

SCITUATE PLANNING BOARD MINUTES January 9, 2014

Members Present: William Limbacher, Chairman; Stephen Pritchard, Vice Chairman; Richard Taylor, Clerk; Robert Vogel, Eric Mercer and Robert Greene, 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, Scituate, MA.

Chairman Limbacher called the meeting to order at 7:30 P.M. The meeting was being recorded for airing on the local cable television station.

Documents

- 1/9/14 Planning Board Agenda

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

Continued Public Hearing and Scenic Road Public Hearing – 214 Thomas Clapp Road Flexible Open Space Special Permit & Definitive Subdivision Plan & Scenic Road Assessor's Map/Block/Lot 18/1/2 Applicants/Owners: Fern Properties, LLC

Documents

- Environmental Notification Form for 214 Clapp Road
- Town Comments on the ENF dated 1/7/14
- Staff report for 214 Clapp Rd dated 1/7/14
- Scenic road draft motion
- 1/9/14 Comments from Attorney Watsky on draft decisions forwarded to Board
- 1/9/14 email with Laura Harbottle's response to comments from Attorney Watsky

Deb Keller, Matthew Watsky, Paul Bourque, Joe Iantosca and Dave Iantosca were present for the applicant. Chairman Limbacher asked the applicant for an update since the last meeting, especially with regards to the ENF. Ms. Keller indicated that comments on the ENF were due to MEPA by 1/7/14 and a decision was expected 1/17/14. Chairman Limbacher indicated that the Town Administrator did comment on the project. Mr. Watsky indicated that he has had correspondence back and forth with Ms. Harbottle on the special permit conditions. He said he has also corresponded with Pat Gallivan, Conservation Agent on the conditions. Chairman Limbacher indicated that he would like to go through the Findings of Fact and then the conditions and to wait to vote until after the ENF decision is made by the state.

Mr. Taylor read the draft Findings of Fact:

1. Fern Properties, LLC filed an application for a Special Permit for a Flexible Open Space Development under Scituate Zoning Bylaw Section 550 on July 25, 2013.
2. The property that is the subject of this application is a 17.59 acre parcel at 214 Thomas Clapp Rd. which contains a single family home. The property is in the Residential R-1 Zoning District.

3. The proposed development is within the mapped Priority and Estimated Habitat of the Eastern Box Turtle, designated as a species of "Special Concern" by the Massachusetts Endangered Species Act. They are primarily an upland species but use wetlands for foraging, mating and thermoregulating. A certified vernal pool and buffer areas to two additional certified vernal pools exist on the site. The disturbance of this habitat has been thoroughly reviewed by the state and Conservation Commission and the Planning Board is satisfied that the development will not impact these areas.

Mr. Pritchard questioned this finding. He thought that the Board should wait until the MEPA process is complete and then revisit this finding. The Board concurred and agreed that the language would probably be as is after the MEPA decision. Mr. Pritchard asked that the word "proposed" be removed in the first line.

4. The applicant submitted an Intersection Sight Distance Memorandum stamped by Deborah W. Keller, P.E. indicating sight distance requirements of 350 feet were met. The applicant provided a plan showing removal of trees and vegetation at the entrance to improve sight distance.
5. The proposed stormwater management system has been reviewed by the Town's consulting engineer, David Johnson of Beals and Thomas, Inc. whose comments indicate his concerns have been satisfactorily addressed.
6. As required by Scituate Zoning Bylaw Section 550.4 D, Special Permit Approval, the Planning Board finds based on evidence and information provided by the applicant and reviewed by the board that the Flexible Open Space Development is superior to a conventional subdivision, with the following specific benefits provided to the town consistent with those in the Purpose section:
 - a. Open Space Parcel D is adjacent to Town Conservation Land and provides a buffer to the wetlands containing a certified vernal pool. The parcel contains 8.92 acres of land that will be transferred to the Town of Scituate as permanently protected open space. This parcel contains 6.13 acres of upland and 2.29 acres of wetland. The upland alone is greater than the minimum open space requirement of 5.29 acres.
 - b. The plan shows public access to the open space parcel from the Bates Lane Preserve by a walking trail connected to the Carl Pipes Trail.

Ms. Keller indicated that 2.29 acres of wetland should be 2.79. Mr. Pritchard asked if the project was going to build the walking trail or provide money for the walking trail on the open space land. Mr. Watsky indicated that discussions are that the trail will be laid out with minimal tree cutting. He said they are willing to cut the trees. Ms. Keller indicated the trial will connect to the Litchfield Trail. After discussion it was agreed the language would be Litchfield Trial which is part of the Carl Pipes Trail System.

7. Scituate Zoning Bylaw Section 550.5, Design Standards, Paragraph A, requires protection of important natural and historic features of the land and minimization of the size of developed areas. The property contains a historic home built in approximately 1850, which is proposed to be preserved.

The proposed development will allow creation of Open Space Parcel D, which contains 8.92 acres. This will minimize the size of the developed area.

This paragraph requires protection of a minimum of 30% of the parcel, or 5.28 acres, as open space. 8.92 acres or 50.7% are proposed to be protected. 70% of the minimum open space area

or 3.70 acres must be uplands. 6.13 acres of upland is provided. The plan thus meets the Design Standard of Scituate Zoning Bylaw Section 550.5 A.

Discussion agreed that "proposed" at the end of the third line of the finding would be removed.

8. Scituate Zoning Bylaw Section 550.5 Paragraph B requires that construction and laying out of developed areas respect the natural features of the parcel, applying six guidelines, as follows:
 - a. Guideline 1 encourages site disturbance beyond the paved area of the road to be minimized, and open space maximized. Guideline 2 recommends that open space include buffers to wetlands. These are met by the preservation of open space as indicated in Finding #6 above and by clustering of homes to reduce land clearing.
 - b. Guideline 3 recommends preservation of adjacent trees along, or open space adjacent to, existing roads. Some trees are preserved along Clapp Road by Drainage Parcel C. Drainage Parcel B, also adjacent to Clapp Road, will be a constructed wetland with trees and vegetation designed to enhance stormwater treatment and habitat creation in a former grass depression area.
 - c. Guideline 4 recommends locating water and utilities under road pavement. Where possible, water lines were located under roadways and underground utilities will be used throughout.
 - d. Guideline 5 indicates use of Low Impact Development (LID) drainage techniques. LID drainage was provided in use of rain gardens, a stormwater pocket wetland adjacent to the road and reduced land clearing due to clustering of homes.
 - e. Guideline 6 states curb cuts should be minimized and conflicts with existing traffic should be avoided. One existing curb cut will be used for the development.
9. Scituate Zoning Bylaw Section 550.C requires provision satisfactory to the Planning Board for protection and maintenance of common land and common facilities. The open space in this development will be owned by the Town. A Homeowners' Association will own and maintain the stormwater areas of the site including the rain garden in the center of the cul-de-sac island and the additional rain gardens on site.

Ms. Harbottle indicated it should be Sec 550.5.C. Mr. Watsky said he would like the stormwater features in the road right-of-way to be accepted including the rain garden. Discussion back and forth indicated that the Town has not accepted a rain garden especially in a road right-of-way. The Board did concur that it makes sense for one entity to maintain all the rain gardens on site, but for now it will be left as the Homeowner's Association. Chairman Limbacher indicated that when it comes time for street acceptance the Town can decide. It was decided to leave this fact as is.

10. Scituate Zoning Bylaw Section 550.6, Minimum Requirements, states that the maximum number of lots in a Flexible Open Space Development special permit must not exceed the number which could be created through conventional development of the site. A Conventional Density Sketch Plan for Benjamin Studley Farms dated July 25, 2013 showed that the parcel could be subdivided into nine lots in a manner which complies with the Zoning Bylaw and the standards of the Subdivision Rules and Regulations. This Conventional Density Sketch Plan was approved by the Planning Board on November 26, 2013. This number of buildable lots was shown on the

Flexible Open Space Development Definitive Plan dated July 25, 2013 submitted with the application.

11. Scituate Zoning Bylaw Sections 550.6 A., Lot Area and Width and B., Frontage requires the lot area, width and frontage for each lot to be sufficient to support the dwelling, its accessory structures, septic system and access. Based on information provided by the applicant's engineer, each lot is of sufficient size and width to do so.
12. Scituate Zoning Bylaw Section 550.6 C. requires 15' front, side and rear setbacks in a Flexible Open Space Development, with setbacks from the perimeter of the development equal to those of the underlying zoning (30' rear setbacks required in R-1.) Building envelopes shown on Sheet 5 show setbacks for Lots 1 – 9 which meet the requirements of 550.6 C.
13. Scituate Zoning Bylaw Section 550.6 D requires no more than one single- or two-family dwelling and accessory structures on each lot. No more homes can be built on any lot because Scituate Zoning Bylaw prohibits construction of more than one single- or two-family home on a residential lot (see Section 430.1.)
14. Scituate Zoning Bylaw Section 550.6 E requires open space to be conveyed to the Town, a conservation trust, or protected through a deed restriction accepted by the Massachusetts Office of Energy and Environmental Affairs. The open space shown on the plan will be conveyed to the Town of Scituate.
15. Scituate Zoning Bylaw Section 550.6 F requires restriction of further subdivision of the lots shown on the plan with a note so stating added to the plan. The special permit will include a condition that prior to the start of construction, a deed restriction shall be recorded stating that no lot in the Flexible Open Space Development may be further divided or subdivided into additional building lots, and a note shall be added to the plan to reference this condition.
16. Scituate Zoning Bylaw Section 550.6 G permits the Planning Board to specify roadway, drainage and utility design requirements deemed necessary to ensure adequate access, lessen congestion, provide proper drainage, protect public safety or provide for water, sewage, utilities or other municipal services. The applicant has agreed to provide easements for pedestrian access to the open space.

It was discussed that there will be no easement from the residential lots to the open space. The last sentence was agreed to be eliminated.

17. Based on these findings, the Flexible Open Space Development is superior to a conventional subdivision, and meets the requirements for a Flexible Open Space Development, Section 550 of the Zoning Bylaw.

The Board did not vote on the Findings of Fact, but went on to discuss the draft conditions.

Mr. Taylor read the conditions as follows:

1. All construction shall be according to a plan by McKenzie Engineering Group, Inc. titled Benjamin Studley Farm, A Definitive Flexible Open Space Development Plan, dated July 25, 2013, with revisions through November 19, 2013, with any additional revisions needed to conform to these conditions.

2. Construction shall meet all requirements of the DPW, Fire Department, Building Department, Board of Health, Conservation Commission, MEPA, the Natural Heritage and Endangered Species Program, the State Building Code and all applicable federal, state and local laws and regulations.
3. All replacement of or connection to Town drainage and installation of all water mains and appurtenances shall be performed according to the specifications of the Scituate DPW.
4. The total number of residential dwelling units on the site shall not exceed nine. There shall be no further division or subdivision of any lot shown on the plan for the purpose of construction of an additional dwelling.
5. Access to all lots shall be over the proposed subdivision road. There shall be no further extensions of the road or attachments of any other roads or Common Driveways to the proposed subdivision road.
6. The drainage system shall be maintained according to the Long Term Best Management Practices Operation & Maintenance Plan and Pollution Prevention Plan, which shall be included in the Homeowners' Association Agreement.

Mr. Pritchard asked for the date of the agreement. Ms. Keller indicated 9/26/13.

7. All electrical, telephone, cable and similar utilities shall be located underground.
8. Lighting shall be installed as shown on the plan, subject to the approval of the Board of Selectmen. Light fixtures shall not exceed 14'6" in height.
9. Prior to installation of an entrance sign, a sketch showing dimensions, location materials and color shall be provided to the Town Planner.

A comma is needed after location.

REQUIRED PRIOR TO ENDORSEMENT OF THE DEFINITIVE PLAN:

10. The walking trail easement shall be removed from the Subdivision and Easement Plan. The following language shall be added as Notes 2. and 3. on this Plan:
 - An easement shall be granted to allow a Homeowner's Association or its designee access to inspect, maintain and repair the stormwater management system, and to allow the Town access in case of an emergency. This shall include an easement a minimum width of 20' which shall allow access from the subdivision road to the detention basin over Lots 2 and 3.
 - An easement shall be granted to the Town of Scituate allowing the right to construct, repair, replace, extend, operate, use and maintain all streets, water mains, and all surface and subsurface stormwater drains in, through or under the streets and easements, should the Town vote to accept the subdivision road as a public street. The above shall not be construed to relieve the applicant, and his successors in title, to the ownership of a portion of the land or any street within the subdivision, nor diminish in any way, his responsibility to complete all construction as required by the applicant's agreements with the Town and to thereafter maintain all streets and utilities in satisfactory condition until they are accepted by the Town.

Ms. Keller said the note will be removed in response to Ms. Harbottle's comment. Mr. Watsky said the easement is 25 feet so language should change. Chairman Limbacher said the plan over achieves as the minimum is 20 feet so the language can remain.

11. The Non-Disturbance Buffer shown on the Grading and Drainage plan provides habitat and a buffer to abutters. This Non-Disturbance Buffer shall be delineated on the ground and the Landscape Plan shall be revised to include this delineation as follows:

Concrete bounds shall be shown at the intersection of the buffer and individual lot lines, and at a distance of no more than 50' along the buffer. The bounds shall extend 4" above grade. Clumps of three to four evergreen shrubs shall be added to between the bounds along the no-disturb boundary.

The applicant said there is no such buffer. Ms. Harbottle indicated that it technically shows up as a limit of work on the plan and the Ivas report on the turtle habitat suggested this could be a condition. Mr. Watsky said the Ivas report is irrelevant to the Planning Board. He expressed concern about the limit of clearing being made a permanent non-disturb bounded zone as this buffer is different from buffers previously approved by the Conservation Commission, bounding costs a lot of additional money and it is further restricting more of the land area for development. Mr. Watsky said that only 30% of the site is required to be open space in a FOSD. He said the applicant is already retaining over 50% and suggests this inappropriate. Ms. Harbottle said that the Board has done this in the past as the area would have a different drainage characteristic as lawn versus the wooded condition that was calculated in the drainage calculations. Ms. Keller suggested that requiring a Stormwater Permit of individual lot owners who wanted to expand in the backs of the lots would be reasonable. She indicated there could be a 10% increase, which may not change the numbers much. Mr. Pritchard indicated that in the future, all property that is not preserved should be calculated as cleared for stormwater purposes. Ms. Harbottle indicated that the Board is allowed to look at all sources of information presented for a project. She indicated that she can see not needing bounds on the open space parcel and open space easement. Mr. Watsky indicated this is not what the applicant would expect in a FOSD. The Board put a HOLD on this condition for the time being.

12. A copy of the revised Definitive Flexible Open Space Development Plan shall be provided to the Planning Board a minimum of five business days prior to expected endorsement of the Definitive Plan.
13. A Homeowners' Association Agreement including the following items shall be provided to the Planning Board no less than eight business days prior to endorsement of the Definitive Plan:
 - a. A requirement that fertilizers shall be restricted to organic fertilizers only. Pesticides and herbicides shall be used sparingly and applied by a professional applicator licensed under the Massachusetts Department of Agriculture. The exterior storage of fertilizers, herbicides, fertilizers and hazardous materials is prohibited.

Mr. Watsky said that they have a permanent condition with the Conservation Commission on fertilizers and he does not want a conflicting condition. He also expressed concern about use of only organic fertilizers and the need for a professional applicator. He said this condition would prohibit a homeowner from spreading their own organic fertilizer and is unreasonable. The Board took this condition under advisement.

- b. A requirement that from the time the developer has ceased maintenance, a Homeowner's Association shall maintain and repair all components of the stormwater management system, roadways (until such time as the road may be accepted by the Town,) the bus waiting area, landscaping in the road layout, and bounds in Condition 11 above.
 - c. A requirement that the Association maintain an account always containing a minimum of one year's costs for this maintenance. A contractor's estimate of this maintenance and proof of the available funds in this account shall be provided to the Planning Board with the Agreement and annually on the first of the year.
 - d. A description of the non-disturb areas and their restrictions and a plan showing their location.
 - e. A requirement that the developer notify contractors, builders and real estate agents that membership in a Homeowners' Association is required to be disclosed to all prospective buyers, and shall make copies of the Homeowner's Association Agreement available to be provided to all prospective purchasers of lots in the development.
 - f. The Town Planner shall be added to the Town of Scituate contact information on page 1 of the Construction Phase Best Management practices.
 - g. A requirement that the Homeowner's Association notify the Planning Board of the name, address, phone no. and e-mail of the trustees within seven days of their election, and to provide an annual report of their maintenance activities to the Planning Board by January 1 of each year.
14. This approval is subject to the Selectmen's acceptance of permanently protected open space in the care and custody of the Conservation Commission for extension of the Bates Lane Preserve. This acceptance shall be obtained prior to the endorsement of the Definitive Plan.

Mr. Watsky said that this condition is impossible. The applicant has agreed to confirm that the Selectmen desire the land. Ms. Harbottle said this is a language issue that can be addressed.

15. The applicant shall provide a draft Conservation Restriction on the Open Space Parcel to the Planning Board with a copy to the Conservation Commission, and shall obtain and incorporate comment from the Conservation Commission on the draft a minimum of eight business days prior to the expected endorsement of the Definitive Plan. Prior to this date, the applicant shall provide the Planning Board with sufficient funds for review of the final draft by Town Counsel.

Mr. Watsky questioned if a conservation restriction is absolute. He said he believes the Findings of Fact correctly state the issue. He questioned putting a state conservation restriction on land the Town will accept. He said putting the land in conservation is enough. Chairman Limbacher said he would look into the conservation restriction matter, but indicated that to the extent it was required the applicant should draft and/or pay for the restriction.

REQUIRED PRIOR TO PRE-CONSTRUCTION CONFERENCE

16. Prior to the pre-construction conference, the following must be provided to the Planning Board:
- Copies of the NPDES Permit, Stormwater Pollution Prevention Plan and Conservation and Management Permit.
 - A check to cover the cost of inspections by the Town's consulting engineer.

- A copy of a recorded deed restriction stating that no lot in the Flexible Open Space Development may be further divided or subdivided into additional building lots.
 - Construction schedule including approximate dates for items in Subdivision Rules and Regulations 9.1.3.
17. A pre-construction conference shall be held with the applicants, their representatives, their engineer, the site contractor(s), the Town Planner, the Planning Board's consulting engineer, Conservation Agent and other representatives of the Town as the Board feels are necessary. A preconstruction conference will not be scheduled until all items required under Condition 16 have been submitted. A list of all contractor contacts, including names and telephone numbers, shall be provided to the Planning Board and DPW. At least one telephone contact shall be available 24 hours per day in the event of an emergency.

REQUIRED PRIOR TO THE START OF CONSTRUCTION

18. The boundary of the non-disturbance area shall be staked in the field under direction of a surveyor, and notification given to the Town Planner a minimum of three business days prior to the start of construction.

REQUIRED DURING CONSTRUCTION

19. Construction work shall not begin prior to 7 AM weekdays and 8 AM on Saturdays, and shall cease no later than 5PM. No construction shall take place on Sundays and legal holidays.
20. All earth moving operations shall only occur while erosion and sedimentation control measures approved by the Town Planner after consultation with the Conservation Agent, are in place. Such control measures shall remain in place until the Board's consulting engineer determines, after consultation with the Town Planner, that the danger of erosion or sedimentation no longer exists.

REQUIRED PRIOR TO ISSUANCE OF THE FIRST BUILDING PERMIT

21. Prior to application for building permits, septic system grading will be reviewed with the Board of Health, to assure septic systems will not interfere with drainage either within the development or onto abutting properties.
22. A copy of a deed conveying Open Space Parcel D to the Town of Scituate for the care and custody of the Conservation Commission shall be provided to the Planning Board prior to the issuance of a building permit on any lot.

ADMINISTRATION

23. All time periods referenced in this document for completion of conditions shall be tolled in case any appeals are taken.
24. This Special Permit shall be void if it is not recorded at the Registry of Deeds within 45 days of expiration of the appeal period following approval of this Special Permit. The Applicant shall provide proof that the Special Permit was recorded to the Planning Board.
25. Within three months of the date of recording, copies of the approved Definitive Flexible Open Space Development Plan, the special permit, the Homeowners' Association Agreement shall be provided to the Planning Board.

26. This Special Permit shall lapse within two years from the date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A, Section 9.

The Board did not discuss further than Condition 16 as time for the hearing did not permit.

Mr. Taylor moved to accept the applicant's request to continue the public hearings for the Definitive Subdivision Plan, Flexible Open Space Special Permit and Scenic Road/Public Shade Tree Hearing for Benjamin Studley Farm at 214 Clapp Road until January 30, 2014 at 7:30 pm and to continue the time for action for the Definitive Subdivision Plan, Flexible Open Space Special Permit and Scenic Road/Public Shade Tree Hearing until February 21, 2014. Mr. Pritchard seconded the motion. Motion was unanimously approved.

**Continued Public Hearing and Scenic Road Public Hearing – 305 Country Way
Flexible Open Space Special Permit & Definitive Subdivision Plan & Scenic Road
Assessor's Map/Block/Lot 37-2-2 & 37-8-13R
Applicants/Owners: Douglas Sheerin/Kristen DeGaravilla**

Documents

- Cover letter from Morse Engineering dated 12/22/13, Appendix F revised 11/14/13 and revised plan set for White Ash Farm Sheets 1 – 11 with revisions through 12/4/13.
- Letter from lance Van Lenten dated 12/5/13
- Revised transmittal letter to departments dated 12/24/13
- Email from Laura Harbottle to Greg Morse dated 1/2/14
- Revision 6 Engineering Peer Review Letter from Chessia dated 1/6/14
- Summary of Issues 305 Country Way 1-6-14 by Chessia Consulting
- Soil pits for basin received 1/6/14
- Email from lance Van Lenten to Laura Harbottle dated 1/9/14 and her response
- Draft Scenic Road approval, waivers, special permit Findings of Fact and Conditions

Greg Morse, Doug Sheerin and Mike Hayes were present for the applicant. Chairman Limbacher asked Mr. Morse the status of the items changed since the last meeting. Mr. Morse indicated his homework was done and the revised plans and letter shows that all of the DPW comments have been addressed. These included changes to details including the fire hydrant and water line, but no substantial changes to the layout were made. Mr. Morse said he incorporated all of the changes Mr. Chessia indicated and said that Mr. Chessia primarily agreed with them. He indicated he revised the Landscape Plan by adding plants at Country Way and the buffer. He indicated that he also showed a section at sta. 1 + 50 with the fence. He said he met with Kevin Cafferty and Ms. Harbottle on the Country Way drainage. Mr. Morse said that no specific drainage improvements were suggested and the applicant would agree to installation of 2 hoods in the catchbasins that discharge to the tributary. He indicated that the applicant was unsuccessful in obtaining a sight line easement from the abutter. He said the plan complies with the sight distance for the posted speed, but not higher speeds. He suggested that signage could be a condition. Mr. Morse also indicated that the revised conservation restriction language has been submitted.

Ms. Harbottle indicated that there have been numerous sessions of the public hearing and the site is a difficult site. She said one of the open issues is the location of the open space versus the developed area. She said some of the 150 foot buffer is located in the drainage easement as well as the actual right-of-way of the cul-de-sac. She asked the Board to look at the issue since the open space will be

conveyed to the Town. She asked the Board to consider not having the applicant landscape plantings in the open space. She indicated that the area should be left to revegetate naturally and plantings should go in the roadway layout. She indicated that DPW sent a memo indicating they would like a Stormceptor installed for the existing drainage on Country Way. Ms. Harbottle indicated that the sight distance easement was still unresolved. She indicated that the cross section of the slope and fence shows the PVC white fence at the bottom of the slope. She said the desire is for the open space land to not have public access as it is tributary to the water supply. She said the type and location of the fence should be resolved. She also said there are a few waivers left to discuss including the granite curb and location of the street trees.

Ms. Harbottle indicated that an abutter has brought the tributary issue back to the Conservation Commission. She said the Commission denied the determination and it has been appealed to DEP. She said there will be a site visit by DEP on January 16, 2014. Mr. Van Lenten said that the purpose of the filing was to have the Conservation Commission make a determination of the location of the tributary that flows through the site. Mr. Van Lenten indicated he would provide digital copies of the filing. Ms. Harbottle indicated that if the road is within 150 feet of the tributary, the project would need to be redesigned. Mr. Morse said that the Commission upheld the previous Determination. He said DEP will not look at the tributary as they do not have jurisdiction. He said they would look at the intermittent stream which will not affect the project. He said it would take DEP 30 to 60 days to act from the site visit time.

There was discussion on the stream versus the tributary. Mr. Morse acknowledged that a tributary runs all through the site and there is a 150 foot buffer from that shown on the plans. He said the buffer is shown off the drainage ditch. Mr. Morse said that there are no further wetlands on site other than what was delineated and approved. Mr. Van Lenten said that the appeal is based on correcting the error of the altered stream and the wetlands at the origin of the stream. He said the Commission did not respond correctly in their opinion so they filed an appeal. He said that DEP can review all of the resources for the full stream. Chairman Limbacher said there are perceived errors, but the Board would wait for DEP to do the site visit. Discussion ensued about surveying and the flag locations. Mr. Morse said DEP will review the field locations and not do a survey. Mr. Mercer summarized that DEP will look at the physical features in comparison to the flags and decide from there.

Chairman Limbacher directed that the Board would move on to go through open items. Mr. Chessia summarized his review indicating that most of the issues remaining are up to the Board through the Flexible Open Space Development Bylaw. He said the Landscape Plan, waivers and sight distance should be reviewed. He indicated the temporary sediment basin is acceptable for type and size, but not the method by which it was determined. Mr. Chessia said a waiver is needed for the proposed road alignment to Black Beech Road. He said not enough information is shown, but graphically the alignment is off by about 8 feet. Mr. Morse indicated that Mr. Chessia is correct. He said the pavements are centered in each right-of way, but the right-of-ways are not centered. He said the center line of Black Beech pavement corresponds with the centerline of the proposed subdivision road. Mr. Chessia thought that cars would not be affected and that technically there should be a waiver. Mr. Pritchard asked about the waiver on the soil testing. Mr. Chessia said that permeability testing was not done. Mr. Morse indicated that an email was received from the Planning Board Assistant indicating that the Board of Health agent could serve as the witnessing agent.

Chairman Limbacher asked about the sight distance easement. Mr. Hayes said they met with the abutter who has not responded to their requests. He indicated that the applicant has assumed that no

response means they are not willing to grant an easement. He indicated that the area remains clear at this time. In lieu of the easement, Mr. Morse said the applicant is willing to provide mitigation consisting of two speed limit signs or intersection ahead signs. Mr. Morse also said that if the sight distance is measured from the opposite side of the proposed subdivision road then sight distance is obtainable. Mr. Hayes said that by moving the sight triangle, sight distance could be provided. Mr. Chessia indicated that sight distance is an AASHTO standard and the rules should not be changed. He suggested talking to the Traffic Rules Committee. Mr. Pritchard did say that the sight distance is acceptable at 30 mph, but not 40 mph. Mr. Morse indicated that if the road narrows due to the future path along Country Way, then people will slow down. Mr. Vogel suggested that this is just a 3 home subdivision. Chairman Limbacher reaffirmed that there was a house there before. Ms. Harbottle indicated that it will be a month before Traffic Rules meets again.

Chairman Limbacher said that the Board needs to decide on the fence location and design. Mr. Taylor asked if the fence were moved to the top of the slope, would the applicant maintain the other side. The Board indicated that the applicant would not be required to maintain the other side. Mr. Morse indicated that the applicant still would like a split rail fence and they are proposing shrubs in front of the fence for further protection. He said that they do not feel the yards will encroach on the fenced area and the Conservation Commission regularly approves wooden split rail fence. Ms. Harbottle said that the length of the fence is also important. Mr. Pritchard said he would like it to go to the back of Lot 3 where it ties into the 150 foot no disturb line. The Board agreed that 5 feet from the edge of the pavement would be best. Mr. Vogel and Mr. Taylor both thought that the shrubs were integral to the fence and suggested locating them behind the fence on the buffer side. Mr. Morse suggested if the fence is to keep people out of the 150 foot buffer area, that is not consistent with the purpose of the bylaw to prevent earth and vegetation removal. Ms. Harbottle indicated that the fence will separate the developed area. She indicated the applicant needs to have some conversation with the Board of Selectmen to determine if they would like the land. She said the Selectmen as the Water Commissioners could decide if they want people to access the area. She said the Water Department would like no public access to the area. The Board agreed that the split rail fence was fine and it should extend to the property line of Lot 3 at the limit of clearing.

The Board discussed the remainder of the waivers as indicated below:

Section 7.2.8 Requirement: Vertical granite curbing shall be installed along the edge of the roadway. Waiver: To allow construction of the roadway utilizing 12" bituminous concrete berm along each edge of the road. Mr. Vogel indicated he thought bituminous berm was appropriate here with granite curbing at the entry and drainage structures. Mr. Vogel moved to require vertical granite curbing where the road meets Country Way and at any other drainage structure and waive it elsewhere in the subdivision. Mr. Taylor seconded the motion. Motion was unanimously approved.

Section 8.3.10 Requirement: Street trees shall be provided on each side of the street. Waiver: To allow street trees on one side of the road only as it is not feasible to plant trees on the westerly side of the road due to the slope and the 150' tributary buffer. The westerly side of the road is proposed to be restored as natural vegetation. Mr. Vogel moved to allow the waiver as requested. Mr. Taylor seconded the motion. Motion was unanimously approved.

Mr. Vogel moved to accept the alignment of the road as shown with the centerline of the proposed subdivision road pavement lining up with the centerline of Black Beech Road pavement as Black Beech Road is in the center of its right-of-way. Mr. Pritchard said the Board should do a waiver so precedent is not set.

Section 7.2.1 2.b. Requirement: Streets entering opposite sides of a major street shall be laid out either directly opposite one another, or with a minimum offset determined on the basis of a traffic analysis by a qualified professional engineer registered in Massachusetts. The analysis shall include, but not be limited to, evaluation of sight distances, horizontal and vertical alignment of the existing and proposed streets, and prevailing speeds on the existing street. In any case, the offset shall not be less than 250 feet. Waiver: To allow street pavement centerlines and not right-of ways to be aligned. Mr. Taylor moved to grant the waiver from Sec 7.2.1 2.b. Mr. Vogel seconded the motion. Motion was unanimously approved.

Section 6.3.4.2a Requirement: Soil evaluation in the area of the infiltration basin evaluated by a qualified soil scientist or Registered Professional Engineer and witnessed by the town's agent. Waiver: Waiver the requirement for soil evaluation in the infiltration basin be witnessed by the town's agent as testing was done by a DEP Soil Evaluator and Registered Professional Engineer. Mr. Taylor moved to approve the waiver from Sec 6.3.4.2a of the Town of Scituate Subdivision Rules and Regulations as written. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Mr. Vogel moved to accept the use of the PVC split rail fence except it should extend to the back of Lot 3 to the limit of clearing at the lot line and the shrubbery shown shall be on the open space side of the fence. The fence is to be aligned 5 feet back on the northwest side of the street and property. Mr. Mercer seconded the motion. Motion was unanimously approved.

Chairman Limbacher indicated that time has run out for this session and the meeting will need to be continued until after the DEP site visit and suggested January 30, 2014.

Mr. Taylor moved to accept the applicant's request to continue the public hearings for the Definitive Subdivision Plan, Flexible Open Space Special Permit and Scenic Road/Public Shade Tree Hearing for White Ash Farm Lane at 305 Country Way until January 30, 2014 at 9:00 pm and to continue the time for action until March 21, 2014. Mr. Mercer seconded the motion. Motion was unanimously approved.

**Public Hearing – Accessory Dwelling Special Permit – 275 C J Cushing Highway
Assessor's Map/Block/Lot 47/02/22B
Applicant/Owner: Peter and Lorraine Bongarzone**

Documents

- Application, Floor plan, foundation plan, site plan and transmittal for the accessory dwelling for 275 C J Cushing Hwy received 11/15/13
- 11/21/13 comment from Board of Health
- 11/26/13 email from Patrick Gallivan, Conservation Agent on pervious paving parking

Peter Bongarzone was present for the applicant. He said he would like to put a one bedroom apartment in the basement for his son. He said it is a walkout basement with a 6 foot slider door. He said the front door provides the second means of access as it has a door to the basement. He said the windows are also 5'-6" to provide secondary egress as well. Mr. Bongarzone said that the driveway for the primary and accessory dwelling will now be pervious pavers. He clarified that the back out motion is for his driveway to the common driveway and traffic exits the common drive to Rte. 3A in a forward motion. Chairman Limbacher inquired if all the drainage was complete. Ms. Harbottle

said she previously observed some erosion and the swale was not completed. Mr. Bongarzone said this work was done and the only item left to complete was the topcoat of the common drive.

Ms. Harbottle indicated that the 850 sq. ft. accessory dwelling was below the 40% maximum as required in the bylaw in response Board members questions. She indicated it is hard to do a right turn onto Rte. 3A from the common drive and suggested a right turn only sign. She indicated that the applicant has previously asked her to visit the site to review possible tree locations adjacent to Rte. 3A. She said there was no room in front of the detention basin and the road right of way for trees to be located. Mr. Vogel concurred as he thought the sight distance could be impacted. Chairman Limbacher indicated he was initially concerned about the density of the site, but reasoned that if his son was going to live there it would be the same density.

Mr. Taylor moved to make the following Findings of Fact concerning the accessory dwelling at 275 Chief Justice Cushing Hwy.

1. According to Town of Scituate Assessor's records, the property at 275 C J Cushing Hwy is owned by Old Webster Street, LLC. Peter J. & Lorraine P. Bongarzone have signed a Purchase and Sales Agreement to purchase the property. (P & S dated to transfer was extended to 1/30/14)
2. On November 15, 2013, Mr. Bongarzone applied for a special permit for an accessory dwelling within a single family house.
3. According to the floor plans submitted by the applicant, the first floor and the second floor contain 2,667 sq. ft. The application indicates that the accessory dwelling at the basement level contains 850 sq. ft. and is 32% of the square footage of the primary dwelling which is less than the 40% maximum in the bylaw, so the area requirements of Section 530.2F are met. The accessory dwelling is also subordinate in size to the primary dwelling.
4. The property is located in the Residential R-2 zoning district. The lot area is 24,797 sq. ft. of which 24,608 sq. ft. is upland. The existing footprint of the home is proposed to be unchanged. The existing dwelling has four bedrooms. The proposed accessory dwelling will be located in the basement and have one bedroom.
5. The site plan shows a two car attached garage and driveway of pervious pavers. A new 10 foot wide by 55 foot long driveway of pervious pavers will be constructed for the accessory dwelling. There appears to be adequate space to provide two parking spaces for the accessory dwelling and ample parking for the primary dwelling.
6. Only one accessory dwelling is contained on the lot and it appears to be a separate housekeeping unit.
7. The applicants have submitted a signed, notarized statement that they will live on the property.
8. The application meets the standards of Scituate Zoning Bylaw Section 530 for an Accessory Dwelling Special Permit.

Mr. Mercer seconded the motion. Motion was unanimously approved.

Mr. Taylor moved to approve the Accessory Dwelling Special Permit for 275 Chief Justice Cushing Highway with the following conditions:

1. The applicant shall meet all requirements of the Building Department, Board of Health, Department of Public Works, Fire Department, Water Department and other town agencies.
2. Except for any changes necessary to meet these conditions, any construction shall conform to plans entitled
 - a. Foundation Plan for Jay Ellis 275 Chief Justice Hwy by Rockwood Design, Inc dated 6/28/13;
 - b. Foundation Certification Plan for Lot 1 Portion of 277 – 283 Chief Justice Cushing Hwy dated 8/7/13 by McKenzie Engineering Group, Inc. for EBC Building Corporation; and
 - c. A sketch plan received 11/19/13 from the applicants showing pervious pavers for the primary and accessory driveways.
3. The property at 275 Chief Justice Cushing Hwy shall contain a maximum of two dwelling units, the existing dwelling and the accessory dwelling as proposed. The footprint, number of bedrooms and/or square footage shall not be increased without prior approval of the Planning Board. The number of bedrooms in the accessory dwelling is limited to one.
4. The owner of the property shall reside on the property as long as it contains an accessory dwelling unit.
5. The Planning Board will require an on-site inspection for conformance to the approved plans and these conditions prior to a Certificate of Occupancy being issued for the accessory dwelling.
6. No on-street parking shall be permitted at any time. Construction vehicles/equipment shall not idle, nor be parked, stored, loaded or unloaded in the street.
7. Ample parking for the primary and accessory dwelling will be provided as shown on the proposed plan. Pervious pavers must be used for both driveways as approved by the Conservation Commission. Future property owners shall be notified of this condition.
8. The detention basin must be stabilized and the swale on the south side of the driveway must be completed prior to an occupancy permit for the accessory dwelling.
9. This Special Permit shall be void if it is not recorded at the Registry of Deeds within 90 days of the date of filing with the Town Clerk. The owner shall provide proof of this recording to the Planning Board.
10. This Special Permit shall lapse within two years from the date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A, Section 9.

11. The Planning Board reserves the right to review compliance with this special permit at any time. This Special Permit shall terminate if the use is not in accordance with this decision and its conditions.
12. At the request of the Planning Board, an affidavit shall be provided that either the primary or accessory unit is owner occupied.
13. At each transfer of ownership of the property, a new affidavit that the owner resides on the property shall be provided to the Planning Board within 30 days of the transfer.

Mr. Pritchard seconded the motion. Motion was unanimously approved.

Public Hearing – Accessory Dwelling Special Permit – 65 Hollett Street

Assessor’s Map/Block/Lot 20/05/02

Applicant/Owner: Jeffrey F. & Barbara Lydon

Documents

- Application, Floor plan, site plan and transmittal for the accessory dwelling for 65 Hollett Street received 11/26/13
- 12/3/13 comment from Board of Health
- 12/8/13 comment from the Water Department
- 12/18/13 email from Jennifer Sullivan to Laura Harbottle
- Revised Sheets A-1 and A-2 dated 12/9/13

Mr. Mirabito was present on behalf of owner/applicant Barbara and Jeffrey Lydon. He indicated the applicants would like the mother-in-law to reside in the accessory dwelling located inside of the existing structure. Mr. Mirabito indicated the accessory dwelling will be 724 sq. ft. and a notarized statement was submitted that the owner will occupy on of the dwelling units. He said the driveway will be expanded to allow room for four cars. Mr. Mirabito said that there will be no change to the number of bedrooms. In response to a question from the Board, he said there are four existing bedrooms, but a revised plan was submitted to show there will be three bedrooms and an office with a 4’-0” wide opening.

Ms. Harbottle indicated that there is no change in the footprint of the home. She said the size of the accessory unit at 724 sq. ft. is below the 750 sq. ft. in the bylaw. She indicated that one bedroom will be decommissioned with a 4’-0” wide opening which was satisfactory to the Board of Health so there are no issues.

Mr. Taylor moved to make the following Findings of Fact concerning the accessory dwelling at 65 Hollett Street.

1. According to Town of Scituate Assessor’s records, the property at 65 Hollett Street is owned by Jeffrey F. and Barbara L. Lydon:
2. On November 26, 2013, the applicants applied for a special permit for an accessory dwelling within a single family house.

3. According to the application and floor plans submitted by the applicant, the proposed accessory dwelling contains 724 sq. ft. This is less than the 750 sq. ft. maximum allowed in the bylaw, so the area requirements of Section 530.2F are met.
4. The property is located in the Residential R-2 zoning district. The lot area is 22,225 sq. ft. The existing footprint of the home is proposed to be unchanged. The existing dwelling has three bedrooms. There will be no increase in the number of bedrooms in the dwelling as there will be a reduction of bedrooms on the second floor from three to two.
5. The site plan shows that the driveway will be expanded to accommodate four 9' x 18' parking spaces on a bituminous concrete surface. There appears to be adequate space to provide two parking spaces for the accessory dwelling and ample parking for the primary dwelling.
6. Only one accessory dwelling is contained on the lot and it appears to be a separate housekeeping unit.
7. The applicants have submitted a signed, notarized statement that they will live on the property.
8. The application meets the standards of Scituate Zoning Bylaw Section 530 for an Accessory Dwelling Special Permit.

Mr. Pritchard seconded the motion. Motion was unanimously approved.

Mr. Taylor moved to approve the Accessory Dwelling Special Permit for 65 Hollett Street with the following conditions:

1. The applicant shall meet all requirements of the Building Department, Board of Health, Department of Public Works, Fire Department, Water Department and other town agencies.
2. Except for any changes necessary to meet these conditions, any construction shall conform to plans entitled :
 - a. Sheet A-1 First Floor Plan by Custom Home Designs dated 11-21-13 and revised on 12-9-13 for the Lydon Residence showing the proposed 724 sq. ft. accessory dwelling;
 - b. Sheet a-2 Second Floor Plan by Custom Home Designs dated 12/9/13 for the Lydon Residence showing two bedrooms and an office on the second floor.
 - c. Site Plan for Accessory Dwelling at 65 Hollett Street in Scituate, MA by Ross Engineering Company, Inc. dated 11-22-13 for Jeffrey F. and Barbara L. Lydon;
3. The property at 65 Hollett Street shall contain a maximum of two dwelling units, the existing dwelling and the accessory dwelling as proposed. The footprint, number of bedrooms and/or square footage shall not be increased without prior approval of the Planning Board. The number of bedrooms in the accessory dwelling is limited to one.
4. The owner of the property shall reside on the property as long as it contains an accessory dwelling unit.

5. The Planning Board will require an on-site inspection for conformance to the approved plans and these conditions prior to a Certificate of Occupancy being issued for the accessory dwelling.
6. No on-street parking shall be permitted at any time. Construction vehicles/equipment shall not idle, nor be parked, stored, loaded or unloaded in the street.
7. Ample parking for the primary and accessory dwelling will be provided as shown on the proposed plan.
8. This Special Permit shall be void if it is not recorded at the Registry of Deeds within 90 days of the date of filing with the Town Clerk. The owner shall provide proof of this recording to the Planning Board.
9. This Special Permit shall lapse within two years from the date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A, Section 9.
10. The Planning Board reserves the right to review compliance with this special permit at any time. This Special Permit shall terminate if the use is not in accordance with this decision and its conditions.
11. At the request of the Planning Board, an affidavit shall be provided that either the primary or accessory unit is owner occupied.
12. At each transfer of ownership of the property, a new affidavit that the owner resides on the property shall be provided to the Planning Board within 30 days of the transfer.

Mr. Mercer seconded the motion. Motion was unanimously approved.

Accounting

Documents

- PO # 1404084(\$1,265.00), PO # 1404085(\$2,225.00), PO # 1404243(\$41.60)

Mr. Taylor moved to approve the requisition of \$1,265.00 to Chessia Consulting Services, LLC for engineering peer review for 305 Country Way and \$2,225.00 to Chessia Consulting Services, LLC for engineering peer review for 50 Country Way and for \$41.60 to WB Mason for office supplies. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Minutes

Mr. Mercer moved to approve the meeting minutes of 12/19/13 and 10/10/13. Motion was seconded by Mr. Pritchard. Motion was unanimously approved with Mr. Limbacher not voting on the 12/19/13 meeting minutes.

Town Planner Report

Ms. Harbottle indicated that there were five responses to the RFP for consulting engineers. She indicated that all five will be interviewed by Chairman Limbacher, Kevin Cafferty and herself and recommendations will be discussed with the Board.

Liaison Reports

Chairman Limbacher indicated that the Board will be receiving copies of a proposal for a trail on Tilden Road that will go up Beaver Dam Road to the ball fields. He indicated it is a multiphased project before the CPC Committee. He also indicated that the MaxTracks Newsletter the Board received contains information on the Damon property that is before the CPC to purchase as well. Ms. Harbottle indicated that the EDC will have a budget for next year and that the market study report is under revision and will go to the Selectmen in February or March. She indicated she hopes the report will be public by Town Meeting as it affects the Village Business Overlay District (VBOD). Ms. Harbottle also said that Larry Bluestone has submitted a proposal for diagrammatic illustrations for the VBOD. The Board unanimously agreed that they supported this proposal. The Board also congratulated Ms. Harbottle on her award for the Sea Level Rise project.

Old Business and New Business

Documents

- Email from MAPC dated 12/23/13
- Proposed Water Resource Protection District Map 12/13
- Proposed changes to the Zoning Bylaw for Water Resource Protection District
- Proposal for graphics for Village Business Overlay District

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 10:45 p.m. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk

1/ 23 /14
Date Approved