

Planning Board Minutes 08/13/18

APPROVED

Chilmark Planning Board August 13, 2018

Present: Rich Osnoss, Janet Weidner, Peter Cook, John Eisner, Chris MacLeod

Not Present: Joan Malkin, Mitchell Posin

Public & Board/Comm. Members: Jessica Roddy, Ann Wallace, Hugh & Suzanne Weisman

Staff: Jennifer Christy, Admin. Asst

Meeting was called to order at 4:30 PM

- **Guest House Zoning Bylaw Discussion:**

- It was noted that the data for the dwellings and their sizes in Town should be confirmed as correct with the Asst. Assessor.
- Chairperson Osnoss opened the discussion on the increase on the Guest House permitted size topic.
- Discussion occurred about the size of dwellings in Town considering the data provided by the Asst. Assessor. It was agreed that Ms. Christy would check the data (and the subsequent graphed information) with the Asst. Assessor prior to the August 27th meeting. Ms. Wallace asked if Ms. Christy could find from Ms. Bunker how many Guest Houses have year-round residents.
- Discussion occurred about turnover of Youth Lots and whether this is an issue of concern. It was noted that the data appears to show that the Youth Lot bylaw achieves what the Town wants: to give Town youth a head start.
- Mr. Cook suggested that the Town could adjust the conditions under which a lot owner could have an Accessory Apartment over 800 square feet and in this way encourage the use of the larger apartment for family. Discussion occurred about the benefits or detriments to allowing a caregiver to reside, year-round or seasonally, in a larger apartment.

- **Weisman Lot, Map 32, Lot 57 Preliminary Discussion:**

- Mr. Weisman introduced the topic of their wish to build a Guest House.
- Mr. Weisman summarized the history of their acquisition of the lot that they now own at Map 32, Lot 57.
 - Bought land from the Parkers in 1980.
 - Purchase and sale agreement had restrictions and rights, and one said that there would only be one dwelling allowed.
 - They asked their real estate agent to ask the seller to allow a Guest House. The seller struck out that restriction and they went ahead with the sale.
 - Their next door neighbor Haskell built a Guest House in 1991 and another neighbor Sloane built a structure that turned into a Guest House in the 1990s.
 - In 1999, or thereabouts, they asked the Building Inspector to take out a permit to build a Guest House.
 - The Building Inspector stated there is a covenant limiting the number of structures on his lot. The Building Inspector showed them the covenant that was identical to the deed except that it included the line that had been omitted from the purchase and sale agreement limiting the structures to one dwelling. It was determined that both the purchase and sale agreement and the deed did not have a restriction on building a Guest House, but that the covenant did include a restriction.
 - Upon research, Mr. Weisman noted that, of the 12 lots in the subdivision, there are 4 lots that have the restriction on the deed, and are therefore identical to the restrictions in the covenant, and 8 lots have no restriction on the deed (including his lot's deed). The covenant for all 12 lots restricts the lots to one dwelling.
- Mr. Weisman stated that Ms. Doris Parker appears to have sold lots with and without the restriction. He also stated that at one time the Planning Board stated no restrictions on Guest Houses were in effect for the Haskell lot.

- Mr. Eisner asked if Mr. Weisman would have been satisfied with the state of affairs if the deed for his lot had restricted the lot to one dwelling. Mr. Weisman stated that he would have been satisfied with the situation since the wording would have been in the deed.
- Discussion occurred about the type of covenant and it was determined it was a covenant with the Town.
- Mr. Eisner stated that the issue appears to be one that requires a legal opinion due to the fact that the question is does a covenant stand the test of time if the restriction in the covenant is not also within the deed and does that deed (without a restriction on Guest Houses) counteract the covenant (with Guest House restriction) put on the subdivision by the Town?
- Ms. Weisman noted there were a few anomalies that occurred with the process concerning the number of trustees of the Parker trust and the recording of the covenant.
- Discussion occurred regarding the modification of subdivisions.
- Mr. Osnoss asked if there were other options available to the family in terms of creating more space. Mr. Weisman stated that a connected additional space would be an option, but that they would be able to rent a Guest House if they needed the income in retirement.
- Mr. Weisman suggested that it would be welcome if the Board allowed the construction of a Guest House due to the lack of clarity around the history of the topic and because it would provide another habitable dwelling in Town.
- Mr. Osnoss stated that he normally would want to honor the previous decisions of the Planning Board, but that this particular situation is one that he would want to research the legal implications of the situation.
- Mr. Eisner asked to take the issue under advisement and give the Board time to look into the situation.
- Mr. Cook posed two questions:
 - Mr. Cook asked who takes responsibility for asserting that the restriction may be removed in the deed that Mr. Weisman signed that gives Mr. Weisman the understanding that there is no restriction? Mr. Cook further asked who takes responsibility if that is not the case?
 - Mr. Cook asked whether the Planning Board has the authority, if they choose, to make a ruling in this case one way or another, and not create a precedent for any future lot in the subdivision?
 - He further restated his first question of who takes responsibility if a person signs a document in good faith that states certain things but those things later turn out not to be the case?
 - Discussion occurred about who may be responsible.
- Ms. Weidner stated that a possible impact on the decision of the Board could be the increase in number of dwellings on lots in the subdivision because each house may want to be allowed to have a Guest House.
- Mr. Weisman stated that 4 of the lots in the subdivision already have a specific deed restriction that does not allow a second dwelling.
- The Board members suggested that Town Counsel may need to be contacted for opinion.
- Mr. Eisner moved to refer the issue to Town Counsel.
- Mr. Osnoss suggested that he work with Ms. Christy to develop the question or questions to Town Counsel the answers of which are necessary to know by the Planning Board. After the questions are determined, Ms. Christy will contact Counsel for an opinion.
- The motion was seconded and voted unanimously.
- **Correspondence:**
 - The Board reviewed the ZBA Applications & Decisions document. The Board inquired what was approved for the Zabel special permit in July. Ms. Christy stated she would inquire with the ZBA what the decision was for this special permit.
- **Minutes:**
 - The Board reviewed the July 23, 2018 draft minutes. They were approved with one change.
- **Update from Subcommittee on the Menemsha Master Plan Work:**

- There was no update from the subcommittee.
- **Next Meetings:**
 - August 27, 2018, 4:30PM
- **Documents:**
 - Information Packet to inform Guest House discussion
 - Information and cover letter submitted by Mr. Hugh Weisman

Meeting adjourned at 5:35PM. Minutes respectfully submitted by Jennifer L. Christy