

SCITUATE PLANNING BOARD MINUTES August 11, 2022

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

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

Members absent: Rebecca Lewis

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

Documents

- 8/11/22 Planning Board Amended Agenda

ACCEPTANCE OF AGENDA: Chair Lambert indicated there was a posted agenda. Mr. Pritchard seconded the motion for the posted agenda and the vote was unanimously in favor.

**Continued - Public Hearing – Major Site Plan Administrative Review and Special Permit Tandem Parking – 14 & 16 Old Country Way
Assessor's Map/Block/Lot 48-2-56 & 57
Applicant/Owner: 14-16 Old Country Way LLC – Robert Proctor, Manager**

Documents

- PDF 220712_Zoning_Site Plan_Stormwater_2nd Peer Review
- PDF Project 1 Building with 4 Townhouse Units and on building called Barn with 4 Units 14-18 Old Country Way Scituate MA 8-4-22
- PDF Site Plan 14-16 Old Country Way Layout
- PDF Stormwater Report 14-16 Old Country Way 2022-08-04
- Doc DRAFT Motion Form 2nd Continuance
- Doc Waivers

Attendees: Robert Proctor, Manager/Owner

Ms. Joseph indicated she previously met with Mr. Proctor to discuss some issues and a decision is not ready at this time. She indicated as she is writing the Findings of Fact she has determined the Townhouse building does comply with the standards for the Village Center and Neighborhood District (VCN); it meets the height, the setback/stepback and there are a few things that require waivers and the Planning Board can grant those waivers, with the exception of building height. Ms. Joseph reviewed the waivers requested.

- Section 750.62 – lot standards for the front yard setback built-to-zone
 - Building 2 exceeds the maximum of 30', it is at 126'
 - Ms. Joseph said the site layout is the most efficient and attractive for the site.
- Section 750.6.3.2 - minimum wall width for street facing building 60'; building is 40'3"

- Side of Building 1 faces the street
- Section 750.6.3.4 - street facing entrance – Building 1 does not have an entrance that faces the street.

Ms. Joseph opined the above three waivers are reasonable for the way the project is laid out.

- Section 754.4 and 754.5 - the monitoring agent for the affordability component
 - Under VCN information is required to be submitted with the application
 - It is an onerous process most applicants don't want to it until a project has been approved
 - The process for LIP units can take 6-8 months
 - Ms. Joseph opined it is a reasonable request to waive that the information on the monitoring agent, etc. for the affordable unit be provided prior to an occupancy permit
 - Conditions will be set that occupancy will not be granted without the affordable unit.

Ms. Burbine agreed that all the waivers are reasonable; she said the buildings work.

Mr. Bornstein said he has no issues and the waivers are appropriate. He said for a smaller project like this the affordable unit timing makes sense.

Mr. MacLean had no issues.

There was discussion about the affordable information being provided prior to occupancy; Ms. Joseph said that she is requesting the information be provided at least 6 months prior to occupancy permits being requested.

Ms. Joseph indicated that she is using many of the conditions that were issued under the first approved Mixed-use project. There will be new conditions added, i.e. that the sidewalk built on Old Country Way will need to be extended and closed in from the new driveway back to the existing handicapped ramp.

Mr. Proctor said all the units will be all owner occupied, there will be no rentals.

No public comment.

Motion:

Ms. Burbine moved to accept the applicant's request to continue the Site Plan Administrative Review and Special Permit for Tandem Parking in the Village Center and Neighborhood District-Greenbush Driftway Gateway District- Greenbush Village Center Subdistrict – VCN-GDG-GVC for property located at 14-16 Old Country Way until September 8, 2022 at 7:00 pm and continue the time for action until September 23, 2022.

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

Discussion/Vote – Reports to Town Meeting

Documents

- Doc PB Report Section 750 Penthouse – Article
- Doc PB Report Section 750 Setback/Stepback - Article

Ms. Joseph indicated that the Advisory Board voted 6 to 0 to support the articles and the Select Board voted 3 to 0 with 1 abstention to support the articles; Ms. Curran abstained.

The Planning Board articles are 7 and 8 on the Warrant, there are 14 articles with several consent agenda articles, the first article is the site for the Water Treatment Plant.

The Board had not objections to the reports.

Ms. Lambert will read the reports at Town Meeting.

Discussion – Common Driveways

Documents

- Excel Common Driveway Log
- Excel Copy of Common Driveway 1
- PDF Hingham Bylaw CD
- PDF Norwell Bylaw CD
- Doc Section 720 CD Bylaw- 4th Reline with Applicability Clause
- Email dated 7.7.22 from Greg Morse with Common Driveway Revisions

Ms. Joseph indicated the Board received the proposal for the Common Driveway Bylaw, analysis of Common Driveways in Scituate, data from other towns put together by Ms. Lambert, the Hingham and Norwell Common Driveway Bylaws; she is looking for direction from the Board on how to proceed before making any more changes. Does the Board want Common Driveways by Special Permit, Site Plan Review or to retain a mix as the current bylaw has.

Mr. Bornstein opined a Special Permit should be triggered in a more conservative fashion and those details need to be flushed out; but he can also see the need for a smaller common driveway that meets all the criteria of design standards just going through the design review process so that people are not deterred from doing the common driveway. He said he does not have an opinion yet on when/what the threshold is for determining a Special Permit.

Mr. Pritchard said looking at the other towns most are at 500' or less and seem to be towns that are more spread out than Scituate. Mr. Pritchard asked what issues have been raised in common driveways that the Board feels like they have not had any control over.

There was discussion that based on the data, regulations must have changed because there are several that are under 500' that are under Special Permit; Special Permits seem to be through the '90's. Ms. Burbine said her concern is where the turnout is located for the far lot. Mr. Pritchard thought that could be addressed through the design standards and does not need to be a Special Permit. Ms. Burbine agreed, but that is what triggered this for her.

There was discussion about the purpose of a Common Driveway, that it is helpful, it reduces the number of curb cuts, provides a perceived sense of denser development and the town needs housing.

Mr. Pritchard opined he inherently does not see Common Driveways as bad that they actually serve a good purpose, but the Board could provide more detail or better guidance on how to achieve the design, the Board should go through what those design standards are so that everyone comes in with the appropriate design. He said he is not sure what is gained by changing it to a Special Permit.

Ms. Burbine said the stormwater should be filed simultaneously with common driveway; everyone agreed.

Mr. Bornstein said that one thing that bothers him with common driveways and the stormwater aspect is the design where a driveway goes to nowhere; he said that is hard to deal with from a site design perspective, the stormwater design is of one driveway that is eventually going to connect to something which could substantially modify the flow of water. He said those driveways that go to nowhere inherently create future conflict and puts the Board at a disadvantage permitting the driveway.

There was discussion that maybe a standard needs to be put in that stormwater needs to be filed simultaneously with the common driveway and all lot development needs to be shown.

Ms. Burbine said this is the only time she has seen that issue with the Common Driveway, generally there is development beyond. She said that is what precipitated all of this, 46/48 Hollett Street.

Ms. Joseph suggest the turnaround may also need to be defined; the turnaround needs to be at the end of the common property or the common proportion needs to be better defined. Mr. Pritchard opined that both parcels need to be laid out in order to do a legitimate stormwater management design; if something changes one of the lots it needs to be looked again and may need to be redone to make sure the system works.

There was discussion if the Board should/can approve a driveway if the second lot is not totally flushed out and how access is going to be provided to the second house. Mr. Bornstein commented it is like building common driveways on speculation, someday they will figure out where it goes. Mr. Pritchard referred to White Ash Farm is a kind of example, common driveways are not intended to bypass all the good engineering practices, etc. Mr. Pritchard opined the Board should require the true layout of all the lots that are tied to the Common Driveway. If something gets changed on a lot then they need to modify the design and come back.

Mr. Bornstein added that the purpose is to maintain the rural character, but if the Board does not know what is happening on the lots and how can they be sure things are not clear-cut, etc. the design may not be adequate.

Ms. Lambert opined they are on the right track, but need to flush out the requirements and design standards.

Mr. Pritchard said they have been learning a lot with the last few lots that have come in. He said he does not know that he would change the design standard that a special permit is required if the driveway is less than 500' serving two lots, that is relatively specific. The Board wants to keep the standard that 3 lots will require a special permit and then the current bylaw can stand as is for 2 lots less than 500'. The Board also wants to keep that if the lots do not have adjoining legal frontage a special permit will be required.

The bylaw needs to be updated to incorporate the new concepts, i.e. turnaround location, but if the Fire Department wants it in a different location the Board should listen to their recommendation, if there is reason for it to change the applicant needs to provide that information from the Fire Department; the Fire Department is most concerned with the size being 30'x20'.

Ms. Joseph asked if the Board cares about the grades; the grades should be consistent with the Subdivision Regulations at 9%.

Ms. Joseph also asked if the Board was in agreement with the 10' setback from adjoining property lines. The Board agreed, it helps with the screening aspect.

The Zoning workshop will be in November and the Public Hearings will be in December.

Discussion – Status update and Impervious Surface Area – Curtis Estates

Documents

Attendees: Paul Sheerin, Developer – Residents of Curtis Estates

Ms. Lambert explained that Mr. Sheerin has been asked to come before the Planning Board to discuss the status of his development at 90 Ann Vinal Road, Curtis Estates.

Mr. Sheerin said the plan is to wrap up the subdivision this fall; they have subcontractors lined up to do the sidewalk and the topcoat, another contractor for the street trees in late September/October, somebody is looking at repairing the stonewall and street light bases are in, but there are issues locating the conduit once that is resolved lights will get up and running.

Ms. Joseph asked for a more detailed schedule via email, because there are inspections that need to be done per the Subdivision Control law for the sidewalk, topcoat, etc. and the Town's Consulting Engineer will need to go out and evaluate where things are. She indicated the binder has been cut in several places and will need review and ultimately a tack coat will probably need to go down before the topcoat, etc. Mr. Sheerin said as soon as he can get more information from the contractors then he will get it to Ms. Joseph.

Ms. Joseph also indicated that as-builts will need to be done and the meadow grass on the septic system has not taken hold. Mr. Sheerin said that after 3-4 times of seeding it, it has not taken, but they cannot do it right now; they are planning to do street trees, the green strip for the sidewalk and the septic system in the early fall in the hopes of getting some wet weather that is conducive to growing things. Ms. Joseph said hopefully there will be water bags on the street trees to help ensure their survival. Mr. Sheerin said they will have to do something. Ms. Joseph also said the grass strip between the wall and the sidewalk on Ann Vinal needs to be taken care of, it was never addressed. Mr. Sheerin said he would make a note of that.

Ms. Lambert asked if there was supposed to be signage into the development; the residents all said yes.

Mr. Sheerin then explained there has been a contract in effect since the project started for the septic system with a company called Septic Preservation and they maintain the system a couple of times a year; someone is mowing the basins three times a year, it has been done twice this year and will

likely be done a third time sometime in September. He said he had someone look at the stonewall out front.

Ms. Joseph asked if the Board was familiar with what happened to the stonewall; the wall has been knocked down by a tree on either side, how does the Board want to see it fixed. She said Mr. Sheerin plans to stop the wall on each side of the tree. Mr. Sheerin said it is either that or cut the tree down. The Board requested that the tree be wrapped and the wall be contiguous. Mr. Sheerin said he would just take the tree down and that it did not make sense to him to go around the tree.

Ms. Joseph indicated those are the major issues for the subdivision and the Town's Consulting Engineer will go out and see what still needs to be done, surety will not be released until everything is done.

Mr. Sheerin argued he did not see the point in making a circle around the tree, they don't know where the roots are. He said they will take a look.

Mr. Bornstein commented that the front is a mess, the septic area has poor stabilization, poor turf grass, the area for the septic is non-existent except for weeds; some work will need to be done.

Ms. Burbine asked if each house got 6" of loam; Ms. Joseph could not confirm. The residents said they have not.

Ms. Lambert asked one of the residents to speak regarding the loam situation on their lots.

Mr. Fagone, resident at 5 Cold Brook Circle said that they had their lot surveyed while trying to do the pool, test pits were done and there was nowhere near 6" of loam. Mr. Fagone said he cannot even grow weeds.

Ms. Lambert said the Board will make note of that situation.

Public Comment:

Mr. Smith, resident at 5 Carriage House Way said that most people want to know how they get this project done; if it is done by fall that is great, but the level of confidence from the residents is not that high. He said he understands not planting in August, but there are a bunch of other things that have to get done and they are not getting done. He discussed the catch basins getting cleaned once a year. Mr. Sheerin said they need to raise the basins so they will get cleaned then; he said no one has said anything to him about other things that need to be done. Mr. Smith said the sign and landscaping; Mr. Sheerin said he is having the front entryway redrawn, because originally the wall was not there. Mr. Smith said after three years a sign could have been done; they just want to get the project done. Ms. Lambert asked Mr. Smith to be more specific about what needs to be done, he said the sign, the light poles, the sidewalk, the roads, all the drainage basins, at some point there has to be sign-off from the Town of things that need to be done and a punch list given to Mr. Sheerin so he can correct things. Ms. Joseph explained that does not get done until after the as-built is submitted; it is done when the developer tells the town it is done, then Town goes out and does a thorough inspection. Ms. Joseph asked when the Homeowner's Association is supposed to take effect; Mr. Sheerin said when they have sold their last property. Ms. Joseph indicated that is not the information the Board has read from the agreement; she said after 4 houses have been sold there are supposed to be some residents as part of the trustees. Mr. Sheerin did not know anything about that; he said typically

when a subdivision is finished the contactor then turns it over to the homeowners. Ms. Joseph said she will send Mr. Sheerin the portion of the agreement she was referencing. Mr. Pritchard also commented that he did not think Mr. Sheerin was correct and that typically as a development is built out there is a percentage of homeowners on the trust, but the developer has the majority voice. He said it is not typical to wait.

Ms. Lane resident of 12 Carriage House Way said she would like more specificity around the time line for completing the project, early fall is that 2022 or 2023. Mr. Sheerin said he just laid it out, they are trying to wrap up the subdivision this fall and the only reason it is the fall is because of the weather they cannot be planting. She asked if there was ever an instance where the homeowners just take over the development to finish the remainder of the project. Ms. Joseph said at this point the developer is still working on it and at some point, the Town can seize the surety, etc., but it is not a pretty thing to do. She said they are trying to get the development done and “we” need to let the developer try to get it done.

Mr. Pritchard said a definitive schedule is needed and that is what Ms. Joseph has asked for; it is needed because there are certain components of the work that need to be reviewed by the Town’s Consulting Engineer. Mr. Pritchard asked Mr. Sheerin to get the schedule to Ms. Joseph next week. Mr. Sheerin also said that Ms. Lane is welcome to call him.

Ms. Lane asked when the last house was going to be completed. Mr. Sheerin said he believes closing is in September, but he needs to double check. She also asked when all the port-a-potties and the large equipment in the neighborhood would go away. Mr. Sheerin said as soon as the workers go, they are obligated to keep the port-a-potties while there are people there working on the subdivision, any other equipment will go very shortly, he is not sure what is there, but he will try to get it out of there. Ms. Lane said that would be appreciated because there are 24 kids in the neighborhood and they are playing on the equipment if they are not being watched.

Ms. Fagone resident at 5 Cold Brook Circle said her issues are similar and what has happened on every individual lot is now happening in the neighborhood as a whole; they have skimped everywhere, i.e. loam, they just haven’t finished. She said she will not get her punch list done without a lawsuit; she said she has a random cement block that is several feet wide that was tossed in the corner of her yard that was supposed to be placed outside her garage door that has a 2’ foot drop that is not safe and she closed last May. She said what is happening in the development as a whole is what is happening on all the individual lots; no one is completing the punch list, no one responds and they have had to fight to get anything done that was legally supposed to be done by contract. She said saying it is not planting season is not acceptable and dates should be provided for everything to be done.

Mr. Sheerin said he has already laid out the subdivision and he is happy to put it in writing to Ms. Joseph, they are planning to be out of the subdivision this fall.

Mr. Fagone resident at 5 Cold Brook Circle asked if being done with the subdivision is also being done with each individual lot, i.e. 6” of loam and grass. Mr. Sheerin said they loam and seed and it is up to the homeowner to grow the grass. Mr. Fagone said no one in the neighborhood is able to grow grass, nor is the developer, because they are not putting down 6” of loam as they are required to do. Mr. Sheerin said he needs to look at that. Mr. Fagone asked when that will be dealt with, when will he get a lawn. Mr. Sheerin could not answer, he does not run the day-to-day dealings of the

subdivision, his brother and Don Gillespie run the day-to-day. Mr. Fagone said Mr. Gillespie never replies.

Mr. MacLean said it sounds like there needs to be better communication between the developers and the homeowner's and asked how does that get done.

Ms. Lambert said it is probably time to open up the Homeowners Association (HOA) to at least one resident so there are better lines of communication. She said during building the developer holds 2 seats, but she does not know what the HOA says, how many seats are the residents supposed to have, etc. Ms. Lambert said Mr. Sheerin should entertain putting a homeowner on the HOA to help flatten out some of the issues here. Mr. Sheerin said it is not an issue, because as soon as the last house is closed they will turn over the HOA. Mr. Sheerin said it is not going to happen now, but will happen in about 4 weeks. Ms. Joseph will provide the portion of the agreement to Mr. Sheerin about the 4 homeowners; Mr. Sheerin said if it is correct they will rectify it.

Mr. Laniel resident at 11 Carriage House Way asked about the loam that is too thin and the quality of the loam; he said they are finding an enormous amount of glass shards on the property, he has a bowl full of samples. He has issues with the quality of the loam, but he is also having an issue with the drainage. He said there is a drain between his house and the house north of him; the drain does not lead to anything except the back of his yard, where a sinkhole is starting to form. He would like someone from the Town to come take a look, because it is not a safe condition. He said this was not part of the build out of his house. Mr. Sheerin asked if Mr. Laniel has spoken with Mr. Douglas Sheerin who was the builder of his house; Mr. Laniel said Mr. Douglas Sheerin is aware of the situation. Mr. Laniel said he is hearing of drainage issues from the neighboring streets that may be coming from their subdivision. Ms. Joseph said she does not believe there are any drainage issues coming from the subdivision going to the neighboring streets; she will work the Town's Consulting Engineer to arrange a time to go out to the site and review the "sink hole".

Mr. Bornstein asked for more specifics about the grate. Mr. Laniel said there is a 12x12 plastic grate which has a box underneath and PVC pipe that leads to the back of his house and just seems to end somewhere, it is not connected to anything and when it rains there is water rushing out of the ground and the ground is now forming a hole. He said he is two houses from the detention pond. Ms. Lambert said she, Ms. Joseph and the Town's Consultant will be out to his house.

Mr. Proccai resident at 9 Carriage House Way, Lot 11, asked if part of the final observation will be the grading of the properties. He said the southside of his lot does not drain properly and forms a small pond when it rains, it does not drain back towards the wetlands as he believes it is intended to do. Ms. Joseph said as-builts have been submitted and certified by an engineer for each lot that the grading is in conformance with the subdivision plan. Ms. Joseph said the Board will review it again. He said it has been that way since they moved in and it has been made clear to Mr. Sheerin and Mr. Gillespie that it is a problem.

Mr. Fagone asked about the as-built and the grading for his lot. Ms. Joseph explained the subgrade was in, supposedly the 6" of loam wasn't done, but the subgrading should be reflective of the final grading minus the 6" of loam. Mr. Fagone said that is not how it is working; what they had prior to their as-built and what they currently have is not 6" less it is a whole different grade and there is a huge disconnect.

Mr. Kelleher resident at 4 Carriage House Way asked what the process is for there to be a comprehensive list of things that need to be done agreed upon by the Town and the property owners to ensure the Builders get things done in a proper amount of time. The Board said there are two separate issues. Ms. Joseph said that Mr. Sheerin said the subdivision stuff will be completed this fall and a schedule will be given next week. Mr. Kelleher asked if that would include loam and individual property issues discussed; Ms. Joseph said no, it will include the sidewalk, wall, lights, etc. She explained that an as-built was needed for each lot for this development for a Certificate of Occupancy, the engineer has certified that all the grades were right or were not substantially different. Mr. Kelleher opined that from the Town's perspective the grading has been signed-off and a few things need to be finished, but in terms of the individual lots and punch list items that is between the residents and the builder. The Board and Ms. Joseph said he is correct; the Town is not involved in individual lots and punch list items. Mr. Pritchard said the residents should look at the HOA, they should all have copies; he said other things, i.e. drainage issues is something that effects the entire subdivision and that is something the Board can look at. There may be some recourse if the 6" of loam was referenced in the decision, but it was unknown at this time. Ms. Joseph said it was probably on the plan not in the decision; but the decision references the plan.

Ms. Lambert said the residents have a lot of paperwork the deed, covenant, HOA, easements, restrictions that are all referenced in the individual deeds. She said the Board has control over the overall project; if there is an issue with a certain lot the Board does not have prevue of it unless it was something that was required as part of the subdivision as a whole, i.e. dead plants in the yard that needs to be taken up with the builder, if there is a dead plant along the street that is part of the subdivision plan that is something the Board can address.

Mr. Sheerin said he is happy to speak with the homeowner's and several of them already have his number.

Ms. Joseph moved into the issue of impervious coverage. She explained that this is a Flexible Open Space Development which means each lot was given a certain amount of impervious area because that is how the drainage system was sized. She indicated that 2 houses were putting in patios and it is unknown if they are permeable pavement. She said there is a permeable pavement section for most of the walkways because the development would have exceeded the impervious surface area allowance if permeable paver walkways were not used. She said this is an issue; the Board needs to provide guidance on how this should be addressed. She said she has asked for the pavement sections of the patios, but it could exceed what was permitted.

Ms. Lambert explained in a Flexible Open Space Development everything that happens on an individual's lot links to another lot; when the Board looked at this piece of land stormwater was a big issue, it is calculated for the all 16 lots, how much water is coming off. She said some of the houses were probably over built and most residents are close to or over their allotted impervious area. She said anything that is done outside a house probably needs to come before the Planning Board because of the stormwater calculations.

Ms. Joseph said most of the houses are very close; she suggested having the Town's Consultant look at how permeable the cross-sections for the patios are, but someone has to pay for that to be done. She indicated in one case there could be mitigation because that house does not currently have a pervious walkway, so they may be able to substitute that out in exchange for some of the improvements being made. She said one home wants to put in crushed stone around the A/C unit to

help with drainage and she opined that is a good idea. She asked the what does the Board want, do they want surveys of the sections to evaluate what is acceptable?

Ms. Lambert said the Board is trying to protect the Town as well as the homeowner's and it should have been better explained when the residents were purchasing their homes.

Mr. Fagone said every individual lot had to be approved by the Board, he said the builders are terrible, but his lot was approved and when it came time to close they were told they could not fit a driveway on the lot. Ms. Joseph corrected him and said the house was built a little too big, not all the impervious areas were considered. He continued to argue that his house was approved by the Town. Ms. Joseph said she was not prepared to discuss his particular lot. She said in general pervious pavement was needed so the amount of impervious amount of coverage for the units would not be exceeded. Mr. Fagone said so the house was built bigger than what was approved. Ms. Joseph said pervious pavers were put in the driveway because that was the only way to get the coverage that was submitted on the plans. Mr. Fagone said his house was built bigger than what was approved by 200 something square feet. The Board said that is possible; the Board approves a layout. The subdivision plans do not have the exact housing on them, a generic house is used. The Board does not approve each individual house, the Building Department approves the houses.

Mr. Pritchard tried to explain the process of approval; a subdivision is laid out with all the roads, etc. and to do that a representation of the construction for each lot has to be shown because the total stormwater that is going to come off all the surfaces has to be calculated to make sure that the stormwater doesn't affect the neighboring properties. The houses are somewhat representative of what the actual house that gets built are, the grading should be relatively close to what the grading was and if it changes significantly the Board asks the Developer to go back and re-evaluate the stormwater system to see if there is a material impact on the stormwater system. He said the footprints that are on the original development are somewhat representative; individual house plans are not submitted to the Board, those are submitted to the Building Department. Mr. Fagone said something was approved on his property that he had to pay out of pocket for the pervious pavers. He said somewhere between the Planning Board, the Building Department there was a mess up and it cost him. He said it is not all on "us" there is something going on with the Board. Mr. Pritchard reiterated the Board does not approve individual houses.

Mr. Bornstein said he never liked this subdivision, but it met the bylaw. It is an incredibly tight build, the motivation is largely financial, maximize the land use, maximize the houses, create a marketable product. There are stormwater standards for environmental reasons and this was engineered to almost the maximum allowable point that would keep it legal. He said it is very tight, in this case the land is totally maxed out and any small changes from the engineering calculations is going to require some sort of mitigation and also will impose limitations on what can be done, otherwise it would be a non-conforming development. He speculated if the Board could have denied the project if it was meeting the standards "no, probably not" because the standards were being met, did the developer push it to the limits "yes" and the Relators and Builders should have communicated potential hardships of redevelopment for the property. The Residents said they did not know and that is the huge disconnect. Mr. Bornstein said in any municipal government there are going to be some communication challenges, but he opined there was not a major oversight by the staff; some changes were made in the field or modifications were made by the homeowner.

Mr. Fagone said they did not see the O&M until they were closing on the house and by then it was too late to back out. Mr. Fagone said everyone in this development was put in a tough position.

Mr. Ritchie resident at 2 Cold Brook Circle asked about the sewer system and said the majority of the stormwater around the neighborhood goes out to Ann Vinal Road and he doesn't think that is what is supposed to happen. He also noted the many of the sewers/catch basins are developing sinkholes. Ms. Joseph said the catch basins need to be cleaned and part of the drainage goes to the back and some to the front 2 basins. He said the HOA when turned over to the residents will be inheriting a broken system, the actual catch basins are falling below the surface of the street; he hopes this Board would make sure the residents don't inherit that issue and then the residents would be responsible for fixing them.

Mr. Pritchard said the developer did say the catch basins need to be raised and it would be expected they would be fixed before the Board signed off.

Mr. Sheerin said if there is a catch basin that is sinking they have not heard about it. He said they will take a look at and there is nothing wrong with them; they have been designed and approved and there is nothing wrong with them, they flow where they are supposed to flow. If they need to be cleaned that is a different matter, he said there is not a broken system there.

Ms. Lambert opined the concern is that water is not being captured by the basins because they are dirty or full of grass and that is giving indication that it is not working properly. She said once they are cleaned we can see how they are working. Mr. Sheerin asked if the basins are overflowing. Ms. Lambert said it is being implied the water is circumventing the basins.

Ms. Burbine suggested that the basins be cleaned in the next 10 days. Ms. Joseph suggested that the Town's Consulting Engineer does a site evaluation now so it can be ascertained what the condition of the site is right now. Mr. Sheerin did not agree; he said the basins have already been approved and if they are dirty they will clean them. Ms. Burbine said the basins need to be cleaned before the final coat goes down; Mr. Sheerin said fine.

Mr. Sheerin continued to press that no one was telling him the basins are overflowing. Ms. Lambert said that is not what is being said, what the people are saying is they are not capturing the water because they are dirty, etc. Mr. Sheerin the basins don't function entirely until the road is finished.

Mr. MacLean suggested a date and time be set for Mr. Sheerin to go out to the site to see what is going on. Ms. Lambert asked Mr. Sheerin to communicate a date for a site visit with Ms. Joseph.

Mr. Banks resident at 15 Carriage House Way indicated he received a letter from Ms. Joseph about the impervious patio; they put in a patio that he believes is pervious. He said his basement flooded as soon as they moved, all they are trying to do is make their homes better and not make the water issues any worse. He said there are sinkholes and flooded basements, they are all trying to improve that and they have all done things to do that. He said it is not unreasonable for people to put in patios. He said they will do everything to make sure the water runs correctly; that patio is done correctly, using a contractor that does it correctly, but their goal is to have houses and land that work. He said if they did not put a patio in they would not be able to walk outside, because they live in the "Sahara desert", they need livable space and putting in a patio provides livable space. He said as it pertains to the letter he asks there be a reasonable evaluation of how normal homes operate; they are trying to improve their land that has a lot of shortcomings already. He said it seems like there is a lot of back and forth between what is the Town's responsibility and what is the homeowner's and it seems that a lot of the liability is left with the homeowner's and to not allow patios seems unreasonable. He said they will do everything they can, the have responded to the

letter with their Contractor, but he wanted to reiterate their position to the Board. Ms. Lambert said the Board appreciates their timely response.

Ms. Joseph said they are trying to determine if the cross-section used for the patio is permeable so there are not issues and the allotment allowed for the lot is not exceeded. Mr. Banks said they created a patio with pavers that are a few inches deep with crushed sand under it; water is flowing under it and over it; he said a patio does not become an unending amount of water blockage. Ms. Joseph indicated that the pavement section used per the Town's Consulting Engineer's initial opinion is dense; the base part is dense. There is 10" of crushed stone over 1" of concrete sand and the Board is trying to verify that concrete sand is permeable; the Board wants to allow the patio. Mr. Banks said he hopes there can be a reasonable solution and that a patio does allow water to flow. Ms. Lambert said the Board is trying to as amenable as possible.

Mr. Ryan resident at 10 Carriage House way said it is not the catch basins that are the issues it is the drainage in the street. The grates are separating from the street and an orange cone is not sufficient to keep kids away from them. He said there is an 8" gap for the one on the left-hand side of the road and a 6" gap for the one on the right-hand side of the road and there a few others that are separating from the road that are big enough for a small child to fall through and there are orange cones sitting on top of them that do nothing. Ms. Lambert indicated that in the very near future she and Ms. Joseph will out to the site to see what is going on; it is on the top of their to do list.

Mr. Ryan also added they are filled with dirt, they are not draining and the original catch is still in there and they need to be drained within the next week otherwise they will keep flooding other neighborhoods. Mr. Pritchard clarified that that responsibility rests with the HOA, which right now is completely Mr. Sheerin, so that responsibility rest with him. Mr. Ryan said that needs to be done before the residents take it over.

Ms. Joseph asked if Mr. Ryan was referring to the silt sacks. He said yes, the water runs directly over them which is creating a 6"- 8" gap. Ms. Joseph said Mr. Sheerin needs to clean the silt sacks. Mr. Sheerin said that is fine, but he wants understand what the gaps are that are being spoken about. Mr. Ryan said there is a space between the granite piece and the grate. Mr. Sheerin said he will have someone out there to look at the issues tomorrow.

Mr. Ryan said the impervious land is quite an issue; he opined that he does not care about a sidewalk system in the neighborhood and that will take up a significant amount of impervious land and could there be a vote in the HOA if all the neighbors vote and agree to they don't want a sidewalk system and all that impervious area could be used to do what they want to do to their homes versus have a big sidewalk system in a very tiny neighborhood. Ms. Lambert explained that is not an option, it is a public safety issue and is a Fire Department decision. Mr. Bornstein also said that it could never be considered as a public way. Ms. Joseph said it is part of the subdivision control laws.

Ms. Lambert thanked everyone for coming and hopes that some questions were answered.

Mr. Sheerin reiterated that he is happy to talk with the residents.

Discussion/Vote – Swimming Pool and Stormwater Permit – 5 Cold Brook Circle – Curtis Estates

Assessor's Map/Block/Lot 21-12-14

Applicant/Owner: Errol Fagone

Documents

- PDF 3-24-22
- PDF 5 Cold Brook Cir 5.15.22- 18x24
- PDF 5 Cold Brook Circle SW Permit
- PDF 22-458 PB Review Report, 5 Cold Brook Circle, 06-30-22
- PDF 3739 O &M Plan & Addendum Rev 3-29-21
- PDF Covenants and Restrictions
- PDF Stormwater Report Cold Brook 5.15.22
- Doc 5 Cold Brook Circle SW Peer Review Reply 7-20-22
- Email dated 7.20.22 from Jed Hannon
- PDF 22-458 PB Review Report, 5 Cold Brook Circle, 07-19-22

Attendees: Jed Hannon, Atlantic Coast Engineer; Errol and Sarah Fagone, Property owners

Mr. Hannon indicated they have been working on a proposal for swimming pool over the last few months for the property at 5 Cold Brook Circle; they are in possession of the as-built done for the lot for the subdivision. They were advised and reviewed the HOA Covenants and O&M plan. He referenced page 8-9 from the O&M Plan that swimming pools are considered to be impervious surface and are not allowed on any lot in Curtis Estates Subdivision unless the certain performance standards are met. He indicated they prepared a stormwater mitigation plan, conducted test pits and developed a stormwater design system that was peer reviewed by Merrill. Comments were made and the applicant addressed the comments.

- All the roof runoff is proposed to go below grade which was never done as part of the original design.
- The proposed layout plan uses gutters and downspouts that tie into Cultec recharge chambers that go into the groundwater system,
- The proposed net increase and decrease of impervious area between the pool and patio is 925 sq. ft.
- Roof patio runoff captured is 3,260 sq. ft.
- Overall it is a net improvement of 2,335 sq. ft.
- Conservative approach to address the impervious area and stormwater specific to this property.

Ms. Joseph indicated the Town's Consulting Engineer could not attend tonight's meeting, but he reviewed the drainage design; there is a third subsurface drainage infiltration system that has not been soil tested and it is recommended soil testing be done. Roof gutters are being put into chambers and infiltrated so the rate and volume of runoff is mitigated.

Mr. MacLean said it looks, good, but with the situation when there is stormwater permit for a subdivision is very tight for building and any future building mitigation this plan meets it and he agrees with the peer review engineer.

Mr. Pritchard clarified that the roof gutters were originally designed as surface discharge. He opined the mitigation of capturing the roof gutters goes a long way and does provide mitigation. He confirmed that the peer review is saying that the volume and velocity does not exceed what is there to start. Ms. Joseph said yes, but he is asking for additional soil testing at system 3.

Mr. Hannon said the second test pit was done in very close proximity to where the third culvert recharge chamber was added; he asked that the Board consider accepting the soils as there, both test pits are fairly consistent with the types of soils and are fairly pervious. He opined they would not find anything different where the third system is located. Mr. Hannon said the runoff from the deck and some of the subsurface from the patio area is going to that location, it is not a significant amount. None of the roof drains go into TP- 3. Mr. Pritchard said once construction starts it should be looked at. Ms. Joseph said that is not done on any other project. Mr. Pritchard opined there is significant mitigation going on and all the roof drains are being discharged to groundwater.

Mr. Bornstein said he is okay with this plan; he understands the frustration of the homeowner with the patio, but he opined this engineering exercise may be needed for almost every project that comes in. He said for this particular project he is okay with it; the work has been done. He said the Board should consider getting an engineer's statement that it will not materially affect the subdivision stormwater. He is for the project.

Ms. Burbine said she has no issue with it and is all for it; if others want to make changes because it is so tight they need to look to the Fagones on how to do it.

Ms. Lambert said this is a very difficult decision to make because of where you live; she feels badly that the restrictions were never made known to them with all the marketing stuff for the development. She encouraged the residents to take into consideration what has been said tonight in terms of landscaping and BMP's for stormwater. She said the work has been done and she will have to support the project, with the caveat that for anything that anyone does outside they will have to come to the Board with the same type of engineering.

Ms. Joseph asked if the Board wants a statement that the improvements for the swimming pool will not materially change the subdivision drainage; their engineer will have to make that statement and it will be reviewed by the Town's Engineer, but how does it fit in with the engineer when as-builts are turned in, etc. for the entire subdivision.

Mr. Pritchard asked when it was reviewed did the Town's Consultant indicate there where any material differences in the where the water was going other than what is being mitigated. Ms. Joseph said verbally he opined this could be an improvement to the drainage in the subdivision. Mr. Pritchard asked if the Board can ask the Consultant in writing if the distribution of water off this lot isn't materially different than what was submitted. Mr. Pritchard agrees, he also thinks the drainage will be better because there will be no surface runoff from roof. He said what Ms. Joseph is getting at is that the distribution of water will not affect the lot next door to it and the one next door to that from a stormwater design.

Mr. Hannon said the net impervious is decreased by 2,335 sq. ft. for any storm event, all that runoff is being discharged subsurface 4' below grade, the overland flow shedding onto the property or out to other properties in the cul-de-sac is now being recharged below grade and that is part of the peer review process.

Mr. Pritchard said he thinks the question is with the change from pervious to impervious did it change the direction of flow from what was originally designed; what was originally designed for all the lots was a common stormwater management system.

Mr. Fagone said two engineers have looked at it and did not bring that question up and didn't seem to be an issue. Because that question is being asked it is going to potentially cost him more money. He does not know why that has to be asked.

Ms. Joseph said she did ask the question.

Mr. MacLean opined the peer review itself satisfies the question. Mr. Pritchard opined it is a reasonable question.

Mr. Bornstein opined he does not need the formal engineer's statement at this time for a project that doesn't have final aspects of it; the flavor of the peer review is that there will not be a material change to the larger system and is fine for this project, but when future projects come in and final aspects are submitted and everything's online and the HOA is taking over and the builder is gone then there should be an engineering statement. He said eventually with all these little projects they could might cause material changes to the holistic stormwater system. He said this is the first time the Board is dealing something with this, but in the future, there might be issues.

Mr. Pritchard said the Board's charge is not to these individual lots, but the entire subdivision and everything done affects your neighbors.

The Board took an informal vote that a stormwater permit should be issued for a pool for this lot. Ms. Joseph will work on drafting a stormwater permit for the lot; the permit has to be issued by September 9th.

Ms. Lambert moved the Town Planner to issue a stormwater permit for 5 Cold Brook Circle for the installation of a pool in accordance with the drawings submitted. Ms. Burbine seconded the motion; the vote was unanimously in favor.

Minutes **Documents**

- Meeting Minutes 7.28.22

Ms. Burbine moved to approve the meeting minutes for July 28, 2022.

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

Accounting **Documents**

PO #2311353 (\$400.00), PO #2311343(\$450.00), PO #2311339 (\$2,410.00), PO #2311340 (\$1,175.00), PO #2311250 (\$2,315.66), PO #2311236 (\$1,500.00), PO#2311237 (\$1,110.00)

Ms. Burbine moved to approve the requisition of \$1,110.00 to Chessia Consulting for peer review services for Residential Compound Country Way, for \$1,500.00 to Chessia Consulting for peer review services for 7 New Driftway, for \$2,315.66 to Horsley Witten for peer review services for Seaside at Scituate, for \$1,175.00 to Horsley Witten for peer review services for 14-16 Old Country Way, for \$2,410.00 to Horsley Witten for peer review services for 109 Elm Street Lot 1 & 2, for \$450.00 to Horsley Witten for peer review services for the Inly School, for \$400.00 to Horsley

Witten for peer review services for 48/46 Hollett Street, for \$150.80 to Gatehouse Media for legal ad for 14-16 Old Country Way, for \$66.30 to Gatehouse Media for legal ad for 20 Mann Hill Road, for \$68.90 to Gatehouse Media for legal ad for 109 Elm Street, Lots 1 & 2, for \$158.60 to Gatehouse Media for legal ad for 803 First Parish Road and Laurelwood Lot 3.

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

Liaison Reports:

Select Board – reported by Ms. Lambert:

- Capital expense project for the stairs at Minot Beach approved by the Select Board
 - Foreshore protection money

CPC – reported by Ms. Burbine:

- Approved work on Central Field
- Approved work on the Ellis Property
- \$200,000 to finish Damon and Crosby properties

Planning and Development – reported by Ms. Joseph:

- Meeting will for the rest of year will have multiple Public Hearings
- September 22nd two big public hearings opening that evening

Documents

- Email to the Board from Shari Young dated 8.5.22 with meeting agenda for 8.11.22
- Email to the Board from Karen Joseph dated 8.5.22 with meeting materials for Common Driveways, Reports to Town Meeting, 5 Cold Brook Circle.
- Email to the Board from Shari Young dated 8.8.22 with DRAFT meeting minutes from 7.28.22.
- Email to the Board from Karen Joseph dated 8.9.22 with meeting materials for 5 Cold Brook Circle.
- Email to the Board from Karen Joseph dated 8.11.22 with meeting materials for 14-16 Old Country Way

These items were distributed to the Board electronically.

Ms. Burbine moved to adjourn the meeting at 8:51 p.m. Mr. Bornstein seconded the motion; the vote was unanimously in favor.

Respectfully submitted,

Shari Young
Planning Board Administrative Assistant

Ann Burbine, Clerk

Date Approved: August 25, 2022