Accounting

Documents

- PO # 1505235(\$421.20), PO # 1505236(\$88.44), PO # 1504985(\$1,328.57)

Mr. Taylor moved to approve the requisition of \$421.20 to Gatehouse Media MA for legal advertising for the DHCD 40 R public hearing, \$88.44 to Gatehouse Media MA for legal advertising for the scenic road public hearing for 71 Clapp Road, and for \$1,328.57 to Deborah Vazza for a refund from the guarantee deposit account for Ingrid Lane. Mr. Pritchard seconded the motion. Motion was unanimously approved.

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

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk
2-26-15
Date Approved