

TOWN OF SCITUATE

Planning Board



600 Chief Justice Cushing Hwy
Scituate, Massachusetts 02066
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Flexible Open Space Development Special Permit – 214 Thomas Clapp Road
Decision: APPROVED with Conditions

Applicant: Fern Properties, LLC
Address: 325 Wood Road Suite 202, Braintree, MA 02184
Owner: Fern Properties, LLC
Address: 214 Thomas Clapp Road, Scituate, MA 02066
Request: Approval of special permit for Flexible Open Space Development under Scituate Zoning Bylaw Section 550

Date: January 30, 2014

Location: 214 Thomas Clapp Road

Assessor's Map: 18/1/2

Zoning District: R-1

Hearing Dates: September 12, 2013, October 13, 2013, October 24, 2014, November 26, 2013, January 9, 2014, January 30, 2014

Members Hearing Special Permit Application: William Limbacher, Stephen Pritchard, Richard Taylor, Robert Vogel and Robert Greene.

Decision: Approved with conditions by a unanimous vote

*Rec'd. Town Clerk's
Office FEB 3 2014
11:30 a.m.*

Background:

The property is a 17.59 acre wooded and grass parcel improved with a historic single family home, shed and garage. It is a portion of land shown on Assessor's Maps as parcel 18-1-2. It contains 14.65 acres of upland and is located in a well-established neighborhood of single family homes on lots generally ranging from 1 to 5 acres, with some larger properties. Access is from Clapp Road.

In the Flexible Open Space Development proposal for 17.59 acres that is the subject of this application, 8.92 acres at the rear of the property would be preserved as open space, with 9 lots for

single family homes created on the remaining land. The proposed road would be 589 feet in length with pavement of 20' wide. Stormwater is piped to two stormwater basins and a rain garden. The rate, volume and peak surface elevations of runoff do not exceed pre-development conditions for the 2, 10 and 100 year storms.

The applicant submitted Drainage Calculations and Stormwater Management Plan by Bradley C. McKenzie, P.E. and a list of waivers from Section 6.3 of the Subdivision Rules and Regulations with the application. This report was reviewed by the Town's consulting engineers, Beals and Thomas, LLC, who submitted detailed comments to the Planning Board. In response to these comments, the applicant provided an Amended Stormwater Report which, after further review by the consulting engineer, was found to address his recommendations.

The Planning Board reviewed the Intersection Sight Distance calculations as submitted by McKenzie Engineering which were stamped by Deborah W. Keller, P.E. The memorandum concluded that the minimum intersection sight distance for the sight is 350 feet which is available and meets the requirement. The Traffic Rules and Regulations Committee reviewed the memorandum and indicated it met their requirements.

The R-1 zoning district where the property is partially located requires 40,000 sq. ft. of upland lot area for each dwelling unit. Section 550 of the Zoning Bylaw, Flexible Open Space Development, allows the Planning Board to issue a special permit to approve lots which do not meet some dimensional requirements of the underlying zoning when they find the development to be superior to a conventional subdivision, based on the design standards of Section 550.5. The development must also conform to Section 550.6, Minimum Requirements. The maximum number of lots is established by the Planning Board's approval of a Conventional Density Sketch Plan which complies with the Town of Scituate Zoning Bylaw and Subdivision Rules and Regulations.

Procedural Summary:

An application for a Flexible Open Space Development Special Permit was filed with the Town Clerk on July 25, 2013. A Public Hearing on the Special Permit was duly advertised and notices sent to all abutters in accordance with MGL Chapter 40A. The Public Hearing was opened on September 12, 2013 and continued to October 10, 2013, October 24, 2013, November 26, 2013, January 9, 2014 and January 30, 2014 when the hearing was closed and the Special Permit was approved with conditions.

Hearing Summary:

When the public hearing was opened on September 12, 2013, Planning Board Chairman Mr. William Limbacher explained the process for the hearing. Matthew Watsky, attorney for the applicant and Ms. Deborah Keller, PE of McKenzie Engineering Group, Inc, design engineer, was present with the applicants, Paul Bourque, David Iantosca and Joseph Iantosca of Fern Properties, LLC. Mr. David Johnson of Beals and Thomas, Inc., consulting engineer for the Town and Ms. Laura Harbottle, Town Planner were also present.

Mr. Watsky gave a brief overview of where the applicant was in the permitting process. Ms. Keller gave an overview of the development and a brief description of the drainage on the property. Mr. David Johnson summarized his concerns as peer review engineer with respect to stormwater and site issues. Ms. Harbottle summarized the process and standards for applications for Flexible Open Space Development special permits of Scituate Zoning Bylaw Section 550, Flexible Open Space

Development. She summarized the project's public benefits with preservation of the open space and the historical home and construction of trails in the preserved land. She indicated the Board should wait to hear from the Conservation Commission as a Conservation and Management Permit is needed from the Natural Heritage and Endangered Species Program (NHESP) due to vernal pools and other sensitive habitat. She agreed with Mr. Johnson that more Low Impact Development (LID) stormwater management was needed in addition to buffer plantings and a Landscape Plan stamped by a Landscape Architect. She requested additional erosion control information.

At the September 12, 2013 public hearing, Mr. Vogel said he would like to see a detailed landscape plan. He said he is concerned with the buffer between the current neighbors and he would like to see the plan include screening. Mr. Pritchard expressed concern over preserving the house and its cultural value in the future and if trails through the open space would be impacted by rare species habitat.

At the October 10, 2013 public hearing, a Landscape Plan was presented to the Board along with changes to the plans that included more low impact development measures. The control of the open space was discussed, but there was no resolution or documentation as to who would control the open space. Drainage at Clapp Road was also discussed. The hearing was continued as additional trees needed to be advertised for removal under the Scenic Road Act for improvements to the drainage in Clapp Road. The impacts to the vernal pools and other sensitive habitat had not been determined by the Conservation Commission. Ms. Harbottle said that there was a letter from Beals and Thomas dated 10/3/13 saying all the issues raised by the consulting engineer had been resolved.

At the October 24, 2013 public hearing, the two additional trees for the Scenic Road Hearing were discussed. A letter from the Conservation Commission on turtle habitat was not available so the Landscape Plan was discussed. The Board was also awaiting input on ownership of the open space.

At the November 26, 2013 public hearing, it was reported that there would be no changes to the plan as a result of the Conservation Commission's Order of Conditions and the turtle habitat report. The Board discussed road width, curbing and when the MEPA filing would be done. The Planning Board approved the Conventional Density Sketch Plan by McKenzie Engineering Group, Inc. dated March 20, 2013 with revisions through 6/5/2013 for 9 lots. The Board voted on several waivers from the Subdivision Rules and Regulations including reducing the road width to 20 feet and requiring granite curbing at the entry and drainage structures while allowing cape cod berm everywhere else except the cul-de-sac island.

At the January 9, 2014 public hearing, the Board was awaiting the decision from MEPA due on 1/17/14 and reviewed draft Findings of Fact for the special permit and started to review special permit conditions.

At the January 30, 2014 public hearing, Attorney Watsky summarized his work on the conditions with Town Planner Laura Harbottle. The public hearings on the Flexible Open Space Development Special Permit, Definitive Plan and Scenic Road/Public Shade were closed. The Planning Board voted to make the Findings of Fact and to approve the Definitive Subdivision Plan subject to waiver of the Subdivision Rules and Regulations as requested by the applicant and previously voted upon.

The Planning Board voted to grant the Flexible Open Space Special Permit for Benjamin Studley Farms based on the Findings of Fact and subject to the Conditions as discussed.

Public Input:

At the September 12, 2013 public hearing, the following public comment was received: Mr. Patrick Gallivan, Scituate Conservation Agent, indicated he likes the open space residential design and would like to see more LID used. He indicated he was anticipating more input from the NHESP and that the Commission would review the 10 DEP Stormwater Standards as well.

Mr. John Niland of 232 Clapp Road was concerned about how much water was flowing toward his abutting property and the sight distance of a car coming out of the development.

Nancy Bartlett of 274 Clapp Road was concerned about sight distance and impact of the development to wildlife.

Shan Morrissey of 238 Clapp Road indicated her preference for a Landscape Architect to be involved in the project and LID drainage. She was concerned about drainage discharging to the vernal pool.

At the October 10, 2013 public hearing, additional public comment was received as follows: Penny Scott-Pipes of the Conservation Commission expressed her desire that the open space be under the control of the Conservation Commission with a conservation restriction.

Shan Morrissey, a member of the Maxwell Trust, said their role is to bring projects with open space deeded to the Conservation Commission to the Community Preservation Committee so that conservation restrictions can be placed upon the properties.

At the October 24, 2013 public hearing, Conservation Agent Pat Gallivan said that the turtle habitat study had been completed and would be addressed at the next Commission meeting. There was no further public comment. There was no public comment at the November 26, 2013, January 9, 2014 or January 30, 2014 public hearing sessions.

Findings of Fact: The following findings of fact based on information submitted by the applicant and the testimony given during the Public Hearing were approved:

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 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.

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 2.79 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 Litchfield Trail 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 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.

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 550.5 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.
 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 March 20, 2013 with revisions through 6/5/13 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 March 20, 2013 with revisions through 6/5/13 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.
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.

Decision: Based on the Findings of Fact, the Planning Board approved the Flexible Open Space Development Special Permit for Benjamin Studley Farm with the following conditions:

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.
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.

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.
11. 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.
12. 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 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.
 - b. 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.
 - c. 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. A receipt shall be provided to the Planning Board indicating each purchaser's receipt of the Homeowners' Association Agreement.

- d. The Town Planner shall be added to the Town of Scituate contact information on page 1 of the Construction Phase Best Management practices.
 - e. 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.
13. This approval is subject to the applicant consulting with the Board of Selectmen regarding their desire to accept the permanently protected open space shown on the plan in the care and custody of the Conservation Commission for extension of the Bates Lane Preserve. This consultation shall occur prior to the endorsement of the Definitive Plan.

REQUIRED PRIOR TO PRE-CONSTRUCTION CONFERENCE

14. 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.
15. 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

16. The boundary of the limit of clearing shall be marked or flagged 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

17. Construction work shall not begin prior to 7 AM weekdays and 8 AM on Saturdays, and shall cease no later than 7PM or sunset whichever is earlier. No construction shall take place on Sundays and legal holidays.
18. 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

19. 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.
20. 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

21. All time periods referenced in this document for completion of conditions shall be tolled in case any appeals are taken.
22. This Special Permit shall be void if it is not recorded at the Registry of Deeds within 90 days of expiration of the appeal period or such extension of that time period granted by the Planning Board following approval of this Special Permit. The Applicant shall provide proof that the Special Permit was recorded to the Planning Board.
23. 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.
24. 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.
25. All plan sheets of the Flexible Open Space Development Definitive Plan shall be recorded at the Registry of Deeds.

Vote:

Based on the Findings of Fact and the evidence and information provided by the applicant and obtained through the public hearings, the members of the Planning Board hearing this application voted unanimously to approve the Flexible Open Space Development Special Permit at 214 Thomas Clapp Road with the conditions noted above.

January 30, 2014
Date

SCITUATE PLANNING BOARD

Richard W. Taylor
John P. Pritchard
William S. Brooker
Robert J. Stone
Robert B. Vogel

This decision was filed with the Town Clerk on February 3, 2014
date

Appeal of this special permit may be made pursuant to M.G.L. Chapter 40A, Section 17, and shall be filed in a court of competent jurisdiction. Proof of that filing shall be provided to the Town Clerk within twenty (20) days of the date of the filing of the decision with the Town Clerk.

This special permit will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds, after the expiration of the appeal period of twenty (20) days.

The Planning Board certifies that it has complied with all statutory requirements of MGL Chapter 40A, Sections 9 and 11, and will file copies of this decision with the Town Clerk. The Planning Board further certifies that it has taken into consideration all testimony rendered at the Public Hearing, the comments and suggestions of other boards which have reviewed and made comments on the plans, and all plans and documents submitted by the applicant.

