

Planning Board Minutes 04/08/19

APPROVED

Chilmark Planning Board April 8, 2019

Present: Peter Cook, Rich Osnoss, Mitchell Posin, John Eisner, Janet Weidner

Not Present: Catherine Thompson, Chris MacLeod

Public & Board/Comm. Members: Clark Goff, Reid Silva, Wendy Weldon, James, Brian Kaplan, Barbara Lee, David Damroth

Staff: Jennifer Christy, Admin. Asst.

Meeting was called to order at 4:30 PM

- **Menemsha Bus Turn-Around Plan review & recommendation:**

- Ms. Weidner explained the timeline of the recent discussions and review by the Board of Selectmen since December, 2018, of the bus-turn around in Menemsha and reviewed the subcommittee's March 27, 2019 discussion.
- The Board members reviewed the plan produced by VLSE, Inc. and discussed what the subcommittee members had recommended to the Board of Selectmen.
- Ms. Weidner stated that members of the subcommittee attended the April 2, 2019 Board of Selectmen meeting to provide the Selectmen with their feedback on the plan. Chairperson Osnoss thanked the subcommittee for their efforts.

- **Form A: Wendy J. Weldon, Map 35, Lot 2**

- Mr. Kaplan submitted a second letter to the Board dated April 8, 2019. Mr. Silva and the Board reviewed the Form A plan approved on May 8, 2017 as compared with the plan put forward for endorsement dated January 28, 2019. Mr. Silva noted that there are no new parcels or lots created by this plan. Mr. Osnoss prepared to read the letter submitted by Mr. Kaplan dated April 4, 2019. Mr. Kaplan stated that he would be willing to verbally summarize, if preferable to the Board, the points he makes in his letter rather than to have the Board read the letter line by line. The Board members agreed to the verbal statement as opposed to the reading of the written statement.
- Mr. Kaplan introduced himself and noted that he is in attendance at the meeting representing High Pasture Farm LLC (4 Austin Pasture, Lot 2 in the Austin Pasture subdivision (Stange)) and 21 Lake Road Trust. Mr. Kaplan summarized three points made within the April 4th letter:
 - The plan should be referred to the MVC due to the fact that the subdivision was once a DRI when it was originally approved in 1979. He noted the plan represents development and this is included in the MVC DRI Checklist, requiring the referral of the plan.
 - The covenant of the 5 lot subdivision, of which the Planning Board is a party to, have restrictions on what may be built: a house, a studio or a Guest House and it can have two of the following: shed, barn, garage. Mr. Kaplan noted that, because there is something on the plan that is inaccurate and because one of the five lots is suddenly going to be two, he thinks there will be confusion in the future about how the covenants apply and that a violation of the covenants may occur.
- Mr. Posin asked for confirmation that the number of lots (the Form A proposal is to change the lot line on the ANR division of Lot 5 into Lot 5A and Parcel A--previously endorsed on May 8, 2017) will not be changing, but the amount of acreage in each lot will change.
- Mr. Silva confirmed that the plan before the Board does not create any new lots.
- Mr. Kaplan stated the Form A plan endorsed on May 8, 2017 was never recorded at the Registry of Deeds.

- Mr. Silva stated the plan was not recorded due to the fact that the applicant wanted to “tweak” the tail. He noted it could be recorded at any time and only shows two lots.
- Mr. Kaplan continued with the third point of the April 4th letter stating that the plan shows two parcels (5A & Parcel A) with a covenant that states restrictions on the number and type of structures on each lot in the subdivision (a house, a studio or a Guest House and two of the following: shed, barn, garage) and that the question going forward is for future owners of 5A and for other owners of the 4 other lots in the subdivision is how the plan got this far. Mr. Kaplan further stated that lot 5 as a whole (as Lot 5 now or as Lot 5A and Parcel A once the May 8, 2017 plan is recorded) shall collectively only be allowed one house, one studio or Guest House and only two of a shed, barn garage. Mr. Kaplan stated that if this is not how the 5A lot and the Parcel A will be restricted then the covenants for the Austin Pasture Subdivision (Stange) might as well be thrown out. He noted other parcels in the subdivision, such as Lot 2, could be divided if there were no covenant into multiple lots and have, therefore, multiple houses/structures on those lots. He noted there could be much confusion in the future about whether the covenants apply to the remaining lots in the subdivision if this plan is allowed to go through and Lot 5A and Parcel A are both allowed to have the allowable number of structures as noted in the covenants.
- Mr. Kaplan stated that he would like a plan that very clearly indicates how the covenants apply to each of the lots and he stated the plans seem misleading. Mr. Kaplan reiterated his suggestion to have the plan note that the subdivision covenants apply collectively to Lot 5A and Parcel A, as if it were one lot. He stated this would bring clarity to the other subdivision lot owners and future owners.
- Mr. Osnoss noted that the plan could be registered today and the burden to enforce the restrictions on building would be on the Building Inspector.
- Mr. Damroth stated that he has had to comply with the covenants and he feels that there is no compliance with the covenants applied to the subdivision. Mr. Damroth stated that if the Planning Board does not help to enforce the covenants then it places the burden on himself as an abutter. He noted he is looking to the Planning Board for protection and he further noted there have been multiple changes to the Weldon lot and that there are different uses of the buildings, he believes, on the Weldon lot than is allowed. Mr. Damroth noted that there are strict restrictions on the subdivision that should be adhered to.
- Mr. Osnoss noted the limitations of the Board in terms of Form As.
- Mr. Posin reviewed what was allowed through the Form A endorsement on May 8, 2017. The endorsement of the plan endorsed on May 8, 2017 was confirmed to be creating a parcel rather than a lot and that the covenant restrictions on numbers and types of structures on the separate parcels (Lot 5 and Parcel A) are adhered to in the January 28, 2019 Form A Plan.
- Mr. Silva described to Mr. Posin that there is actually a reduction in allowed density due to the fact that there could have been two Guest Houses allowed before the April 27, 2017 endorsed Form A plan (one on Lot 5 and one on 19 Lake Road) but now there will just be one that could be built due to the fact that the April 27, 2017 plan restricts Lot 5A from have a Guest House and Parcel A, by itself, is not a buildable lot.
- Ms. Weldon noted she has been upfront with her plans for her lot in the subdivision and the uses of the structures on the lot. Mr. Osnoss noted that the Building Inspector would be the person to enforce the buildings built and the uses of those buildings. Ms. Weldon noted that the subdivision originally went to the MV Commission due to the need to preserve and protect the ‘Cromlech’, primarily. Mr. Damroth stated that this was not the case and that Mrs. Stange wanted more protections for the subdivision from the MVC.
- Discussion occurred about the definition of studio and how this may impact the discussion. Mr. Silva stated the use of the structures is not relevant and that that would be an issue for the Building Inspector.
- Mr. Silva noted that the plan that is presented does not allow for anything to happen which would violate the covenants.
- Mr. Silva confirmed that there is only one house allowed on Lot 5A and one house allowed on 19 Lake Road. He further confirmed that there will not be any guest houses on Lot 5A.
- Mr. Kaplan suggested three notations that he would like to add to the plan that is presented for endorsement.
- Mr. Posin asked again for clarification on what was allowed once the Planning Board endorsed the April 27, 2017 Form A plan and Mr. Silva stated that Ms. Weldon and her family (who own 19 Lake Road to which Parcel A is attached to) will be able to

build a Guest House on that lot, while Lot 5A no longer may have the right to build a Guest House. Mr. Posin confirmed that the 2017 endorsement did not increase density and stated that the plan, as presented, appears to be one that he would endorse.

- Ms. Lee inquired whether the existing garage/shop on Parcel A is a Guest House or a Studio. Ms. Weldon stated it is a work building, a studio.
- Mr. Kaplan noted that Ms. Weldon calls the garage/shop a studio and further noted that the covenants for the subdivision should apply to all of the 5 lots, whether or not they are divided by a Form A as show on the Form A plans in 2017 and 2019. Mr. Kaplan also noted that there are discrepancies with how this structure is named in various applications to the Town. He further stated that there is a concern that when there is a new owner of Lot 5A and they may want to build a studio as one of their allowed structures according to the covenant, they may not be able to due to the fact that the garage/shop on Parcel A is already a studio. Mr. Kaplan again urged for the Board to create more clarity for the sake of applying the covenants in the future.
- Mr. Osnoss stated that one problem is that there is no Town zoning definition for a Studio.
- Mr. Silva suggested it is not important whether it is labeled a Studio, that there will be a Guest House built on Parcel A, and that the Board could simply note on the plan that Lot 5A and Parcel A must meet all the covenants as recorded.
- Mr. Cook stated that he has a garage on his property that has a spot inside of it that is sometimes used as a studio and he noted he is not moved by the issue of whether a space that is allowed by the Building Inspector as an uninhabitable workspace is called one thing or another as long as it is used in the way that it is permitted to be used.
- Ms. Lee noted the issue is whether a studio on Parcel A is inhabited or not.
- Ms. Weidner noted that 19 Lake Road was never part of the original Austin Pasture subdivision.
- It was confirmed again that 19 Lake Road and Parcel A are combined (this was achieved through the April 27, 2017 Form A endorsed plan) and may have one Guest House on it and that Lot 5A (originally Lot 5 of the Austin Pasture Subdivision (Stange)) may not have a Guest House on it.
- Mr. Damroth inquired how to guard against Ms. Weldon making a non-inhabitable space, such as the garage/shop on Parcel A, which, he noted is called a Studio, have the attributes of a habitable space while still not permitted as a habitable space. Mr. Osnoss stated the inspection, permitting and enforcement of buildings is the responsibility of the Building Inspector.
- Mr. Damroth noted there is the potential of an extra house that is not allowed if the Studio is allowed to be habitable and a Guest House is permitted for Parcel A/19 Lake Road. Mr. Silva rejected this assessment of possibility.
- Mr. Posin again confirmed that the plan before the Board would decrease density in the area due to the fact that a Guest House will be permitted on Parcel A/19 Lake Road and no Guest House will be permitted on Lot 5A, whereas before the endorsement in 2017 a Guest House was allowable on both Lot 5A and 19 Lake Road.
- Mr. Osnoss noted that the main issue appears to be the garage/shed that is used as a studio.
- Mr. Silva stated it is not important whether the garage/shop is actually a studio now or habitable in any way and it will not matter until Ms. Weldon applies for a Guest House for the Parcel A/19 Lake Road lot.
- Mr. Kaplan noted that the plan has a lack of clarity and proposed conditions that could be written on the plan. He passed the chairperson a list and there were three that were marked with a red star and he noted these were the primary ones of interest.
- Mr. Posin stated he is ready, with the information presented today, to endorse the plan and he made a motion to endorse the plan.
- Mr. Osnoss noted that the list from Mr. Kaplan are listed as conditions and the Board cannot condition a Form A. He read aloud the suggested 'Conditions' from Mr. Kaplan. Mr. Silva suggested that the plan just state that Lots 5A and Parcel A must meet the Austin Pastures covenants (Stange) collectively.
- The suggestion to add a note to the plan that the access to Lot 5A and Parcel A is over Austin Pasture Road (rather than Lake Road) was noted by Ms. Weldon as unnecessary due to the fact that she has already signed an agreement with abutters about access on Lake Road and Austin Pasture Road.
- Mr. Kaplan noted that a future owner of Lot 5A may look at the January 28, 2019 Form A plan, if endorsed, and think that they have the right to use the access from Lake Road that passes over 21 Lake Road and 19 Lake Road. He noted that a note about no access for Lot 5A over the Lake Road that extends over 21 & 19 Lake Road would provide clarity. Ms. Weldon noted that she would not agree to the added note due to the fact that there is already a separate agreement that addresses the issue of access for Lot 5A and Parcel A. Mr. Damroth stated that the agreement made does not allow Lot 5A and Parcel A to be accessed

through Lake Road. There was disagreement among attendees of the meeting as to what the access easement agreement states.

- Mr. Cook stated the issues of subdivision as they related to the covenants were considered in 2017 and the Board at the time noted that the spirit of the covenants are lived up to and that other issues that are apparent now are topics for the Building Inspector, other Boards and neighbors.
- Mr. Damroth stated it was his memory that it was understood that a note was to be added to the April 27, 2017 Form A plan that stated there would be no traffic allowed to run from the newly created Parcel A through to Lake Road. He thought this was going to be part of the Form A approval conditions. He stated he was very clear that all traffic for Parcel A and Lot 5A needed to go through Austin Pasture Road.
- Ms. Weldon stated that the agreement, relating to access of Parcel A and Lot 5A, states that any persons entering through Austin Pasture Road must exit through Austin Pasture Road and any persons entering through Lake Road must exit through Lake Road.
- Discussion occurred about the benefits or detriments to adding the language of the agreement of easement and access on Lake Road and Austin Pasture Road to the Form A plan.
- Board members stated they remember the discussion in 2017 regarding access. Mr. Silva stated that agreements between neighbors is not often placed on subdivision plans.
- The Board asked to have time to review the minutes from the May 8, 2017 Form A plan at which the April 27, 2017 Form A plan was endorsed. Mr. Damroth expressed concern that a notation was supposed to be placed on the 2017 plan and it is not on the plan. Ms. Lee stated there have been problems between their family and the Weldon family concerning the access of Lot 5A and Parcel A.
- The Board decided to continue the discussion of the Form A at the May 13, 2019 meeting in order to give time to Ms. Weldon to review the suggested 'conditions' from Mr. Kaplan and to give time to review the minutes from 2017
- Mr. Osnoss confirmed the receipt of a letter from Kaplan Law LLC on April 4, 2019 with accompanying exhibits as well as the letter received at the meeting today dated April 8, 2019..
- Ms. Christy noted that the May 8, 2017 minutes shows that the Board discussion reflects that the topic of easement and access to the Lot 5A and Parcel A over Lake Road and Austin Pasture Road was discussed and that it was noted that this was primarily a neighbor issue. She stated that she would forward the written minutes and the audio from the date to the Board members.

- **Chapter 91 Waterways License Appl. Receipt, Sheriff's Meadow Foundation:**

- The Board reviewed application. Chairperson Osnoss signed the application. Ms. Christy stated she would research when the Planning Board is asked to respond to applications and when input is not requested and just signature of receipt is required.

- **Biennial Review of Accessory Apartment Zoning Bylaw:**

- The Board reviewed the accessory apartment activity and asked Ms. Christy to contact the Housing administrative Assistant to confirm that Jim Feiner, chairperson of the Housing Committee, will be addressing Town Meeting with a biennial report.

- **Swimming Pool Zoning Bylaw proposal amendment discussion:**

- Brief discussion occurred.

- **Correspondence:**

- **Topics not reasonably anticipated by the Chairperson at the time of posting:**

- No other topics were addressed.

- **Minutes:**

- The minutes of October 9, 2018, January 28, 2019, and February 11, 2019 were reviewed and all were approved as written.
- There was no quorum reached for a meeting on March 11 or 25, 2019 and no minutes were therefore reviewed.

- **Next Meeting:**

- May 13, 2019, 4:30PM

- **Documents:**

- Draft of the Swimming Pool ZBL amendment proposal and email from town counsel.
- Kaplan Law, LLC letter and accompanying documents related to Weldon Form A
 - April 4, 2019 Letter
 - April 8, 2019 Letter
 - 'Conditions' document from Kaplan Law LLC r'cvd on April 8, 2019
- Wendy J. Weldon Form A Board action signed extension agreement until May 31, 2019

Meeting adjourned at 6:30PM. Minutes respectfully submitted by Jennifer L. Christy