

Planning Board Minutes 08/28/17

APPROVED

Chilmark Planning Board August 28, 2017

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

Not Present: Mitchell Posin

Public: Reid Silva, VLSE, Brooke Emin, Cody Coutinho, Linda Coutinho, Debbie Hancock, Martha Cottle, Rob McCarron, Bob Reardon, Tracy Gibbons, Warren & Harriet Kantrowitz

Staff: Jennifer Christy, Admin. Asst.

Meeting called to order at 4:32 PM

- **PUBLIC HEARING: Keith L. Emin Form C Subdivision, Map 13, Lot 10.2**

- Mr. Osnoss opened the public hearing at 4:32PM. Mr. Osnoss read the advertised notification of the public hearing aloud.
- Mr. Silva presented the plan and explained the request for a division of land to create a .55 acre youth lot. The Board reviewed the plan and identified the access, frontage and the setbacks.
- Discussion occurred regarding the issue of size of the lot: .55 acre lot.
- Mr. Osnoss read aloud the Board of Health report. The Board of Health concluded that the property can support a fully-compliant well and septic system. It was noted the Conservation Commission had no comment on this subdivision plan.
- A motion was made to approve the Form C Definitive Subdivision plan. Ms. Weidner seconded the Form C. The approval was unanimous.
- It was noted that September 18, 2017, at 5PM, will be the conclusion of the 20 day period of appeal if the decision of approval is received by the Town Clerk on August 29, 2017.
- Discussion occurred about future discussion on Youth Lot regulations and history.

- **Signing of the approved plan for David Damroth Form C Subdivision, Map 11, Lots 54.4 & 54.5:**

- Ms. Weidner, Mr. Osnoss and Mr. Eisner signed the approved plan certificate. Ms. Christy stated she would contact Mr. Posin to have him sign in the office this week before the plan is picked up for recording.

- **Minutes:**

- The minutes from August 14, 2017 were reviewed and approved with two changes.

- **PUBLIC HEARING: Martha Cottle, Trustee, Special Permit Application/Flexible Siting Section 6.7 ZBLs, Map 24, Lots 29.2, 166**

- Mr. Osnoss opened the public hearing at 5:02PM. Mr. Osnoss read the advertised notification of the public hearing aloud.
- Mr. Silva presented the plan and introduced Mr. Rob McCarron who is an attorney representing the buyer.
- Mr. Silva stated that Martha Cottle is planning to sell the 'Orchard Lot'.
- The Board members reviewed the plan.
- Mr. Silva and Mr. McCarron described the need for using the Flexible Siting bylaw (Section 6.7) as the only way to obtain a perpetual special permit restriction on the Orchard lot. Mr. Silva described the plan is to sell the two resulting lots together. Mr. Silva described the upper lot would be conforming and would not have any further restriction on the lot. The second lot would encompass the restricted 'Orchard Lot' and would allow for a building site for a 1200 square foot house. He described this second lot with the small house as always 'traveling' in "contiguous ownership" with the upper lot and could not ever be sold off separately. He further stated that it would function essentially as an 'auxiliary guest house'.

- Ms. Weidner asked for clarification of the size of the lots. Mr. Silva stated the lower flexible siting lot would be 3.0 and the upper lot is 4.68 acres. Mr. Silva clarified that the house that would be allowed on the small flexible siting lot is not technically a Guest House, as defined in the Chilmark zoning bylaws, but the house will be restricted in size and will always 'travel' with the abutting lot. Mr. McCarron stated that the two lots would be required to be owned by the same family.
- Ms. Malkin asked why there cannot be a conservation restriction applied. Mr. McCarron noted that the lot is too small and isolated for conservation groups to be interested in purchasing the lot.
- Mr. McCarron noted that a deed restriction only lasts 30 years.
- Mr. Eisner clarified that the two lots are to be marketed to one buyer. Mr. Silva agreed that this is the plan.
- Mr. Silva outlined the list of Special Conditions offered by Martha Cottle, Trustee. A revised Special Condition document was distributed. The revision was in the preamble and stated, "all of which conditions shall be in effect and enforceable in perpetuity."
- Ms. Malkin noted the frontage and inquired where access is provided to the flexible siting 'Orchard Lot'. Mr. Silva noted the meeting with the Zoning Board of Appeals and stated that a question arose of how the access may be allowed if the frontage is restricted. Mr. Silva stated that there may need to be small changes to the plan in order to provide access that is not illusory (inaccessible frontage). Mr. Silva stated he would change the plan to show access and it would show possibly an additional 40 feet of accessible frontage on Wooten Bassett Road. Ms. Malkin asked for clarification: "Does access need to be via frontage?" Mr. Silva clarified that you physically do not need to use your frontage for access, but you do need to be able to use the frontage for access. He clarified that one cannot restrict one's frontage to the point that it is not useable for access, even though access may not be made on the length of frontage.
- Mr. Eisner inquired if there are any other conditions on Wooten Bassett Road. Mr. McCarron stated that there are restrictions on the upper road, Sam's Way, which was part of a prior subdivision and it has a road association. The upper lot may not have a guest house.
- Ms. Malkin reviewed the Flexible Siting bylaw, section 6.7, and noted that the section states, "The Planning Board may, after consultation with the Board of Health and the Board of Appeals, grant a special permit to build or place a one-family dwelling, for owner occupancy, upon a lot located in a subdivision having an area less than the minimum lot size **and** setback limitations as prescribed by this section for the district in which the lot is located, if in the opinion of the Board such use is necessary for the protection of agricultural land or dry woodlands, is consistent with the preservation and enhancement of existing large trees, large exposed boulders, water courses, hills and other natural features as well as vistas, water views and historic locations and will not have a material detrimental effect upon, or be inconsistent with the established and future character of the neighborhood and the Town."
- Ms. Malkin noted that the section requires both an area less than the minimum lot size **AND** setback limitations. She inquired how this would apply to the plan. Discussion occurred. Mr. McCarron noted that the idea is that by accepting a restriction on the Orchard Lot, the buyer is essentially granting the restricted portion of the lot to the Town and thereby lowering the useable lot area to below the minimum lot size. Mr. McCarron noted that this creates a situation that is within the spirit of the Flexible Siting bylaw and that he recognizes that the application of the Flexible Siting bylaw is a case of trying to fit an "oval peg into a round hole" and that it does not fit the case perfectly. He further stated that it appears to be the best way available in order to create a perpetually restricted lot and maintain two areas in which to build.
- Discussion occurred regarding the perpetual nature of a covenant and other private restrictions as opposed to the perpetuity of a restriction placed as part of a special permit process with a Town board. Mr. McCarron clarified the law: deed restrictions only last 30 years unless renewed. He further stated that private restrictions are unenforceable past 30 years unless the restriction itself specifies a longer period, but it cannot be perpetual because that is unenforceable. Mr. McCarron stated also that there are required renewals of the restriction at 20 year periods.
- Mr. Osnoss read aloud into the record the letter from Thomas and Judith Bracken.
- Mr. Osnoss read aloud a report from the Zoning Board of Appeals stating that the Board "had no concerns on the proposal provided a legal access right of way is created for the 'restricted orchard lot'."
- Mrs. Kantrowitz inquired about what protections could there be for the abutters due to the change in building envelope, to higher up the ridge, and not in an area where the lot was originally.

- Mr. McCarron clarified that the Board has two things before it: a plan that is essentially a Form A to re-divide the lot lines and a request for a special permit in order to restrict the Orchard Lot.
- It was clarified that the narrow 60 +/- "strip" that connects the buildable portion of the restricted Orchard Lot is the portion of the plan that does not conform to the subdivision rules and regulations due to the fact that it is less than 100' wide.
- Ms. Cottle noted the current rights for building on each of the lots: a main residence on the upper lot and the lower lot may have a main residence and a guest house and has no extraordinary restrictions on building.
- More discussion occurred about the process of a Flexible Siting special permit being used to accomplish the restriction of the orchard lot and whether it is appropriate.
- Mr. McCarron noted the application may need to be a Form C once the special permit issue is determined. Mr. McCarron reiterated his recognition that the Flexible Siting special permit process is not a perfect solution but that he views the restriction of the Orchard Lot is essentially conveyance of a real property to the Town. He further noted that deed restrictions are not enforceable by the Town.
- Mrs. Kantrowitz clarified her original inquiry about the location of building in the proposed area and noted her support of Martha Cottle's plans. She noted that the Brackens may be inquiring about the plans due to the fact that the proposed building may be, if the special permit is allowed, higher up the hill and closer to their lot than previously allowed.
- Mr. Silva described the surrounding vegetation and the topography.
- Mr. Osness suggested a site visit. Ms. Weidner agreed that a site visit is needed.
- Ms. Malkin asked that the Board request guidance from Town Counsel. She would ask Counsel, "If the created lot is not less than 3 acres and the setback, or width, limitation is not met can we use the Flexible Siting 6.7 section to accomplish this and is it alright to have the restriction in perpetuity."
- Mr. Cook agreed that Town Counsel should be consulted if there is no simpler way to accomplish this plan.
- Ms. Malkin made a motion to ask Town Counsel the question about specific methods of accomplishing the restrictions. This motion was seconded and all ayes.
- Ms. Malkin made a motion to continue the hearing to September 25, 2017. This motion was seconded and all ayes.
- The Board agreed to meet for a site visit at the Cottle lot after the site visit to the Muglia lot on August 31, 2017 at 9am.
- **Pre-liminary Discussion: Reardon & Gibbons:**
 - Mr. Reardon described the situation and identified his concerns.
 - The general idea is for Mr. Reardon to purchase a small portion of Ms. Gibbons lot.
 - Discussion occurred.
 - No action was taken.
- **Master Plan Update:**
 - There was no update from the subcommittee.
- **Correspondence:**
 - See above correspondence re the Cottle plan.
- **Next Meetings:**
 - Thursday, August 31, 2017, 9AM: Site Visits for the Muglia & Cottle Plan
 - Monday, September 11, 2017, 4:30PM: Continued Public Hearing: Muglia
 - Monday, September 25, 2017, 4:30PM: Continued Public Hearing: Cottle
- **Documents:**
 - Keith L. Emin Form C Subdivision, Map 13, Lot 10.2 Plan
 - Martha Cottle, Trustee, Special Permit Application/Flexible Siting Section 6.7 ZBLs, Map 24, Lots 29.2, 166 Plan
 - David Damroth Form C Subdivision, Map 11, Lots 54.4 & 54.5 Plan

- Form C Procedure

Meeting adjourned at 6:35PM. Minutes respectfully submitted by Jennifer L. Christy