



PLANNING BOARD

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MINUTES
May 17, 2016

TOWN CLERK
TOWN OF SANDWICH
JUN 08 2016
11 H 09 M A M
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7:00pm

Upstairs Meeting Room
Human Services Building,
270 Quaker Meetinghouse Road

Present: Sarah Regan, Chair, Lori Caron, Robert King, Joseph Vaudo, Thomas Lynch and Matthew Cubetus

Absent: Scott Torey, Vice Chair

Also Present: Blair Haney, Director, Planning and Economic Development, Josh Peters, Asst. Town Planner, and Sam Jensen, Asst. Town Engineer

Approval of Minutes

Mr. King motioned to accept the minutes from April 19, 2016 as written. Mr. Vaudo seconded. The vote was unanimous.

Submission of New Plans

No new plans were submitted.

Board Reorganization

Mr. Vaudo made a motion to elect Ms. Regan to her 2nd year as Chair. Ms. Caron seconded. The vote was unanimous.

Ms. Regan made a motion to elect Ms. Caron as Vice Chair. Mr. King seconded. The vote was unanimous.

Cape Crossing

Form E & Mylar signing

Ms. Regan read the following letter into record:

- Planning & Development, Blair Haney, memo dated May 12, 2016

Mr. Haney explained that the Town has not received the documents that are required in order for the Board to sign the Mylar plan. He briefly discussed the appeal that was filed on the Board of Appeals vote to modify the Forestdale Village comprehensive permit. It had just come into the Planning & Development Office that day so he had not had time to review it. The Board unanimously agreed to table the agenda item, until all documentation was submitted.

Tsakalos Realty Trust

ANR

357 Cotuit Road

Mr. Thomas Tsakalos, property owner, and Mr. Richard Tabaczynski, Atlantic Design Engineers, were present. They explained that lot 190 originally had 134 feet of frontage (zoning bylaws require 150 feet). He had gone before the Zoning Board of Appeals back in December 2015 for a Variance from the required amount of frontage, but he was denied. Instead he has opted to take a small, triangular section of land (approximately 300 square feet) from an abutting lot that he owns to the northeast, to

gain the required frontage on Cotuit Road. Mr. Jensen had reviewed the plan and he believes it is very straight forward. The access in is provided by an existing driveway. He mentioned that upon approval, Mr. Tsakalos should go through the Building Dept. to discuss future access. He believes traffic will not be impacted.

Ms. Regan opened the hearing for public comment. There was none. Mr. King made a motion to approve the ANR. Mr. Vaudo seconded. The vote was unanimous.

Board Discussion

Comments for the Zoning Board of Appeals

After a brief discussion about application #16-07 for a Special Permit for 1 Jarves Street, the Board had no comments to offer.

Scenic Roads

Ms. Regan thanked the Planning staff for providing the scenic road by-laws from towns on and off Cape. She had previously requested the information after the April 19th meeting. She asked if anything in particular stood out from the other town's by-laws. Mr. Peters responded no. These towns note scenic roads in their town by-law, but all of them fall back on MGL Chapter 40, section 15C. Mr. Vaudo questioned why Justin O'Connor, the tree warden, wasn't present for the meeting and Mr. Haney responded because the tree warden is responsible for trees that fall under the Public Shade Tree Act. Mr. Haney believed the discussion was going to be around Scenic Roads, not public shade trees.

Mr. King explained that the State tells each town how to distinguish Scenic Roads, but then only allows Planning Boards to make decisions when trees and stone walls are compromised. He wants the Planning Board to preserve all aspects of Scenic Roads. He would like to rewrite the bylaw so that the Board can go "deeper" than just trees and stone walls. According to Mr. Haney and Mr. Peter's, the State will not allow towns to go "deeper". Per Johnathan Silverstein of Kopelman & Paige, towns cannot use a local bylaw to broaden a state statute. Mr. King would like to change the By-law and present it the Attorney General's office to see if it would be accepted. Ms. Regan asked Mr. Haney where they would need to start to make a change to MGL Chapter 40, § 15c and Mr. Haney responded that they would need to draft letters to Senators and State Representatives.

Mr. King went on to explain to the new Board member, Matthew Cubetus, how scenic roads are designated in Sandwich. He also explained the issue with Heritage Museum's parking lot expansion on Shawme Road. Heritage did not have to get a Scenic Road permit for work done on Shawme Road (a designated scenic road) because the scope of work being done did not include the removal of trees or stonewalls and he's concerned that Heritage will be sending its guests down Shawme Road, a dirt road that's already very worn. A long conversation ensued over Heritage's curb cut and parking lot expansion plans. Mr. King would like a right turn only sign placed upon exiting this parking lot that forces cars to take a right out of the lot so as to avoid proceeding down Shawme Road. Ms. Regan mentioned having a sign that says "To Route 6" also making the cars turn right. She feels that may be more effective. Mr. Haney asked the Board what they would have done different with Heritage? Mr. King responded he would have made Heritage have a self-contained parking lot where all pedestrian traffic crosses in one place, at the main entrance. He said he would have granted them the curb cut and given them the use of Shawme Road with two caveats, 1) No cars allowed and 2) Walking traffic remains.

Looking at the chart of Town Scenic Road Bylaws prepared by the Planning Office, Ms. Caron doesn't believe it accurately depicts what the Board can and cannot do with respect to the bylaw. Reading from the town bylaws, Ms. Regan believes that two key words "with respect" need to be removed and the bylaw should read as follows, "repairs, maintenance, reconstruction or paving work done shall require prior written consent of the Planning Board." Mr. Haney reminded the Board to keep in mind the sentence that directly follows, "in accordance with the regulations of GL Chapter 40, § 15C, paragraph

2." Ms. Regan stated that she believes the state by law enables the town the authority to designate scenic roads, but it doesn't say that the town bylaw needs to be written in a certain way.

Mr. Vaudo is curious as to why the Tree Warden has an application for tree removal on non-scenic roads. Ms. Regan answered because trees on non-scenic roads are under his purview. Mr. Vaudo is confused as to why he needs a non-scenic road permit on Gallo Road to remove brush. Mr. Haney said the caliper of trees that fall under the Public Shade Tree Act is much smaller (1 ½-2") than the caliper of trees that trigger a scenic road permit. The Board questioned if trees on private property fall under the Public Shade Tree Act. Mr. Haney explained that if the tree is not in the layout of the road, an application does not need to be filed. Homeowners can take these trees down without a permit.

Mr. Carlo DiPersio, 11 Morgan Trail, questioned the split rail fence on Shawme Road that was moved by Heritage. Does this come before the Planning Board? Mr. Haney explained once again, that because it was not a stone wall, it doesn't come before the Board. He also wanted to express that Shawme Road is in no condition to allow more Heritage traffic. He feels a few more heavy rainstorms and the whole road could wash away. He said that Heritage already has a beautiful curb cut just down from the main entrance. It's pavement to pavement and no one ever talks about it.

Erin Sullivan, 7 Johnathan Lane, questioned 2 driveway permits that are currently pending and wondered if they will be going before the Scenic Road Committee. Ms. Regan stated that unless the driveways involve trees and stones walls, they will not have to come before the Board. Ms. Sullivan reads from the Town Rules and Regulations (page 10, Revised 1994) and states that it's a requirement for driveway permits to obtain a scenic road permit. She believes that the town regulations supersede the scenic road bylaw because it was written after. Mr. Haney, who spoke with Town Council, says that it is not a reasonable interpretation since MGL statute only says trees and stone walls. The statement serves as a warning to someone that they may need to file a Scenic Road application if required. It's a procedural statement and not a regulatory statement. Ms. Sullivan doesn't understand how the Town Rules and Regulations can differ from the Scenic Road By-laws. Why did the Town adopt something they don't want to follow? She wonders if the Town had similar conversations in 1994 when the Rules and Regulations were revised. Ms. Caron explained that through personal experience sometimes Town Bylaws don't necessarily agree with Zoning Bylaws. Ms. Sullivan said she made a public records request on a Heritage application to remove two trees to put in a driveway and walkway. Ms. Regan stated that the trees are probably on their land therefore they do not have to come before the Board. Ms. Sullivan will check with Engineering to see if the trees are in the road layout.

Judy Stainbrook, 2 Faunce Mountain Road, questioned why the Planning Board denied the parking lot plan last June? How can it be denied by one and approved by another? Mr. King explained that the first plan involved taking down a tree, which the Planning Board denied. Heritage then changed their plan to save the tree, so they were able to bypass the Planning Board and go right to Historic. She also questioned why the language on an application for a cub cut says that all driveways require a Scenic Road permit? Mr. Haney again explained it is a procedural statement and not regulatory. Ms. Stainbrook thinks it needs to be taken off the application. She also wonders why the town is limited in their actions on Scenic Roads and is willing to write a letter to State Representatives.

Mill Creek Park:

Mr. Vaudo questioned the trees that were taken down in Mill Creek Park. They did not require a scenic road permit? Mr. Jensen said those trees were shown clearly on a survey and they were not in the road layout. Mr. Vaudo also questioned 2 trees taken down on Grove Street behind the town hall. Mr. Peters said that two of those trees were storm damaged as determined by the Tree Warden and they came down the day after the storm. The Planning Board should have received notice of them coming down within 72 hours and they never did. There were also two trees taken down along Shawme Pond directly behind the town hall. Mr. Haney believes that those two trees are near the Grist Mill and they were taken down because the roots were impacting the Grist Mill. Mr. Haney will look into it and clarify. Mr.

Vaudo would like Justin O'Connor to attend the next meeting to discuss Scenic Roads and the Public Shade Tree Act.

Mr. Haney brought up the Atkins Road appeal that was filed by Monomoy Properties LLC. Town Council recommends having an Executive Session to discuss the lawsuit. Also the Board will need to take a vote on the Cluster Special Permit for Atkins Road by June 13th. Ms. Regan will not be at the next meeting on June 7th. Ms. Caron made a motion to hold the meeting on May 31st at 5 pm for the Executive Session as well as to take the Cluster Special Permit vote. Mr. Cubetus seconded. The vote was unanimous.

Mr. King made a motion to adjourn. Ms. Caron seconded. The vote was unanimous. The meeting adjourned at 9:23 p.m.

Respectfully Submitted,

Laura C. Watts