

FALMOUTH PLANNING BOARD MEETING MINUTES

TUESDAY, OCTOBER 6, 2009, 6:30 P.M.

FALMOUTH TOWN HALL, COUNCIL CHAMBERS

MEMBERS PRESENT: Tony Calcagni (Chair), Bill Lunt (Vice-Chair), David Fenderson, Stan Bennett, Jay Moody (Associate), Becca Casey (Associate)

Bernard Pender arrived late to the meeting.

STAFF PRESENT: Ethan Croce (Senior Planner)

The meeting was called to order at 6:32 pm.

Jay Moody was appointed as a voting member.

1. Approval of September Meeting minutes

Stan Bennett moved to approve the minutes as amended; Jay Moody seconded. Motion carried 5-0.

Public Hearings

2. Public Hearing regarding proposed amendments to Section 3.16 of the Zoning and Site Plan Review Ordinance.

Ethan Croce explained that the proposed amendments would update outdated ordinance definitions, adjust minimum parking requirements and setbacks, and allow increases in density, maximum building heights, and maximum building size in regards to the Retirement Community Overlay District.

Bill Lunt asked for clarification on the new height restriction.

Ethan Croce clarified that it will be 4 stories, 45 feet.

Becca Casey asked about the minimum of 150 residents for the overlay district.

Ethan Croce said that was in the original ordinance language.

Tony Calcagni opened the public hearing; there was no public comment.

Jay Moody stated that a constituent contacted him with concerns about the parking standards being lax. OceanView has three different facilities, and when the residents of other facilities visit the lodge for events there are parking issues. The parking is designed for those who live in the lodge and the staff, and not to accommodate all the residents of the property. He also wondered about the threshold of 150 residents for the overlay district.

Tony Calcagni also wondered about the minimum of 150 residents, as well as the limitation on a number of different types of care in order to qualify for an overlay district.

Stan Bennett thought the Council should rewrite the ordinance to allow for smaller, less diverse retirement districts.

Becca Casey noted that in 3.16.7 Item B it allows 6,000 sq feet per resident; it is a fair amount of space.

Ethan Croce said that number is used to figure the maximum square feet of density for the site. They are proposing to increase the allowable density from 7,500 sq per dwelling unit to 6,000 sq feet.

Bill Lunt observed that this is an overlay district designed for a specific area. They are supposed to review whether this document is easy for them to review as a Planning Board, and not whether this could be used for another overlay district.

Stan Bennett moved that the Planning Board approve these amendments.

David Fenderson asked if the owners of a development in this overlay district could amend their site under these new amendments; Tony Calcagni said they could.

Bill Lunt seconded the motion.

Motion carried 4-1 (Moody).

Agenda Items

3. Ellen Josephs – Parker Way – Request for preliminary and final subdivision approval for a six-lot conservation subdivision. Tax Sheet 220; Map-Lot R03-036. Zoned Farm and Forest, RCZO, & SP (Shoreland).

Bernie Pender arrived at the meeting.

Ethan Croce explained that the applicant is requesting three waivers: 1. to combine both preliminary and final subdivision approval; 2. to extend the dead-end road to 1562 feet, beyond the 1500 foot limit; and 3. to reduce the travel width of the street after the wetland crossing from 22 feet to 16 feet. The other question is whether the Board will require the applicant to extend public water up to the subdivision. The Board asked the applicant to come back with cost estimates on extending public water to support the request to use private wells for the subdivision. These estimates are included in the Board packet and are substantially higher than the rough estimates provided at the last meeting. An average of the four estimates divided by six lots shows that the cost per lot to install public water would be \$149,514, as opposed to \$34,700 per lot with wells and sprinkler systems.

Ethan Croce presented the key issues. The applicant is requesting that the Planning Board approve a conditional agreement as allowed under Section 11 of the Subdivision Ordinance instead of a full financial performance guarantee. Under this conditional agreement, the applicant would be prohibited from selling lots and obtaining building permits until such time as either 1) all of the subdivision's infrastructure has been completed; or 2) a performance guarantee is posted to cover the cost of any uncompleted site improvements.

Staff had previously recommended that the proposed transformer pads be shielded or screened from the street with either architectural elements and/or landscaping. Also, at past meetings, the applicant indicated that clearing/cutting of vegetation would be prohibited in all open space areas and buffer areas, however, the revised legal documents still seem to allow for some amount of clearing and construction to take place. Staff believe the intent of the Ordinance was to have the Planning Board approve specific locations suitable for any proposed disturbance in the common open space and to have those locations shown on the plans, in order to ensure that the location of any buildings has gone through the 4 step design process.

The subdivision ordinance requires a monitoring party qualified in land/resource conservation – the legal documents propose the monitoring party be assigned by the Homeowners Association, but the ordinance requires that party be approved by the Board. The Board could authorize Planning staff to sign off on that party. A stewardship fund to pay for the monitoring is required by the ordinance – staff recommends that the Homeowners Association be the holder of the fund instead of the Town.

The range recommended for the fund is \$5,000 - \$10,000; the applicant is proposing a \$5,000 fund, and staff is agreeable to that amount.

David Fenderson asked who does the monitoring.

Ethan Croce said that ordinance requires someone qualified in land management and resource management. The Town requires a copy of the monitoring report.

Tony Calcagni asked why staff was recommending a separate account and not a deposit to the Town's stewardship fund.

Ethan Croce said that if the applicant was deeding the open space to the Town it would be appropriate to deposit the money with the Town, but in this instance the Homeowners Association will retain ownership and should therefore maintain the fund.

Judy Soule of Titcomb Associates represented the applicant. This is a 6 lot conservation subdivision of 18.6 acres. There will be 6 lots of $\frac{3}{4}$ acre each with a total of 12.9 acres of open space and an additional 2.7 acres of no-disturb areas for a total of 15.6 acres protected, or 84% of the project area. She mentioned another waiver request not yet mentioned, on the reduction of the rear setback from 40 feet to 20 feet on lot 4.

Ethan Croce clarified that it is not technically a waiver; the Board has the power to reduce these setbacks and seemed to show support for this request at the last meeting.

Ms. Soule said the transformer pads are all in the non-disturbance areas; any disturbance would be re-vegetated to match the surrounding vegetation, except for the front of the transformer per CMP requirements. There is a letter of intent to provide financial backing included in the packets. Regarding the language in the legal documents, she clarified that no small buildings will be allowed without coming back before the Board for an amendment.

Tony Calcagni asked about the cross-hatching on the plan; he wondered if there is a difference between how the 50 foot perimeter buffer is treated as opposed to how the open space is treated.

Ms. Soule said no; it is called out separately in the ordinance so they show it as distinct on the plan.

Tony Calcagni wanted to make sure the plan coordinates with the legal documents, in regards to what space is called out.

Tony Calcagni asked Ethan Croce about the standard notes required for a subdivision plan.

Ethan Croce had a list of conditions for approval, including the addition of some plan notes.

Tony Calcagni didn't think they needed as much topographical information on the subdivision plan. He felt it was cluttered.

Steve Bradstreet, of Oak Engineers, spoke about the water line extension. They put together a bid form to show, line-by-line, the costs associated to extend the water line up Parker Way. This included pipe, backfill, ledge removal, etc. They sent this form out to four contractors, received back all the bids and sent them to Town staff. Bids ranged from \$815,460 to \$993,515, averaging out to \$149,000 per lot. They also priced out a typical well in this area, as well as the installation of sprinkler systems. They have confirmed the presence of ledge in this area.

Bill Lunt wondered about where some of these numbers came from; he was surprised at how high they were. If the water main were directly in front of the subdivision the Board would never consider how much it would cost to bring water into the subdivision. Using the average as stated, he backed out some numbers and found an average of \$131,000, and with backing out the sprinkler systems which wouldn't be needed if they had public water, the number comes closer to \$98,000 and could even come down to \$70,000 per lot. The Board might not think \$70,000 was reasonable anyway.

Mr. Bradstreet said that even with backing out the 800 linear feet of the new extension, it still leaves 3300 linear feet of water main extension. They showed the cost of public water versus the cost of private wells and sprinkler systems. The sprinkler system was required whether they have public water or not.

Bill Lunt didn't think sprinklers were required by ordinance.

Ethan Croce said that fire protection had to be provided to the satisfaction of the Fire Dept. There is no requirement for sprinklers, but they are typically used in subdivisions with no public water.

Bill Lunt said that, even using Mr. Bradstreet's own number for the width and length of the trench, he could not come up with the cubic yards that Mr. Bradstreet came up with. He said that even with backing it down to \$70,000 per lot, he thought it was too high.

Mr. Bradstreet said using the 4200 feet long, 4 feet high, 6 feet wide estimate of the trench, calculates to more than the number he was using.

Bill Lunt said the Board has never taken into consideration the installation of water actually within the subdivision, only the cost to bring the water to the property. This brings down the estimated cost significantly.

Tony Calcagni thought they should really be measuring from Woods Rd.

Bill Lunt did that the first time, but he reviewed the State statute to see what he should and shouldn't consider in the calculations. The statute said that you have to look at the impacts, and if it were sewer then he would have considered the three front lots, but for bringing the water in the front three lots have no impact.

Tony Calcagni asked how much the lots will sell for.

Ms. Soule said between \$150,000 and \$180,000.

Stan Bennett asked the staff if there was some way to see what other Planning Boards do with this situation; he wondered what percentage of total cost is unreasonable.

Bill Lunt referred to the rule on Route 1 about buried power which refers to 20% of the total cost. In a commercial project, you don't think much about 20%, but in a residential project you do. He was satisfied after his extensive work with the numbers, that the cost per lot to bring public water to the project is too high.

Ms. Soule appreciated the hard work Bill Lunt has done. She explained that the reason they showed an estimate bringing public water to the end of Parker Way was that she thought they were asked to compare bringing water to each lot with public water versus private wells.

Terry Snow, an attorney from Cumberland, spoke about the legal documents. The applicants agree with Ethan Croce's comments about the documents, and will turn in revised documents later this week. The road maintenance association will be nine lots, nine votes, majority rule. The developer will form an executive committee, which will then be elected annually by the lot owners. There will be no buildings/structures allowed in the no disturb areas; that language will be removed. The documents refer to no disturb areas as shown on the plans, and they will confirm that the documents and the plans are consistent with the recorded survey. They will make the changes recommended in regards to the monitoring party.

Becca Casey asked if the existing lots will be included in the new road maintenance agreement.

Mr. Snow said they will be included in the road association, but not the homeowners association.

Tony Calcagni wanted clarification that the developer will pay for the extension of the road.

Mr. Snow said that was correct and they will put that in the documents.

Tony Calcagni suggested that language be added that any amendments to these documents had to come back before the Board for approval. He was concerned that they could amend the document that governs the open space, and undo all the restrictions required by the Board.

Mr. Snow said that he would consult with the applicant, and add that language. He asked if Tony Calcagni wanted to distinguish between major amendments and minor amendments.

Tony Calcagni thought those types of amendments could be handled as an administrative action item on a Planning Board agenda; he didn't want to get into defining major or minor adjustments.

Tony Calcagni suggested a number of changes to the declaration in regards to the language in several sections. He specifically removed language allowing utilities and features in the open space; he felt that anything they wanted in the open space should be shown on the plans submitted to the Board.

Mr. Snow noted the suggested changes.

Tony Calcagni asked about the \$5,000 monitoring fund; Mr. Snow said the developer is making the initial deposit.

Ethan Croce said the intent is that the interest be used to pay for the monitoring, but at some point the fund will likely need to be replenished.

Tony Calcagni wanted to make sure that each property owner has rights to the common open space, and that the declarant doesn't have more rights than other lot owners.

Mr. Snow said that was their intent.

David Fenderson wondered if the Board was really able to vote on an approval tonight in light of the long list of changes to the documents that Tony Calcagni has suggested.

Jay Moody thought they could fully vote on it tonight, with a condition of approval to fix the declarations as requested.

Tony Calcagni reviewed the bylaws and wondered about the board of directors of the homeowners association. Mr. Snow said it is being changed; the developer will appoint an executive board the first year, and then it will be one vote per lot.

Tony Calcagni suggested they list the open space restrictions in one document, preferably the declaration, as opposed to listing them both in the declaration and in the warranty deeds.

Bill Lunt thought it would be more difficult to alter the restrictions if they were in the deeds.

Mr. Snow said the declaration is recorded.

Tony Calcagni said the deeds refer to the declaration, and if the declaration states that it cannot be altered without Board approval, they are covered. He referred to the executive interest holder provision, and suggested moving it to the declaration. It didn't make sense to have the Town sign every deed. He asked to remove the note that any use restriction violation come before the Planning Board within 30 days.

Ethan Croce said that language was originally drafted by the Town Attorney, but he also felt that it could be removed.

Tony Calcagni observed that with conservation zoning, more and more complicated declarations will be coming before the Board.

Bill Lunt wondered who should hear violations with the open space restrictions.

Tony Calcagni thought it should be code enforcement. Planning Board is not armed to hear violations. He asked about an easement to the homeowners association over the 50 foot right of way. He thought the deeds would have easements included.

Mr. Snow said they are contemplating turning over the road to the homeowners association.

Bill Lunt suggested that all these changes go back before the Town Attorney for review before the Board signs the mylar.

Tony Calcagni agreed that they should be reviewed by the Town Attorney.

Public hearing opened; no public comment.

Tony Calcagni reviewed the three waiver requests.

Stan Bennett was agreeable to combining the preliminary and final approval stages, provided they add a condition that the proposed revisions to the documents be reviewed by the Town Attorney and staff. Jay Moody agreed.

Bill Lunt suggested that, if the Town Attorney had any problems with the suggested changes, or any further changes, the documents come back before the Board as an administrative item.

The Board conducted a straw poll, and was in favor of combining the approval stages. Another straw poll showed the Board in favor of the road extension, the reduction of the pavement width, and the use of private wells for each lot instead of the extension of public water.

David Fenderson raised the question of the performance guarantee.

Ethan Croce said that these types of conditional agreements are allowed conditional upon approval of the Town.

Jay Moody was in favor of the suggestion; it is a small project.

Tony Calcagni felt the Board was in favor of the changes he proposed to the legal documents, and the applicant's attorney seemed to be in agreement with those changes as well.

The Board was in favor of the \$5,000 level for the stewardship fund.

David Fenderson felt that if the association holds the money the Board should find a way to insure the fund was used for open space, and not for something else.

Jay Moody was concerned with the amount of money; it is quite a bit of open space to review.

Tony Calcagni felt there should be a provision in the declaration about the \$5,000 fund.

Bill Lunt felt that if the monitoring wasn't done the Town would enforce it and then bill someone.

Jay Moody suggested a provision in the declaration establishing the fund, as required in the ordinance. The developer will fund it at \$5,000 and it will be replenished.

The Board agreed that it should be added to the declaration.

Ethan Croce said the ordinance calls for the Board to approve the monitoring party for the open space.

Tony Calcagni thought the homeowners association should propose someone, and staff could sign off on it. If the staff thought that person was questionable they could bring it before the Board, but he didn't feel that the Board needed to vote on it every time.

Ethan Croce read the proposed conditions of approval. Tony Calcagni amended 3 c to include that all the legal documents shall be revised to reflect comments by the Board and then reviewed by the Town Attorney, and also added that the stewardship account shall be included in the declaration.

Stan Bennett moved to grant preliminary and final approval to the application with the conditions as amended, David Fenderson seconded. Motion carried 5-0.

4. (Item Tabled) Hundred Acre Woods, LLC - 570-578 Blackstrap Road – Request for preliminary subdivision approval for an eighteen lot conservation subdivision. Tax Sheet 90; Map-Lot R08-059-002; Zoned Farm and Forest & RCZO.

5. Rebecca and Stephanie Rand – 3 Pine Grove Way – Request for private way approval to create one new lot. Tax Sheet 300; Map-Lot U07-004-D. Zoned RA & RCZO.

Ethan Croce identified the key issues. First, the applicant is proposing to locate the required hammerhead on new proposed lot 3 instead of within the private way easement. If the Board agrees to this somewhat unorthodox arrangement, staff recommended that the legal documents reflect that maintenance and plowing should be required up to and including the hammerhead and driveway into lot three so that emergency vehicle access is preserved year round. Secondly, the applicant should verify that the travelway either meets the private way standard or their intent is to bring it to meet that standard.

Stephanie Rand presented the application. The revised plan includes the changes requested by the Board, and she understands that she will have to widen her driveway to conform to the private way standards. The plan shows the road widths as they will be upgraded. Each lot must meet 75% buildable area, and the current configuration allows them to meet that standard with lot 3's driveway on lot 3. Pine Grove Way as shown on the plan is how the road currently exists. There is a forested buffer between lots two and three and the Pine Grove woods trail system; if they can continue to use the existing driveway they will have almost no impact on the surrounding areas. The dimensions of the turnaround are 22'x40' as outlined in the subdivision ordinance; they would prefer it to be smaller if possible.

Tony Calcagni asked if the association would maintain the gravel roadway and the hammerhead.

Ms. Rand said that would be paid for by the lot owner. Currently, the lot owner furthest away from the main road pays the most for plowing.

Jay Moody asked if the plowing was all under one contract.

Ms. Rand says her father does it currently.

Tony Calcagni wants to make sure that the hammerhead is maintained; he wasn't sure that the road as defined in the road maintenance agreement includes anything beyond lot 3. He wasn't clear from looking at the plans what exactly Pine Grove Way was. The road maintenance agreement refers to "the Road" and he thought it needed to be clear what was included in "the Road".

Stan Bennett suggested language of "up to and including the hammerhead".

Jay Moody was concerned about snow piling; he felt the turnaround should come away from the cottage.

Ms. Rand asked if the turnaround has to be 22'x40'.

Ethan Croce said that there was no standard in the private way ordinance. The 22'x40' standard is from the subdivision ordinance, and is what they typically see. Ms. Rand could appeal to the fire department for a smaller turnaround.

Bill Lunt is concerned about a future owner of the lot and the location of the hammerhead. He wondered if they should insist that the built out turnaround be in the right of way.

Tony Calcagni observed that the agreement states that the right of way beyond the gravel drive shall remain as a forested buffer.

Bill Lunt said the right of way as set up here is just a piece of paper, and can never be used as a right of way. He thought maybe they should move the private way to where the driveway is now.

Ms. Rand explained that to achieve 75% net buildable area they had to move it onto the Hesters' lot. To have it as a forested buffer benefits everyone.

Jay Moody thought they needed to go back to the beginning, show a 50 foot right of way all the way to lot 3, and pull the hammerhead back toward Foreside and away from the cottage.

Bill Lunt felt that it was potentially a problem further down the road, when it was no longer family living here.

Ethan Croce said what is unusual is the location of the hammerhead outside of the private way easement. It isn't uncommon for the Board to approve a private way where the travelway isn't built all the way to the end of the hammerhead, but it is unusual for a portion of the private way to be built outside of the easement.

Tony Calcagni felt that, if this design is approved, there should be language in the agreement that the turnaround be maintained as part of the "Road" and can't be used for any other purpose.

Bill Lunt observed that a long driveway doesn't require a hammerhead. He suggested moving the hammerhead to be where the width changes from 16' to 12'; where the circle is. The driveway could then be a driveway and the turnaround would be in the right of way. He indicated on the plans where he was suggesting placing the turnaround.

The Board agreed with Bill Lunt's suggestion.

Ms. Rebecca Rand clarified that they are only doing this for legal reasons, and do not have any plans for further development.

Bill Lunt thought the circle could be used for the hammerhead.

Becca Casey and Tony Calcagni observed that only a third of the circle is within the right of way. Becca Casey suggested that they go to the Fire Chief and see if a smaller hammerhead is possible.

Ethan Croce clarified the Board's request that the built portion of the hammerhead be within the private way easement.

Public comment period opened; no public comment.

Bill Lunt moved to table the application; Jay Moody seconded. Motion carried 5-0.

Meeting adjourned 9:01 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary