

Planning Board Minutes 10/09/18

APPROVED

Chilmark Planning Board Oct. 9, 2018

Present: Rich Osnoss, Peter Cook, Chris MacLeod, Mitchell Posin, Catherine Thompson, Janet Weidner

Not Present: John Eisner

Public & Board/Comm. Members: Warren Doty, Clark Goff, Rob Hannemann, Hugh Weisman, Joan Malkin, Jessica Roddy

Staff: Jennifer Christy, Admin. Asst

Meeting was called to order at 4:30 PM

- **Zoning Bylaw Discussion:**

- The Board postponed discussion of the proposed swimming pool zoning bylaw amendments until October 22, 2018.
- Mr. Osnoss opened up discussion on the topic of the as-of-right zoning bylaw amendment.
- Mr. Hannemann discussed the background and the important aspects of the Green Communities initiative. He noted the primary reason for becoming a Green Community is the access to the grant funds.
- It was noted that Seth Pickering is the South East Coordinator of the Green Communities initiative. Mr. Hannemann noted the two key steps towards becoming a Green Community:
 - Identify parcel for the as-of-right zoning lot for the solar array
 - As-of-Right zoning article drafting and review
- Ms. Weidner inquired how the As-Of-Right zoning would help someone who does not have the right location on their private property for a solar array, but who would like to erect a solar array. Mr. Hannemann noted that the homeowner would essentially be the developer through a community solar farm in Chilmark.
- Mr. Osnoss noted that the model As-Of-Right zoning bylaw appears to be for a large solar facility for 250 kilowatts. Mr. Hannemann stated that the space needed to comply would be a minimum of approximately 1 ½ acres.
- Selectman Doty noted that the issue for Planning Boards concerning the As-of-Right zoning is the possibility of homeowner's with large lots establishing large solar array farms without having to apply for a special permit.
- Mr. Hannemann noted his understanding is that the Town would need three Town Meeting actions:
 - Agreement to become a Green Community
 - As-of-Right zoning bylaw
 - Adoption of the Stretch Code
- Mr. Hannemann noted there is a new energy committee and that they could help with getting the word out about what it means to be a Green Community.
- Discussion occurred about the solar arrays that are covered by the Green Communities designation.
- It was noted that the parcel of land that would be designated as the As-Of-Right zoned area would need to be identified at the time of a public hearing for the As-Of-Right zoning bylaw article.
- Mr. Hannemann noted that the Cape Light Compact organization would assist Towns in the completion of the application process.
- Ms. Malkin volunteered to work with Mr. Hannemann to draft an As-Of-Right zoning bylaw.
- Mr. Cook noted the need to review what the problems may be with the Green Communities designation and the benefits of hearing any downsides experienced by communities since the designation of Green.

- The Board agreed to appoint Ms. Malkin to the working committee to develop a draft As-Of-Right zoning bylaw before the October 22, 2018 meeting and to ask the Board of Selectmen to provide a plot plan of the lot. Mr. Osnoss volunteered as well to serve as a member of the working committee.

- **Weisman Lot, Map 32, Lot 57 Discussion:**
 - Mr. Osnoss summarized where the issue stands:
 - He noted that Town Counsel has advised that the Board may accept a modification of a Form C if the Weisman family would like to alter the covenant.
 - He also noted that it would be beneficial to the Weisman family if the Board could determine if the idea of allowing a change to the covenant would be palatable to the Board.
 - Mr. Cook stated that the Weisman issue may be more complex due to the history of imprecise and inequitable application of the restrictions of the covenant.
 - Discussion occurred.
 - Mr. Osnoss noted the Board has the power to review all covenants and act on them differently if the basis of the argument is sound.
 - Mr. Posin noted that he feels that a covenant made is something that is to be adhered to and he would vote no to a change in a covenant. He noted that it is unfortunate that there has been unequal application of the covenant, but he noted that he is still firm in his view that the covenant should not be altered.
 - Ms. Malkin noted that it is difficult to know the intention of the covenantor and it is possible that the person who drafted the covenant and applied it differently to the different lots in the subdivision meant to do this.
 - Ms. Weidner stated she would still like clarification on the last paragraph of Town Counsel's memo to the Zoning Board of Appeals in 2000. Ms. Christy offered to contact Town Counsel regarding the last paragraph and gather a written clarification of what is meant.
 - Mr. Osnoss asked if the Board would need more time to decide on whether a future Form c application from the Weismans to modify the covenant would be acceptable to the Board.
 - Ms. Weidner suggested that she is usually unwilling to alter a covenant and would most likely vote no on an alteration of the covenant.
 - Mr. Osnoss asked how a change to a covenant in the Stonewall Road subdivision would set a precedent or not. Ms. Roddy suggested that a precedent would be set if a covenant was changed to allow a Guest House and Ms. Malkin agreed.
 - Mr. Posin noted he was not necessarily against making changes to subdivisions, but feels that a covenant regarding Guest Houses would appear to be a restriction that should not be altered.
 - Mr. MacLeod asked for clarification of exactly which lots are restricted in writing on their deeds and which are not. It was noted that all twelve lots in the subdivision are held to the covenant no matter which lot and no matter which deed.
 - Mr. Posin noted his view is that the covenant overrides the deed. He reiterated his view is that the covenant needs to be followed no matter what has happened in the past and he is taking this position primarily due to the fact that the Board should honor the covenantor and also due to the fact that if the Board did allow a Guest House on the Weisman lot it may open up the Board to anyone applying to the Board for relief of their covenant restricting Guest Houses.
 - Mr. Osnoss suggested the Board consider taking a straw vote on whether the Board would be amenable to a Form C application for a modification of the covenant.
 - Mr. Cook stated that the Board could only provide a positive direction to the Weisman family if the Board agreed that the approval of the Haskell Guest House was an anomaly and not the intent of the covenantor.
 - More discussion occurred.
 - Chairperson Osnoss asked, given the facts in front of the Board, and if a Form C modification from the Weisman Family was received, if Board members would be amenable to this application. Mr. Osnoss, Mr. MacLeod and Mr. Cook voted in favor of considering a Form C modification application in front of the Board.
 - Mr. Weisman thanked the Board and stated he would take this information and make a decision.

- **Form A Certificate: Squibnocket Boat Launch:**

- The Board signed the Form A endorsement certificate.

- **Guest House:**

- The Board reviewed the report on the pros and cons.
- Ms. Malkin described the brief history of the development of the Guest House pros and cons.
- Discussion occurred on the way forward.
- Mr. Cook suggested that the document should offer the pros before the cons. It was agreed that the pros should come before the cons.
- It was agreed to wait on a vote to send it to the Board of Selectmen until the 22nd of October.
- Mr. Posin reiterated his view that, if the Residential Building Size Regulation limits the Total Living Area, there should be little need to limit the size of Guest Houses.
- Ms. Weidner suggested that the alternative idea of an increase to the allowable size of the Accessory Apartment might be better in the cover letter rather than the pros and cons.
- Mr. MacLeod noted some language that he would suggest be changed in order for the report to appear even-keeled and neutral.
- The Board asked that the working committee make some changes and return to the meeting on the October 22nd.

- **Site Review Committee:**

- Ms. Weidner asked if anyone would be willing to fill in as the Planning Board member on the Site Review Committee. Mr. Osnoss volunteered to attend the Site Review Committee meetings in the winter and Ms. Thompson and Mr. Cook agreed to continue to fill in on an as-needed basis.

- **Update from Subcommittee on the Menemsha Master Plan Work:**

- Ms. Weidner and Ms. Malkin updated the Board on the progress of the VTA bus turnaround at the Comfort Station and reference the plan provided to the Conservation Commission (dated Sept. 18, 2018, VLSE).
- A new option was briefly discussed that proposes to instead continue to allow the buses to go all the way to the beach area as they have done up to now and eliminate 6 spaces at the beach area rather than next to the Comfort Station.

- **Correspondence:**

- No correspondence was reviewed.

- **Minutes:**

- The Board reviewed the Sept. 24, 2018 draft minutes. They were approved with changes.

- **Next Meetings:**

- October 22, 2018, 4:30PM

- **Documents:**

- 31 Stonewall Road Documents Packet
- Model As-Of-Right Zoning Bylaw
- June 2018 Green Communities Powerpoint Presentation
- Draft Guest House
- Le

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