

SCITUATE PLANNING BOARD MINUTES August 28, 2014

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

Members Absent: None. Chairman Limbacher arrived at 7:50 p.m.

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.

Vice Chairman Pritchard called the meeting to order at 7:33.M. The meeting was being recorded for airing on the local cable television station.

Documents

- 8/28/14 Planning Board Agenda

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

Bylaw discussion – Increase height limit for home elevations

Ms. Harbottle handed out a picture of an actual elevated home in Scituate. She indicated that when a home is elevated in the A zone, the State Building Code requires that the first floor level must be above the base flood elevation by 1 foot. She said in the V zone, the lowest structural member of the house must be 2 feet above the base flood elevation. She indicated that Marshfield uses the base flood elevation to determine height for homes that are going to be elevated. She indicated that the highest flood elevations in Scituate are currently along Turner Road and Oceanside Drive. She said that Surfside Road and Glades Road will have higher flood elevations if the new flood maps are approved. She said that will raise the elevation where height is measured by 9 or 10 feet from where it is now. She indicated that some Town officials think there shouldn't be any expansion in the floodplain. She said that the proposed bylaw language would not be applicable if a house is being expanded in height or living space. She said a person would need to work within their existing height.

The Board discussed that one cannot rebuild and then come back and elevate a house. Mr. Vogel said a special permit is needed from the ZBA if a nonconforming structure is increased by 20% or more or on a nonconforming lot. Ed Tibbetts from the ZBA said that they review any significant changes. He said that if renovations to a structure exceed 50% of the value of the structure, then a house would need to be brought into compliance with the current building code which calls for elevation of a home in certain zones.

Ms. Harbottle said that this wording is really for homes that need to be elevated so they don't exceed the height requirement. Mr. Vogel said that if one were doing a raze and reconstruct or building a new house they shouldn't be able to use the bylaw and that should be addressed. He said elevating is good for existing homes. Ms. Harbottle said that she does not want to encourage new development along the coast plain due to rising sea levels. She said the proposed wording doesn't take away from anything now as a look at Cedar Point and Turner Road would indicate. She said most homes there aren't exceeding the 40 foot height requirement with elevating included.

Mr. Vogel said it could be hard to get approval at Town Meeting. He said a house on grade not in the floodplain now could be in the future, but a resident may want to expand and elevate now if a renovation is greater than 50% of the cost of the home. He said it is right to elevate for one set of reasons and right for expansion to be prohibited based on another set of reasons. Ms. Harbottle said that the height change should be automatic for an existing building. Chairman Limbacher arrived. Mr. Pritchard said that FEMA tells people to get out of the flood zone, but they don't address the height. Ms. Harbottle clarified that you are only supposed to raise the house with a FEMA grant. No expansion is allowed. Mr. Taylor said that the proposed language says people can't change their habitable area, but it doesn't seem to incentivize people from not building on the coast. Ms. Harbottle said it does encourage elevation of existing smaller homes. Mr. Pritchard thought that razing of a house after it is elevated needs to be addressed.

Ed Tibbetts said that the challenge is if someone builds a home today under the current rules and regulations, and next year wants to elevate to be out of the new floodplain. He said they would be out of compliance with the height limit. He said that nonconforming houses need to go to the ZBA who want them to be more conforming when they come in for changes to their homes or to raze and reconstruct their homes. He said that the ZBA would consider conditions for safety, setbacks for congested areas etc. He said that in the process of elevating, the height restriction may be violated. He said that the ZBA could use height as a bargaining issue to try to make houses more conforming. Ms. Harbottle said that was a good point. She said there should probably be language to increase the height of the structure above the height requirement only if it is necessary. Mr. Vogel said it would be easy to claim and houses must be elevated if improvements are above 50% of the assessed value. Mr. Tibbetts said that many lots on Surfside are conforming. He said some of them already exceed the height requirement. He said they may need to be elevated as well. He said that he believes people should be allowed to elevate without a height restriction due to FEMA. He said maybe they should be exempt with a special permit from the Zoning Board. Ms. Harbottle said that she is trying to make it so people don't have to go to the Zoning Board. Mr. Taylor said that there should be no increase in height allowed for atriums and widows walks.

Ms. Harbottle said she is looking for suggestions and will bring another draft to the Board. Mr. Vogel wants raze and reconstructs and new construction addressed. Ms. Harbottle said that a new house in the floodplain needs to show that the lot is not subject to flooding and they also need a ZBA special permit. She said there are additional requirements if they are in the Water Resource Protection District. Chairman Limbacher said he thought that the idea was to help someone who is elevating their home meet the height requirement. He said the other part is zoning and belongs to the Zoning Board. Ms. Harbottle said that she is trying to make it so that not everybody has to go to the Zoning Board similar to Marshfield. Mr. Vogel still thought that someone is going to want to build a mansion 16 feet in the air and have it above 40 feet. He said it will only apply to houses whose envelope won't change. Ms. Harbottle said that the wording may be simplified so existing height is grandfathered and no additional height is allowed. Mr. Greene said the wording will make it easier for someone to elevate and not change anything. Mr. Taylor likes that intention.

Mr. Pritchard handed over the meeting to Chairman Limbacher.

Accounting

Documents

- PO # 1501301 (\$85.00)

Mr. Taylor moved to approve the requisition of \$85.00 to MAPD for annual dues for Laura Harbottle. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Minutes

Mr. Taylor moved to approve the meeting minutes of 7/24/14 and 8/14/14. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Liaison Reports

Mr. Pritchard said he will be unavailable September 25. Mr. Vogel said the meeting put on by the Coastal Coalition on the Floodplain response to disasters was very informative. Ms. Harbottle said that Scituate Harbor has been named a Massachusetts Cultural District. She asked the Board to think about what is the cultural character of Scituate. She indicated that Vineyard Haven is one such cultural district with similarities to Scituate. Ms. Harbottle said that the designation would bring marker flags and tools for marketing the district from the Massachusetts Cultural Council. Chairman Limbacher asked for staff to investigate the possibility for the opening for the Associate Member to be on the ballot in November along with the selectman's position.

Continued Public Hearing – Accessory Dwelling Special Permit – 113 Arborway Drive Assessor's Map/Block/Lot 25-6-2 Applicant/Owner: Russell E. Williams

Documents

- Application and supporting documents for accessory dwelling special permit including deed, letter from Mr. Williams, Building Permit 89-471, aerial photo, Assessor's card, notarized statement that owner will live on the property, description of floor areas, 11-15-92 Mortgage Inspection Plan, Proposed Addition and Disposal System 113 Arborway Drive Scituate, MA by CCR Associates, 49 Pleasant Street, So. Weymouth, MA dated 2/28/1989, Addition to the Mailhot Residence, 113 Arborway Drive Scituate, Ma by Douglas Laughlin, 118 Dorchester Ave South Boston, MA dated 2/5/1989
- Transmittal to departments dated 6/24/14
- Memorandum dated 6/26/14 from Jennifer Sullivan, Board of Health
- Memorandum dated 7/23/14 from Jennifer Keefe, Director of Public Health
- Letter dated 7/10/14 from abutter Pam Mullin
- Email dated 7/24/14 from abutter Rich McDonald
- Email from Laura Harbottle with opinion of Neil Duggan attached
- Memorandum from the Board of Health dated 8-19-14
- Letter dated 8-21-14 from Jenny Laughlin
- Meeting Minutes and Memo from Neil Duggan 1998

Chairman Limbacher opened the continued public hearing. Russ Williams and Attorney Michael Hayes were present for the applicant. Mr. Hayes indicated that Mr. and Mrs. Williams purchased the house in 1997 and have lived there ever since. He said the lot at 113 Arborway Drive in the R-1 district is 40,032 sq. ft. and the dwelling meets all the dimensional requirements. He said the original house was built in the 1950's and was renovated in 1989 with a valid building permit to add a 2 bedroom addition and garage.

Mr. Hayes said that his client would like an accessory dwelling in an existing 6 bedroom structure of 2,401 sq. ft. He said the 1989 addition was for the former owner's daughter and child and it was designed to be a semi-independent space. He said there would be no changes to the outside for the 2 bedroom accessory dwelling with 918.7 sq. ft. He said the accessory dwelling is 38% of the total existing living area. He said that this type of proposal was envisioned with the bylaw as it meets the purpose of Section 530.1, especially 530.1.E. to legalize situations for code compliance.

Mr. Hayes reviewed Sec. 530.2 for the application's conformance. He said that it meets Section A as it is a complete separate housekeeping unit. He said Section B. is not applicable as it applies to business. He indicated Section C. is met as only one accessory unit is proposed with the single family home on the lot. He said Section D. was met as the accessory dwelling is under the same roof as the primary dwelling. He said Section E. is also met as it was designed so the appearance was unchanged and it won't change. Mr. Hayes said he would come back to Section F. He said Section G. is met as there are two off-street parking spaces for the accessory dwelling. He indicated that Section H. is met by the home meeting all applicable codes and bylaws and that Section I. is met as there is adequate sewage disposal with a Title V compliant system for 6 bedrooms.

Mr. Pritchard asked how the proposed accessory dwelling complies with being a separate housekeeping unit. Mr. Hayes said the entry is on the left side of the garage and the levels change on the interior. He said there was no door to the kitchen as the vestibule is common space and belongs to the primary dwelling. Mr. Pritchard confirmed that the alternate means of egress for the accessory dwelling is through the sunroom doors to the deck. Mr. Hayes said that the lower level also has large windows for alternate egress. Chairman Limbacher also confirmed that the main unit was 1483 sq. ft. and the 918 sq. ft. starts at the second door.

Mr. Taylor asked about compliance with Section I. Mr. Hayes gave the Board copies of the Title V report which conditionally passed the system with items needing action including a new distribution box and other repairs requested by the Board of Health. Mr. Taylor questioned about the number of occupants in the house and the Director of Public Health's memorandum. Mr. Hayes said the system is Board of Health compliant. Planning Assistant, Karen Joseph, said that she talked with Jennifer Keefe, Director of Public Health late in the afternoon. She indicated that Ms. Keefe said the system was designed for 6 bedrooms and the applicant is working to make it Board of Health compliant. Mr. Williams said that the washing machine is going to be connected to the tank and the front system has been decommissioned.

Mr. Pritchard asked about the 2 off-street parking spaces. Mr. Hayes said there is a 2 car garage and room for 5 cars to park in the driveway. Mr. Williams the garage belongs with the primary dwelling and it is up to the owner where the accessory spots will be. He said there is a two car driveway and another paved spot. He said he is in the midst of selling. Mr. Pritchard questioned if that was 2 dedicated spaces for the accessory dwelling. The Board asked for a site plan to see where the parking was located. Ed Tibbetts offered a view of the site on his phone with a google image. Chairman Limbacher thought that 6 cars could use the driveway, but it could be tricky coming and going. Mr. Tibbetts stated that all parking on a residential lot is private by nature and it is up to the owner to decide how parking would be assigned. Mr. Pritchard said he wants to make sure that parking is not on the street.

Mr. Hayes began discussing Section F. He said that there are 2 standards the Board must find. The first is that the accessory dwelling must be clearly a subordinate part of the single family dwelling. The second is that the size is limited to 750 sq. ft. or 40% of the total square footage of the floor area

of the primary dwelling whichever is greater. Mr. Hayes said that the accessory dwelling of 918 sq. ft. is 38% of the total square footage of the house. He said that under a different interpretation, 918 sq. ft. is 62% of the primary dwelling area of 1482 sq. ft. Mr. Hayes said he feels that the primary dwelling is the existing home and there is no definition in the bylaw of primary dwelling. He said the bylaw permits three types of accessory dwellings including in a single family house, attached to a single family house and a detached structure on a single family lot that complies with all requirements of the primary structure. Mr. Hayes said the language of the bylaw permits the Board to say it is 40% of the existing dwelling. He indicated that the Zoning Enforcement Officer said this in 1998 and has not changed his position.

Ms. Harbottle said that this is a bit of a “red herring”. She said that Mr. Duggan wrote a memorandum years ago that generated discussion of how to measure the accessory dwelling square footage. She said that the Pioneer Institute has researched 104 accessory dwelling bylaws in the state and they all concur the accessory dwelling is supposed to be subordinate to the primary. She said that after 1998, all the plans the Board approved had the accessory dwelling being 40% of the primary dwelling not the total dwelling. She said that this property does not fit with what the Planning Board has been doing. She said that if the accessory dwelling was rented out here, the people would likely see each other all the time due to the close connection. She questioned if an exemption should be granted as this one was different than the others. She suggested that maybe the house could be rearranged with the buyer.

Chairman Limbacher asked if it is being used as an accessory dwelling now. Mr. Hayes indicated it was not. Mr. Taylor questioned what part of Section 530.1 was applicable as the house is for sale so it is not for the homeowner. Mr. Hayes said it is 530.1.E. – to legitimize conversions for code compliance. He said it was originally built as a semi-private dwelling for the former owner’s daughter and her child. They want to add a stove so it will be a complete accessory dwelling unit as there is the proper electrical connection. Mr. Hayes said the applicant is working with the Board of Health to bring the septic system into compliance. He said it would make a unit available to a moderate income household. He said it is the “poster child” for the bylaw and since it has existed for years it would bring it under the purview of the Board if approved. Chairman Limbacher said the “poster child” status is lost as it is not being used as an accessory dwelling. Ms. Harbottle asked if there was a stove there now. Mr. Williams said there was not as he wouldn’t be covered if the house burned.

Mr. Vogel inquired why Mr. Williams wanted an accessory dwelling if he was selling. Mr. Williams said he and his wife tried to permit it in 1998. He said they decided back then to withdraw the application as they did not want problems with their neighbors. He said it wanted it now. Mr. Taylor asked if it would add value to the house. Mr. Hayes said it depends on the buyer and he thinks Mr. Williams believes it is more marketable as an accessory dwelling. Mr. Taylor said that every accessory dwelling since 1998 is not calculated this way. He asked what would be needed to make it below 750 sq. ft. Ed Tibbetts said that if the area is taken from the stairs then the calculations will work. He said his wife is the listing agent. He said that Mr. Williams can’t do anything about how the dwelling was constructed. He said that knowing it is an accessory dwelling clarifies how it can be marketed. Ms. Harbottle questioned why the Assessor’s field card said 2600 sq. ft. of floor area. Mr. Tibbetts said it is the cathedral ceiling. Mr. Taylor said that if it is approved, the new owner would need to come in and sign an affidavit. Mr. Williams said there is an electrical connection for the stove, but no stove.

Kathy McDonald of 108 Arborway Drive said she bought her house in 1993 because it was a single family home to raise her children. She said that if the house becomes an accessory dwelling, they could rent out the unit to anyone. She is worried about the number of cars. She is concerned that everyone will want to add an accessory dwelling to rent out for the income and this would change the neighborhood. She said it is a residential area with a school down the street and is concerned who will buy the house and how it will be used. Mr. Pritchard asked her if the people before the Williams' used it as an accessory dwelling. Mrs. McDonald said it was a family with their daughter.

Eileen Jacobucci of 97 Arborway said she has lived there for 50 years. She asked what the difference is between an accessory dwelling and a rental apartment. She said an apartment means income and is concerned that everybody on the street could do this. Mr. Pritchard said that anybody on the street could have an income apartment if it met the conditions for an accessory dwelling. She expressed concern about the number of occupants living in the apartment and the number of vehicles. Mr. Pritchard said that the Board can condition no street parking. Mr. Taylor said that is why the Board is asking why now. Mrs. Jacobucci said it would appear to be about the money as a sale is pending and the house would be more marketable with an apartment. The Board indicated that the accessory unit must be self-sufficient and the owner must live there.

Mr. Williams' daughter said that they want to put in a stove so it could be a separate legal unit with the benefit of privacy. Mr. Hayes added that approval of the accessory unit is not a condition of the interested buyer.

Tom Lee of 105 Arborway Drive said he has been friends with the Williams' for a long time. He said that once the house is sold, all the controls will be gone. He said any number of people could move in. He said when his family moved in it was all single family homes and this would change the dynamic of the neighborhood. He indicated he did not want to see change to the neighborhood.

Mr. Taylor said he was concerned about setting precedent for the size calculation. He said it is for sale and the future use is a concern to the neighborhood. He indicated that if it was not approved and used as an in-law it seems the neighbors wouldn't mind. Mrs. Jacobucci said she wouldn't mind. Mr. Taylor said he was leaning toward not approving it. Mr. Pritchard said that the Board does not have the latitude to approve the unit just for a family. He said it could be considered a variety of housing, but he does not want to see the way the calculation is made changed as there would be duplexes and not accessory dwellings. Mr. Pritchard said he would prefer the footprint shrink to meet the bylaw numbers rather than to legitimize a conversion.

Mr. Vogel said that if it was a 60/40 split or less than 750 sq. ft., the Board would need to approve it. He said neither of those conditions is met and the owner also needs to live on site. He said those conditions are not met so he would be inclined to vote against it. Mr. Greene said that the house seems to flow as a six bedroom house and since whether the accessory dwelling is permitted has no bearing on the sale, he would vote against it. Mr. Pritchard said there is still the opportunity to modify the layout to meet the size. Mr. Taylor concurred and said the new owner could come in for the accessory dwelling. Chairman Limbacher said that if it was a clear accessory dwelling it would fall under Section E. He said the outlet for the stove helps him to possibly say the accessory dwelling could be legitimized. He said if the Board is not convinced on the legitimization of the unit then reconfiguration of the spaces would be necessary to make it a true rental accessory dwelling. He said it seems the Board would like more work done on the size.

Mr. Hayes said he would like to take the opportunity to see if the dwelling can't be reconfigured. He requested a continuance until the next meeting.

Mr. Taylor moved to accept the applicant's request to continue the Accessory Dwelling Special Permit public hearing for 113 Arborway Drive until September 11, 2014 at 7:30 pm. Motion was seconded by Mr. Pritchard. Motion was unanimously approved.

Form A – 182 – 188 First Parish Road
Assessor's Map/Block/Lot: 44-01-20 & 21
Applicants/Owner: Tar Pouch Realty Trust & John & Irene Roman

Documents

- Form A application and Plan of Land located in Scituate, MA 182 – 188 First Parish Road entitled Redivision of Lands stamped by Lawrence W. DeCelle Jr. of DeCelle Burke & Associates, Inc. for applicants Tar Pouch Realty Trust and John and Irene Roman 6-28-14
- Email from Jim Decelle on 8-19-14 with plans referred to in deeds and color coded plan of property lines
- Transmittal to departments dated 8/20/14
- New trustees recorded document and individual authorizations
- Legal opinion on ownership of right-of-way

Jim Decelle of Decelle Burke and John Roman were present. Mr. Decelle indicated that the Romans and Versoys own the property that is proposed for 4 lots with frontage on First Parish Road. He said the Roman house is on sewer and the 3 others would be on septic. He said there is a small resource area in the back with a drainage ditch. Mr. Decelle said that all of the lots have over 100 feet of frontage. He said that the Bamber survey of 1952 had frontage of 93 feet for the house at 188 First Parish Road; however his survey finds 98.02 feet. He said that 2 feet of the Versoy property is added to the Roman property to achieve the 98 feet. He said that half the right of way frontage is added to get to 106 feet. Mr. Decelle said that he spoke to Neil Duggan who indicated that the front section of 188 First Parish Road would be pre-existing nonconforming as there was not a new lot line in the front. He indicated that he has a legal opinion that says half of the right of way could be included in the property. He said this would provide the frontage.

Ms. Harbottle said that she recalls if a lot line is changed then it is a different lot and in her opinion the lot would lose grandfathering. She said that the front lot line is proposed to be changed, so it is not the same lot. She indicated that the deed to the property says it runs along the right of way. She said that she could seek the opinion of Town Counsel on the matter. Mr. Decelle asked why Mr. Duggan's opinion did not matter. Ms. Harbottle said the Planning Board is supposed to have purview of frontage. She asked if there was any thought to a common driveway. The Board concurred that they want Town Counsel to determine if the right of way can be used for frontage and if the front lot line of 188 First Parish is not changed, would the Duggan opinion apply.

Mr. Taylor moved to accept the applicant's withdrawal without prejudice of An Approval Not Required a Plan of Land located in Scituate, MA 182 – 188 First Parish Road entitled Redivision of Lands by DeCelle Burke & Associates, Inc. for applicants Tar Pouch Realty Trust and John and Irene Roman dated 6-28-14. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Old Business and New Business

Documents

- Staff report for 8/28/14

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 10:20 p.m. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk
9-25-14
Date Approved