

**Scituate Planning Board, April 25, 2013**  
TOWN OF SCITUATE MASSACHUSETTS

SCITUATE PLANNING BOARD

MINUTES

April 25, 2013

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

Chairman Limbacher called the meeting to order at 7:35 P.M. He announced the meeting was being audio recorded and asked if there were any other recordings being taken. The meeting was being recorded for airing on the local cable television station. Mr. Mercer arrived at 7:38 P.M.

Documents

- 4/25/13 Planning Board Agenda

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

Public Hearing – Accessory Dwelling Special Permit – 7 Pennycress Road

Assessor's Map/Block/Lot 21/5/18

Applicants/Owners: Sean & Melissa O'Brien

Documents

- Transmittal to Town Depts. on Accessory Dwelling Special Permit – 7 Pennycress Road
- Application and supporting materials for Accessory Dwelling for 7 Pennycress Road
- 4/16/13 letter from Water division
- Labeled Floor Plans 7 Pennycress Road
- Existing Site Plan 7 Pennycress Road
- Photo of Existing House

Applicant Sean O'Brien was present with his contractor, Ed Walsh and his Architect Jonathan Aprea. Mr. O'Brien indicated he would like to have an accessory dwelling for his house for his mother in law as her husband is deceased. He indicated that the footprint of the house will remain unchanged, with the exception of the addition of an 8 foot by 8 foot foyer. He said the number of bedrooms will be unchanged as there will be one in the accessory dwelling and four in the primary dwelling for a total of five bedrooms.

Ms. Harbottle indicated the application is straightforward. The proposed accessory dwelling unit will be 688 sq. ft. which is less than the 750 square feet allowed in the bylaw. The accessory unit is subordinate to the primary dwelling in size and the space is well utilized. In response to a question by Mr. Taylor, Ms. Harbottle indicated the Board may want the applicant to show where parking would be located if someone other than a family member occupied the unit. Mr. O'Brien indicated that there is space at the end of the driveway. None of the Board members had any questions and were all amenable to the application.

Ann Burbine of 10 Pennycress Road indicated she has lived in her home for 30 years and believes the accessory dwelling will not detract from the neighborhood and is in full support of the application.

Mr. Taylor moved that the Board make the following Findings of Fact concerning the accessory dwelling at 7 Pennycress Road.

1. According to Town of Scituate Assessor's records, the property as 7 Pennycress Road is owned by Sean J. & Melissa M. O'Brien.
2. On March 20, 2013, Sean and Melissa O'Brien applied for a special permit for an accessory dwelling within the existing single family dwelling at 7 Pennycress Road.
3. According to the Assessor's Records, the floor area of the primary dwelling is approximately 3,000 sq. ft. The floor area of the accessory dwelling as shown on the plan is 688 sq. ft. This is less than 750 sq. ft. and meets the requirements of 530.2F for accessory dwellings.
4. The property is located in the Residential R-2 zoning district. The lot area is 20,993 sq. ft. The existing footprint of the home is proposed to be unchanged as the existing dwelling will be reconfigured for one bedroom in the accessory dwelling and four in the primary dwelling. There are presently five bedrooms in the existing house.
5. The site plan shows a driveway and a two car garage for the primary dwelling. This appears adequate to provide two parking spaces for the accessory dwelling and ample parking for the primary dwelling. Should the accessory dwelling not be occupied by a family member, additional parking may be required.
6. The applicant has submitted a signed, notarized statement that he will live on the property.
7. The application meets the standards of Scituate Zoning Bylaw Section 530 for an Accessory Dwelling Special Permit.

The motion was seconded by Mr. Monger. Motion was unanimously approved.

Mr. Taylor moved to approve the Accessory Dwelling Special Permit for 7 Pennycress Road 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 Cover/Demolition Plan revised dated 3/26/13, Sheets A-1 through A-4 Basement/Foundation Plan, First Floor Plan, Exterior Elevations, Interior Elevations O'Brien/Miller Residence 7 Pennycress Road Scituate, MA prepared by Aprea Design and dated 2/11/13 submitted with this application. Site Plan submitted for property shows septic system revisions dated 3/11/1997 by Stenbeck & Taylor, Inc.
3. The property at 7 Pennycress Road 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.
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.
7. The applicant should provide a site plan showing where additional parking would be located in the event

someone purchases the property who will not have a family member in the apartment.

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. Monger seconded the motion. Motion was unanimously approved.

Accounting - None

Minutes

Mr. Taylor moved to approve the meeting minutes of 3/28/13 and 4/18/13. Motion was seconded by Mr. Monger. Motion was unanimously approved

Liaison Reports

Chairman Limbacher indicated that the Public Facilities Masterplan Steering Committee will be meeting to review the library.

Town Planner Report

Town Planner, Laura Harbottle, indicated that she went out to 85 Maple Street after being notified a gravel surface had been installed over the property. She indicated the Board met with the landowner and his attorney last fall and determined that the landowner did not need a stormwater permit at the time. Currently a gravel base course has been installed and there is one boat parking there. It is likely that the base was compacted before the gravel was placed and the landowner does own a marina. Ms. Harbottle indicated that it appears that there is more impervious surface through a compacted base than previously existed which would trigger the need for a stormwater permit. She indicated there would likely be zoning issues with boat storage and suggested a Site Plan Review would be necessary. Chairman Limbacher indicated that the Water Resource Committee is looking at the issue too as they are concerned about gas and oil where the land is in the Water Resource Protection District.

Mr. Vogel indicated that the gravel looks to have some ground up asphalt in it which could be an issue with runoff. Chairman Limbacher indicated the Building Department is looking at the issue. Mr. Pritchard said the pictures show the area looking level and compacted and there appears to be runoff issues. Ms. Harbottle indicated that if there is more impervious surface or the permeability of the surface is changed altering the runoff characteristics, then the stormwater regulations would apply. Mr. Vogel concurred that permeability has been decreased. Mr. Mercer and Mr. Monger both concurred that the area of discussion in the fall focused on permeability. Ms. Harbottle asked if the Board would like to send Mr. Duval a letter asking for his compliance with the Stormwater bylaw. The Board asked that a letter be sent.

Ms. Harbottle indicated that Chairman Limbacher, herself and John Clarkeson met with the Town Administrator on the updating of the Water Resource Protection District Bylaw. DEP is requiring changes as a condition of renewing the Town's Water Withdrawal Permit. The group discussed whether the changes should be a general bylaw or a zoning bylaw. It will stay as a zoning bylaw. The Town's water withdrawal

permit expires in August 2014. John Clarkeson is doing some work on the bylaw and it will hopefully be ready for fall town meeting.

Ms. Harbottle indicated that the DLTA grant with MAPC for the Economic Development Commission study will be finalized imminently. She indicated that the Open Space Plan will begin to be updated after a consultant is hired. Ms. Harbottle indicated that the Zoning Board of Appeals has received an application for a cell tower at 361 Tilden Road that was forwarded to the Board. She indicated that the Town has minimal say on where the towers are located as case law supports them going in where service is needed. She said a study has been done indicating that the general area is deficient in cell service. She indicated the proposed design resembles a tree. Mr. Vogel asked if the Board will see any radiofrequency radiation backup material. Ms. Harbottle indicated that the Board of Health should get that type of information. The Board did not express an interest in commenting to the ZBA.

Public Hearing – Flexible Open Space Special Permit & Definitive Subdivision Plan – 305 Country Way  
Assessor's Map/Block/Lot 37/2/2 & 37-8-13R

Applicant/Owner: Douglass Sheerin & Kristen deGaravilla

#### Documents

- Application and plans for Flexible Open Space Special Permit and Definitive Subdivision Plan received 2/28/13
- Revised transmittal dated 3/26/13, revised waiver and abutter lists and owner's signature information
- Comment from Water Superintendent dated 4/16/13
- Comment from Traffic Rules Committee dated 3/13/13
- Comment from Bill Krussell with plan and dvd dated 4/18/13
- Emails with 305 Country Way tributary information
- Emails from Lance Van Lenten re: 305 Country Way
- 305 Country Way Subdivision emails

Neither the applicant nor his engineer was present. Chairman Limbacher waited for several minutes then opened the public hearing at approximately 8:07 p.m.. Ms. Harbottle indicated that she told the engineer that the peer review was not complete and it would be complete in mid-May so that continuing the public hearing to May 23 at 7:30 would be appropriate. Mr. Taylor moved to accept the applicant's request to continue the Flexible Open Space Development Special Permit and Definitive Subdivision Plan public hearings for Fred's Way at 305 Country Way until May 23, 2013 at 7:30 p.m.. Mr. Monger seconded the motion. Motion was unanimously approved.

Public Meeting – Site Plan Waiver – 3 Mill Wharf Plaza Unit N11

Assessor's Map/Block/Lot 50-07-101N

Applicant/Owner: Bryce Grefe, Manager of N Eleven Realty LLC

#### Documents

- Application and supporting materials for Be Well Studios received 4/3/13
- Supplemental letter dated 4/3/13 from Atty. Steven Guard
- Floor plans – Be Well Studios by Compass Group dated 2/27/13
- Transmittal to Town departments dated 4/5/13
- Comment from Wendy Williams dated 4/22/13
- Supplemental letter dated 4/24/13 from Atty. Steven Guard
- Correspondence Be Well Studio

Attorney Steven Guard was present along with applicant Bryce Grefe. Architect, Jonathan Aprea and Sarah and Jennifer Jensen, Be Well Studio operators were also present. Stephen Pritchard recused himself from the Planning Board discussion of the application as he is on the Board of Trustees of the condominium development.

Attorney Guard indicated that the application is for a Site Plan Waiver for minor interior renovations. The building space was previously occupied by SpaScapes. Attorney Guard reviewed the plans submitted. He

indicated the first plan shows the demolition areas in the interior. They are shown as dashed lines. The second plan shows dark lines where new walls will be located. He indicated there is little new being added. There will be a fitness studio, yoga studio, therapy rooms and a reception area. Attorney Guard indicated that the significant additions shown on drawing A-2 is that a new ceiling is being installed above the studios, the reception area and the bathroom.

Attorney Guard reiterated that the waiver is for minor renovations and the applicant will be mitigating noise which was the chief concern prior to the meeting. He indicated that the applicant has hired Anderson Insulation who will install sound insulation in the ceilings to mitigate possible sound through the ceiling. He said that there is 12" of thermal insulation and sheet rock then a void space. There will be a layer of sound insulation then another layer of sheet rock. Attorney Guard indicated that the condominium bylaws are specific to sound and that sound cannot reasonably interfere with another unit. He indicated that the ceiling speakers from Spascapes are being removed and that desk top music will be used to minimize sound. There is a commitment from the applicant to do a sound test prior to the opening to determine an acceptable sound level to the condominium association and to the unit owner above the Studio.

Attorney Guard indicated that the wellness studio is not a gym, but a relaxation place. Yoga will be provided with one instructor for 2 people so that communication can occur. The music will not be hard rock. The hours of operation requested are 5:30 a.m. to 8:30 p.m. Monday through Friday, 8:00 a.m. to 5:00 p.m. on Saturday and 10:00 a.m. to 3:00 p.m. on Sunday. Class sizes would generally be 4-10 people and most people do not come for massages at 5:30 a.m. Attorney Guard said that this would be a personal business and is a new concept in exercise training. He indicated that the applicant understands that he is operating in a mixed use building and that Jennifer and Sarah Jensen have been operating a business in the harbor for 10 years and believe in this type of therapy.

Chairman Limbacher inquired as to what is below the space. It was indicated that there is an 8" slab on top of a crawl space and no abutters to the north or south. The Everyday Girl store is to the right and there are two residences above. Town Planner, Laura Harbottle indicated that the applicant was referred to the Board by the Building Commissioner. She suggested that the business would be a positive addition. She suggested that noise is a very subjective issue and the Board may want to consider moving the start time to 6:00 a.m. Ms. Harbottle said that Get in Shape for Women opens at 6:00 a.m. Their building is also a mixed use building, but with not as many units as in the Mill Wharf building. She suggested 5:30 a.m. may be a little early for people coming and going with more residential units at Mill Wharf.

Ms. Harbottle indicated that the applicant will be adding sound insulation in the ceiling and some walls to control noise. She indicated the table top music devices will also provide sound control. She supports the applicant's commitment to do a sound test and indicated it shows sensitivity to the neighbors.

Mr. Taylor was satisfied that Attorney Guard's letter and the condominium documents would address the concern of noise. His initial thought that 5:30 a.m. was early. He questioned if zumba exercise classes would be occurring. Ms. Jensen indicated there would be no zumba. She said the fitness and yoga rooms would share a wall and they would have quieter music and quieter therapies going on. She indicated they want to be good neighbors.

Discussion on hours of operation of activities in Scituate Harbor occurred. It was determined that Sam's opens at 6:00 a.m. and fishing boats leave as early as 3:00 a.m. Attorney Guard indicated that the applicant asking for 5:30 a.m. is not arbitrary. The Jensen's indicated that they surveyed their clients and the requested opening time is in response to client requests.

Mr. Taylor indicated that his concerns have been addressed and he has no further questions. Mr. Monger indicated he was not concerned about the hours. He asked if there would be weights as he was concerned with vibrations. The applicant indicated there would be no weights. Mr. Monger inquired if there would be windows open. The Jensen's indicated generally not, but they would like to have the ability to on a nice day. They indicated they want to be good neighbors and support the community and have the community support them. Mr. Monger indicated that a condition could be put as part of the waiver decision so that

noise is mitigated. He indicated he is okay with the hours and with noise mitigated there should be no problem. Attorney Guard reiterated that the condominium documents will safeguard that noise is controlled. Mr. Monger asked if vibration control should also be part of the decision. Mr. Grefe indicated that they are not going to use a power sound system that creates vibrations. Mr. Monger was satisfied that soundproofing in the ceiling and no speakers in the ceiling would be beneficial noise mitigation.

Mr. Vogel was concerned that a 5:30 a.m. opening time could be a problem with automobile noise. He also asked if the acoustical assembly would be designed by an engineer. Mr. Aprea indicated it wasn't engineered, but there will be two ceilings with sound and acoustical insulation. Mr. Aprea indicated it would be solidly put together and a structural engineer designed the ceiling for earthquake loads. Mr. Vogel inquired more about the sound test. Mr. Grefe indicated it would be when the work was done prior to opening. He indicated the test was agreed to with the trustees.

Alice Brown of the trustees group indicated she met with Mr. Grefe and they reviewed the plans, noise issues and hours of operation. She indicated that traffic in the harbor starts at 4:00 a.m. with fish boats and trash removal. She said Dunkin Donuts is open at 5:00 a.m. and Sam's at 6:00 a.m. She indicated the trustees are concerned with the noise and have asked for a sound test along with Linda McManus and Wendy Williams. Ms. Brown said there will be no speakers in the ceiling so she doesn't think there will be noise. She asked if the applicant would be willing to direct patrons to park a distance from the door so that car noises would be minimized and if a soft close could be added to the outside studio door to address resident's concerns. Ms. Brown indicated that if those conditions are done, the condominium bylaw is adhered to, there is no zumba and the sound test is done, the Board of trustees are satisfied. Discussion occurred about the level of the noise and the sound test, and there was consensus that according to the condominium bylaw if Ms. McManus and Ms. Williams can hear any noise then it is too loud.

Mr. Mercer asked Ms. McManus if the Spascape music disturbed her. She indicated it did not. Mr. Mercer thought the proposed use should be quieter. Ms. McManus indicated her bedroom is over the exercise room and she just wants a situation where neither party hears each other. Christine Griffin, an attorney representing Ms. McManus, indicated Ms. McManus is not opposed to the business; she just doesn't want to hear any noise from it. Ms. Griffin indicated that there is the potential for the business to be so successful that it could interfere with Ms. McManus' life and property value. She indicated that the application is for a waiver and suggests that a full site plan review may be valuable and could be done for a meeting in May. She indicated that sound insulation and a decibel limit should be conditions and that a waiver is for minor or insignificant use changes. The day spa had no exercise. She indicated that active exercise changes the use. Ms. Griffin was concerned that the exercise room below her client's bedroom has a capacity for 30 occupants even though they talk about a small group of 6 women at 5:30 a.m. She is concerned the trend could be larger. She would like thorough conditions if a waiver is granted and indicated that the better course would be to deny the waiver and have a full site plan review and ask for a decibel level in the conditions.

Ms. Griffin indicated she would like to insure that those who live directly above the business will still be able to enjoy the quiet use of their property. She indicated that condominium bylaws and trustees can change over time. Mr. Monger indicated that he feels comfortable that enough conditions can be placed on the project. He indicated the condominium bylaw wording seems very thought out and it indicates that no music can be audible from another unit. He said soft closers on the door and limiting hours of window openings could be added as conditions. Ms. Brown suggested adding the condominium bylaw wording on noise would be a safe course to take.

Robert Proctor indicated that noise and vibration are complicated issues. He has not seen the plans and inquired if Anderson Insulation had an acoustician. He indicated sound problems are expensive to repair and a decibel limit may not be a bad idea. He thought that a site plan should be accepted. He was concerned that insulation doesn't mitigate sound. Attorney Guard indicated that the condominium bylaw could be put in the conditions for it to go in perpetuity.

Discussion occurred about what test standard should be used and if a decibel limit should be placed. Ms.

Brown indicated that the standard is just making sure people can't hear outside the unit. She said if a decibel limit is placed and Ms. McManus can hear, then the problem hasn't been solved. Ms. Jensen indicated the sound test prior to opening will determine a level. Ms. Griffin asked that a condition be placed that if another condominium unit is disturbed, then the music needs to be turned down. She said it is subjective. She indicated it would be more objective to obtain more scientific information through a site plan review; however, they are comfortable with subjective and Ms. McManus being the canary.

Mr. Vogel was concerned about setting a precedent for mixed use and restrictions. Mr. Monger indicated that people should have understood that the condominium association had noise and vibration restrictions in the bylaws. Mr. Taylor indicated that the key wording is disturbing noises. Mr. Monger indicated the Board may want to adopt the condominium wording. Ms. Harbottle began to summarize the draft conditions. The first would be the standard condition that the construction shall be according to the plans. Another condition would be the requested hours. Ms. Griffin asked about steam or heat coming through the ceiling. All agreed it could be a condition. Ms. Harbottle read the proposed conditions as follows:

1. Construction shall comply with the improvements shown on plans entitled Alterations to: Condo Unit N11 3 Mill Wharf Plaza Scituate, MA for Healing Touch Therapies Sheets D-1 Demolition Plan, A-1 Partition Plan Door Schedule and Partition Types, A-2 Reflected Ceiling Plan and A-3 Enlarged Bathroom Plans and Interior Elevations dated 2/27/13 as prepared by Compass Group Architecture LLC except as may be modified to meet these conditions.

2. Hours of operation are limited to Monday – Friday 5:30 a.m. to 8:30 p.m., Saturday 8:00 a.m. to 5:00 p.m. and Sunday 10:00 a.m. to 4:00 p.m. Prior to 7:00 a.m. exercise or yoga classes may be held with the number of participants not to exceed ten per class, and personal training or massage therapy may be provided to individual customers. This should minimize exterior noise and interior noise transmission.

3. Music provided shall be by small table top external device such as a table top Bose wave radio or similar technology. No music system built into or attached to the walls or ceiling is permitted.

4. Sound insulation will be installed in the new walls and ceilings. Sound barrier insulation in the ceiling shall be between 6 and 8 inches thick and be designed for sound reduction rather than thermal retention. Final sound insulation specifications shall be provided to the Planning Board and Building Commissioner prior to installation for verification of conformance with the intent of this condition.

5. The applicant has agreed to conduct a sound test prior to opening with the condominium trustees, the management company and the unit owners. This test will be designed to fully understand the level of the noise and vibration within the premises and provide an opportunity to determine an acceptable level of volume and vibration in the unit. The Town Planner and Building Commissioner shall be notified of the results and of the test and any agreements that are made based on the test.

6. The applicant shall not make, permit or suffer any disturbing noises or vibrations by means of a radio, phonograph, stereo, television, piano or other musical instrument or other form of technology of any description, by himself, his family, guests, agents, servants or employees, nor do, permit, or suffer anything by such persons that will unreasonably interfere with the rights, comforts or conveniences of other unit owners or occupants. No radio, phonograph, stereo, television or other device shall incorporate outside terrace or deck speakers. For purposes of this section, any noise or vibration from within a unit which can be heard or ascertained within another unit shall be deemed a disturbing noise or vibration.

7. A soft-close mechanism shall be added to the exterior door used by the studio.

8. The applicant shall encourage customers to park at a distance from the building.

9. Windows shall remain closed while music is being played before 8:00 a.m. and after 6:00 p.m.

10. No incursion of steam or heat shall be detected in the Condominium Unit above.

11. Signage is approved as designed (see attached rendering.)

Mr. Monger moved to approve the site plan waiver for the Be Well Studios at 3 Mill Wharf Plaza Unit N-11, with the conditions just read as indicated above. Mr. Taylor seconded the motion. Motion was unanimously approved.

Old Business and New Business

Documents

- Background and staff recommendations dated 4/19/13 for the meeting on 4/25/13
- Applications and plans submitted to the ZBA for a variance for a cell tower at 361 Tilden Road
- SJC 11401 Joint motion to extend – 114 Edward Foster Road

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 9:30 p.m. Mr. Monger seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph  
Planning Board Secretary

Richard Taylor, Clerk