

**TOWN OF SCITUATE
ZONING BOARD OF APPEALS
PUBLIC HEARING NOTICE**

TOWN OF SCITUATE
TOWN CLERK

December 19, 2019

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The Scituate Zoning Board of Appeals will hold a public hearing in the Selectmen's Hearing Room in the Scituate Town Hall located at 600 Chief Justice Cushing Highway on **Thursday, December 19, 2019 at 7:00 P.M.** to consider the following requests:

Present: Anthony Bucchere, Chairman, Tom Cavanagh and Ed Tibbetts

Also Present: Bob Vogel, Building Commissioner and ZEO

First Application: Mary E. MacKay and Patrick H. O'Brien, Trustees of 35 Doctors Hill Drive, Scituate., MA request a Special Permit pursuant to Section 610.2B of the Scituate Zoning Bylaw to allow the creation of three single family lots. The property is located on Laurelwood Drive (Assessor's Map 30, Blocks 1 & 2, Parcel 6 & 22F).

Representing the Applicant - Paul Mirabito of Ross Engineering

Mr. Mirabito - Reviewed the plan for the lots. There are 5 proposed lots, before the Board are 3 of the 5 due to the 50ft of frontage on each.

Mr. Cavanagh - Presented a letter from the Planning Board to the ZBA regarding the formation of the lots.

Mr. Bucchere - Requested some clarification regarding the Planning Board's letter referencing a subdivision.

Mr. Mirabito - Provided an explanation.

Mr. Tibbetts- Asked for clarification on the division of the lots.

Mr. Mirabito - Clarified how the lots were being divided.

Mr. Tibbetts - Confirming how the lots were divided and after the creation of Laurelwood drive the lots would now be on Laurelwood and First Parish Rd. Confirming also that the application before the Board that "Lot B" can now have sufficient frontage on Laurelwood Drive and creates access to the back and the creation of the additional 5 lots.

Mr. Mirabito - Confirmed.

Mr. Bucchere - Asked Mr. Mirabito if he received a copy of the Planning Board's letter. (Mr. Mirabito did not) In the letter Ms. Burbine refers to the Planning Board endorsing a Form A in 2011.

The first issue that you raised in the memo, it makes it seem like there is to be no further subdivision, I think no further subdivision is on the lots across the street and not on these lots. I think the inference that maybe the memo gives that the restriction is on these lots that we are now being asked to go back on is not accurate. I think if there was a restriction it would be on this plan.

Mr. Tibbetts- Stated that he would rely on Mr. Mirabito's professional experience and licensure to identify if this parcel should not be subdivided.

Mr. Bucchere- There would be a record plan that would say it wouldn't and that would be part of it and there isn't. With the little time given after receiving the memo "did some poking around" and did not find anything, I don't believe that these lots are subject to the restriction that was put in across the street.

Mr. Mirabito- The land area that is in front of the Board this evening was never part of the original subdivision. Lot A & B was part of the MacKay homestead back in 1996 when the subdivision was submitted to the Town of Scituate.

Mr. Bucchere - Referring to the memo from the Planning Board - It seems as though she is questioning the validity of the easement that someone has, not the validity of the easement the applicant has which might be a valid argument between the grantor and the grantee of that easement. I am pretty sure it is not something we are concerned with here.

Mr. Tibbetts - Regarding Mr. Bucchere's comments stated - not with this application.

Mr. Bucchere - The next part of the memo goes into a dissolution of an entity which is not our applicant.

Mr. Mirabito - Regarding the easement she may be referring to the gray area on the plan that is the layout Laurelwood Drive which is a private way and has not been accepted by the Town of Scituate to this point. So Mr. Mackay decided he wanted to divide not subdivide his property into parcel A & parcel B. Case law says; if you have frontage on a way that is approved under the subdivision (not audible) law you can use that frontage to divide that property. However if it is a private way you have to get permission from the owner and at that time it was Mr. Simone(sp) in 2011 and Mr. Mackay did get written permission.

Mr. Tibbetts - When the easement was given by Mr. Simone to Mr. MacKay in 2011, was it a restrictive easement allowing the use of Laurelwood Drive for this divided land and not to be used in the future subdivide it?

Mr. Mirabito - I don't believe so because the only land he owned was lot A & B. Mr. MacKay did not own that larger parcel, the subject of that judgement.

Mr. Tibbetts - You're referencing an easement that allowed A & B to be divided into lot A & B and we don't have a copy of that easement to confirm what or the wording so we don't know if there was anything in it that showed limitations as to what was to be created.

Mr. Bucchere - There are no restrictions in it as they are creating a private way. The memo also gets into drainage questions which are not before us.

Mr. Cavanagh - Asked Mr. Vogel if it would be subject to Storm water Permits.

Mr. Vogel - The Planning Board would decide that issue.

Mr. Bucchere - This meets the requirements of 610.2B.

Mr. Tibbetts - I believe the sincerity of the applicant as you have presented it that it is his desire to utilize the towns by-laws to develop the least dense development on this parcel.

Open to the Public-

Matt Kane 12 Laurelwood Drive - Questioned whether the road would be public or private

Mr. Bucchere - It is a private road.

Mr. Cavanagh - It is private in Scituate and public in Norwell.

John Belson 745 First Parish Road - Main concerns regarding drainage. Can you explain "No approval required under the subdivision control law"?

Mr. Mirabito - Explained the difference between a subdivision and a division of land.

Mr. Bucchere - It does cut through a lot of red tape by not creating a subdivision but you also have to meet a lot of requirements, which are the requirements of 610.2. Most notably these lots are twice as large as is required in this district.

Mr. Tibbetts - Explained the amount of frontage they have and what is required and what impact it could have had if they just divided into 3 lots instead of what they are requesting.

Mr. Belson- Concerned about the water that is going to drain off of the property.

Mr. Bucchere - They are not looking to avoid any regulations on the book other than the 100 ft of frontage. They are still subject to all the Storm Water regulations even if they were going to build only one house.

Mr. Tibbetts - If a person builds a single family house they have to maintain the water on their lot. If they are building a subdivision or dividing lots and building houses retention and detention that may take place, they have to follow all regulations.

Mr. Vogel - Explained the building permit process and requirements regarding storm water.

Mike Constantine of 60 Vernon Road - Questioned if you were w/in 100 ft of a wetland does that trigger a review.

Mr. Vogel - Explained the wetland requirements go before the Conservation Board and if there is an issue with stormwater that is a Planning Board issue. Regulations are in the bylaws.

Mr. & Mrs. Jared Nicholson of 787 First Parish Road - Questioned whether or not they would be able to use their driveway.

Mr. Bucchere - Confirmed they would not be able to use their driveway.

Mr. Nicholson - Wanted clarification if it was 3 or 5 lots.

Mr. Bucchere - There are only 3 lots before the board today. These three lots are restricted and cannot be subdivided in the future.

John Kimball 769 First Parish Road - Asked for clarification if there was frontage on First Parish and Laurelwood.

Mr. Tibbetts- Prior to the existence of Laurelwood that was the case. Parcel A has frontage on First Parish. On Laurelwood it has 350 feet, so they are taking 200ft and creating 2 100ft frontage lots and 3 50ft frontage lots.

Mr. Bucchere- Which is enough under the code because the size of the three 50 ft lots are twice the required minimum size under the code.

Mr. Kimball - Will it become a cul-de-sac?

Mr. Tibbetts - Laurelwood will be their road, with driveways coming off of it.

Mr. Cavanagh- They are not proposing another street. They are just proposing these five lots.

Mr. Vogel- If you have 3 50ft frontage lots they will have to have a common driveway.

Mr. Kimball - What about setbacks? Can they clear to the line?

Mr. Bucchere - The Zoning Bylaw does not prevent folks from cutting down trees. To a certain extent a certain amount of clearing could trigger the stormwater bylaw. Which would then make sure the clearing did not exceed the threshold this gentleman was getting into. There is no requirement for shade or trees with this type of development. There are no screening requirements on a residential lot like this.

Mr. Cavanagh - On the application of Mary E. MacKay and Patrick H. O'Brien, Trustees of 35 Doctor's Hill Drive, Scituate MA on their request for a Special Permit pursuant to Section 610.2B of the Scituate Zoning Bylaw for the creation of three single family 50ft. frontage lots located on Laurelwood Drive as shown on the plan prepared by Ross Engineering, Paul Mirabito dated November 18, 2019 I move that the board grant the Special Permit with the condition that those three lots 1, 2 & 5 not be further subdivided.

Mr. Tibbetts – Second

All in Favor – Unanimous

Second Application: SLV/WW Scituate, LLC of 257 Hillside Ave, Needham, MA request a Special Permit pursuant to Section 710.2 of the Scituate Zoning Bylaw to allow the installation of signage at 126-132 Chief Justice Cushing Highway, Scituate, MA for the project known as Herring Brook Meadow (**Assessor's Map 58, Block 1, Parcels 8A & 5**).

Representing the Applicant: Andrew Tibma, KIG Real Estate Advisors, LLC

Mr. Tibma - Described the temporary sign where the trucks are now entering the site and stated the Applicant would like it to remain until April/May 2021.

Mr. Bucchere - Questioned what the location of the sign would be in relation to the entrance.

Mr. Tibma - It will be 10 or 15 feet on the side of the entrance, wherever it is easiest to put the sign.

Mr. Tibbetts - It will run parallel to the street.

Mr. Tibma - Confirmed.

Mr. Tibbetts - The sign will be a single-faced sign and will be 12ft wide.

Mr. Bucchere - Questioned whether or not this application fell under Section 710.2 of the Scituate Zoning Bylaw and recited the bylaw. Stated the Board does not necessarily have a problem with the sign, they just need to be sure of the relief they are granting.

Mr. Tibbetts - Explained 701.2C and gave examples.

Open to the Public

Frank Kilduff - 125 CJ Cushing Hwy- Recited part of the Bylaw that applies to signs. He asked for a definition of what "temporary" means. Also, will the sign be a lighted sign.

Mr. Bucchere - Explained that lighting would need to be part of the application, which it is not.

Mr. Kilduff - How will the sign promote and protect the aesthetic value of the town.

Mr. Tibbetts - Explained the Zoning Bylaw that is before them specifically stipulates that in a residential district you are allowed to have signs for specific purposes. He also stated that he did not think 710.2C applied to this situation and he felt that it should be 710.2B. It does say the sign can only be 20 sq. ft. but it does not say there can't be more than one sign. We do need to consider the aesthetic value for the town.

Mr. Kilduff- Questioned who would be in charge of monitoring the sign if a Special Permit is granted.

Mr. Bucchere - The Building Commissioner. He also stated that the application has a right to modify their application for the 40B to include the sign and therefore a lot of the Board's ability to say yes or no goes away. He explained that this is a 40B project and what that means.

Mr. Tibma - Stated that they did not have any intention of lighting the sign.

Mr. Tibbetts - Brought up the Toll Brothers sign and asked for confirmation. Wondered if they could model this sign after those.

Mr. Vogel - Confirmed they do have signage and that it may be the 20 sq. ft.

Sarah and Brian Lannon 133 CJ Cushing Hwy - Wanted it on the record that the project has disrupted their peace. She made reference to her home shaking, trucks entering before 7:00 am and using her driveway to turn around. They (the Applicant) have made several promises concerning the project that they have not kept including but not limited to the cutting down of trees and time of deliveries.

Mr. Bucchere - Asked how recently had she noticed a delivery before 7:00am?

Ms. Lannon - Stated that at this time it was the best it had been and that they hadn't really heard anything since Thanksgiving.

Mr. Vogel- Explained that he had spoken with the Applicant and that they were not to start work and/or deliveries prior to 7:00am.

Mr. Lannon - Stated that the green tarp had blown off on November 16th and was concerned that the sign would blow off also.

Mr. Bucchere - Asked Mr. Tibma what material the sign would be made of?

Mr. Tibma - Stated that he believed the sign would be made out of wood but he was not 100% sure, but it would not be a tarp.

Mr. Bucchere - Stated that he was not dismissing their concerns with safety and that it had been addressed in prior applications and the Board does not have the ability to say the project is unsafe and stop it. You have valid questions but the Board does not have the ability to regulate that portion of the project. He also reviewed what is covered under the permit regarding deliveries.

Mr. Tibbetts - Stated that you cannot reasonably prohibit someone from walking around on their property on Sundays.

Mr. Bucchere - Agreed. However, if the excavator is running on a Sunday it is a different story.

Marcia Klein - 146 CJ Cushing Highway - Ms. Klein stated that she is very saddened and disappointed at the way the project is going and that her home is being disrupted by the project.

Mr. Vogel - Spoke to the pond on the site. It was a Conservation Commission and the Mass EPA condition that the fragilities be eradicated and to do that they had to scoop out about 3 feet of soil which created the pond and the intent is to fill that area with non-contaminated soil. He also addressed the vibrations on the property and stated that he was told that they could dial down the vibration on the rollers.

Ms. Lannon - Reiterated that her house shakes and she has had to leave in order to get some peace.

Mr. Vogel - Explained that they need to use the machines in order to get what they need done, but once the platform is complete they won't need to use those machines anymore.

Warren Boehl, 15 Marthas Lane - Mr. Boehl disappointed that Mr. Tibma was not more prepared. There is trash blowing onto Martha's Lane. He feels there is no courtesy to the neighbors. He questioned as to whether or not it had to be completely fenced in?

Mr. Bucchere- He is sure about the fence requirement and directed the question to Mt. Vogel.

Mr. Vogel - Stated he was unsure but would look into it.

Mr. Boehl - Stated he thought it was a requirement to have the site fenced in.

Mr. Bucchere - Restated he was unsure what the regulation was but fences are often used for security purposes and may be required if they are digging.

Mr. Tibbetts - Stated that an insurance company would most likely be the one to enforce that type of requirement. He also stated that hopefully by June this type of work would be finished and they would hopefully be building the buildings which would still have noise but not as bad as the site work. He also addressed the removal of the Beech tree.

Mr. Boehl - The workers are parking on Marthas Lane.

Mr. Vogel - Stated he would talk to the GC.

Sandra Kingsland - 21 Martha's Lane - Expressed concern that there is no fencing around the pond.

Mr. Bucchere - Stated he was not aware of a requirement for there to be a fence around the pond. He also stated that he does understand her concerns.

Ms. Lannon's son suggested that they put the green tarp that came loose on the inside of the fence. He also questioned as to whether or not Geoff Engler is still on the project.

Mr. Vogel - Confirmed.

Mr. Kilduff - Urged the Board to be as specific as possible regarding the permitting process for the sign.

Mr. Bucchere - We shall be.

Mr. Tibbetts - (Directed to Mr. Tibma) I think it's important we know where the sign is going to be placed. Show me some sites as to where it is going.

Mr. Vogel - Would like to know how it is going to be built

Mr. Tibbetts - I'm not sure you need as big a sign, I am thinking about the sign on Stockbridge Rd and Toll Bros are not as big as this.

Mr. Bucchere - The height isn't necessarily ok with me.

Mr. Tibbetts - To Mr. Tibma- You should present to us what the signs are going to be made of and use the one's mentioned for reference. They are probably about 20 sq. ft and would probably meet your needs but if they don't and if you are looking for relief from 710.2B then I would like to have a better idea of what that is.

Mr. Bucchere - Stated that it does not matter which side they put the sign on but it does matter how far back it is from the street. It can be on the left or right but it does need to be defined.

Mr. Tibma - Stated that it is going to be a free standing sign and maybe it could be placed so it is behind but above the fence.

Mr. Bucchere- We need to know where the sign is going, the Building Dept will eventually need to know what its going to be made of and we would like to know what the material is too. It is a unique project, you are asking for much larger than the code permits, I'm not saying you can't have the sign, but to the extent it has to be much larger than the code permits we need to understand why.

Mr. Tibbetts- Explained that this application falls under 710.2B and if they are looking for relief from B then the Board needs to know why.

Mr. Bucchere - Questioned why they don't just use the fence for the sign. He reiterated what information they need.

Mr. Tibbetts - Stated that as the project progresses he would like to see the sign moved back onto the property and as far as the term that the temporary sign is up he would like to see it as a 6 month renewal.

Mr. Tibbetts- Move to continue to the next meeting.

Mr. Cavanagh - Second

All in favor - Unanimous

Move to Adjourn -- All in favor -- Unanimous

Meeting adjourned at 9:24 pm.

Respectfully submitted by,

Beth Heneghan