

Marblehead Planning Board
Minutes of Meeting

May 29 2018

Members present: Robert Schaeffner, Ed Nilsson, Rossana Ferrante, Barton Hyte and Steven Leverone. Others present Rebecca Cutting Town Planner. A quorum being present the chairman called the meeting to order at or about 7:30 PM

This meeting was specially scheduled to replace the May 8, 2018 meeting which conflicted with Town Meeting.

Continued Public Hearing 42 Lee Street – 54 Lee Street LLC

The applicant has requested in writing that the application be allowed to be withdrawn without prejudice. A motion was made and seconded to allow the application to be withdrawn without prejudice. All in favor 5-0.

Continued Public Hearing 7 Redstone Lane

Architect Craig Bosworth presented the plans as modified. At the last meeting the board had asked that the plan be modified to reduce the bulk and massing. He explained that the revisions changed the plans by adding the gable like dormer and a reduction to the second floor area. The Redstone Lane lot is oversized. The additions were minor; porches; attachment of garage to house. From the board's direction at the last meeting the plans were revised. They have received approval from the Conservation Commission and the Board of Appeals. Barton Hyte asked if the garage attached will be taken down and rebuilt.

The chairman asked if anyone from the public wished to speak. No one spoke in support or in opposition. A motion was made and seconded to close the hearing. All in favor 5-0

Board discussion ensued and concluded that the objections raised at the last meeting were addressed and this helps reduce the linear mass. A motion was made and seconded to approve with the standard conditions. All in favor 5-0

Public hearing 93/95 97 Beacon Street Site Plan Approval – Burke

Scott Burke Attorney introduced the applicants, his brothers Joseph and James Burke and gave a brief overview and legal points. He explained they have been before the planning board twice before in 2016. He explained the history of the ANR allowed in June 2015 93 Beacon Street and ANR for 3 additional lots. A neighbor appealed this ANR to Land Court. The judge found it not valid and the Burke's appealed. A site plan approval application for 93 95 Beacon was issued by the planning board and also appealed by abutter. They have settled the site plan approval and in that process the judge vacated the ruling on the four lot ANR. He cited the minutes of the meeting and the decision that clearly specified that if they prevailed in court they could come back for a single family house on the fourth lot or likewise if they had not prevailed they could come back for a new accessory structure. Land Court was disposed of in a way that validates the ANR claim of lack of frontage in favor of the Burkes. They will record a new plan adjusting lot lines once a new plan is approved. He wanted to address some of the issues raised in the letter to the board written by David Nutt. The amended judgment affirms the judgement of the Planning Board in validating the ANR.

Developer Joey Burke 95 Beacon Street explained that new plans and landscaping plans have been submitted. The site plan drawing Lot D curb cut is the same curb cut using a common shared driveway. Presently Lot Four has a nonconforming garage which will be removed and landscaped. They made a change to address car lights after speaking with an abutter. They plan to plant 87 10 foot or larger plantings for privacy. They have made adjustment to accommodate concerns of abutter. He stated they moved the patio from property line. They have proposed a lot of privacy screening moving to the edges to help with the privacy. They are willing to remove four existing stumps and plant ten assorted pine streets also installing irrigation system to keep the plants healthy on the Trowbridge's property. It is 130 feet to Trowbridge from the new house and 210 to next house. The Trowbridge's wanted the roof lines lowered eliminated the gable and put a hip roof which they have done in addition to the landscaping. The project will eliminate a nonconforming garage and build an attached garage and extensive planting where garage was to act as a buffer. He added that there were trees lost in the last storm and one they want to take down which is in conflict with the previous site plan approvals decision to not remove and additional trees. They had an arborist do a report on the health; they want to remove and take down. The project is 100 % confirming to zoning dimensions.

The chairman asked if there was anyone in the audience that wished to speak on the proposal.

David Nutt 91 Beacon Street - his concern is the frontage issue. He reiterated his concern that was in a letter that he submitted to the board that the fourth lot is not valid.

In response the town planner read the letter from Adam Costa, assistant town counsel into the record which addressed Mr. Nutt's concerns specifically and stated that the application was properly before the board and the fourth lot is allowed.

"The recitation of events contained in the Burkes' application is generally correct. The Burkes already received an ANR endorsement from the Board for a division of the property into four (4) lots, signed by the Board on June 9, 2015 and subsequently recorded with the Registry of Deeds at Plan Book 448, Plan 76; that endorsement was appealed to the Land Court; Judge Piper did indeed issue a ruling, on June 28, 2016, that "taking into account the fundamental purpose of the ANR endorsement process that the legislature established, it is appropriate for a board, in the right set of circumstances, to refuse an endorsement where there is a clear lack of legal right for the applicant for endorsement to use the way"; HOWEVER, the subsequent Amended Judgment expressly VACATED that ruling (or, more specifically, the judgment that followed). I do not dispute Mr. Nutt's statements, quoting Judge Piper's aforesaid ruling and the aforesaid Amended Judgment, relative to the Burkes' right(s), or, better stated, lack of right(s), in Corn Point Road. However, as to the legal use of Corn Point Road for frontage sufficient to qualify the Burkes' plan for ANR endorsement, the Board previously decided that issue by endorsing the four-lot plan; the Amended Judgment dismissed the appeal that followed "with prejudice" and with "no... adjudication" of the issue; and the opportunity for other(s) to challenge the ANR endorsement has long since passed, the statute of limitations having run.

As Mr. Nutt acknowledges, the Amended Judgment also states that the four-lot ANR plan "as endorsed by the Board and as recorded is to stand." Contrary to what the letter states, I do not believe that the Burkes ever withdrew the four-lot ANR plan by subsequently presenting a three-lot ANR plan; but, quite the opposite, expressly reserved the right to use the four-lot plan, and, as they are doing now, to later seek site plan approval for a fourth lot, pending the outcome of the Land Court litigation. Of course, regardless, the Amended Judgment is a court order that supersedes any action or inaction by the Board. And, again, it says that the four-lot ANR plan "is to stand."

Carlton Sparrell 1 Bradlee Road talked to his wife Renya but he has not seen an updated plot plan. He is concerned with tearing down the existing garage and replacing it with a turnaround. His concern is

whether now headlights would directly impact his property. He wants to make sure the plan can be amended so turnaround is not right there and privacy plantings installed.

Charles Trowbridge 7 Bradlee Road is not in opposition, the Burke's have reached out to them and they have submitted a letter to the board stating their concerns. They are concerned about the survival rate of plants and privacy issues. The primary massing is fairly close. The Burke's have revised the plans with hip roofs and they concur that the conversation is ongoing. They expressed concern that the grade will be built up and the 35' house built on top of that effectively/ visually exceeding the 35' height. The Town Planner explained the height of a building was measured from the lowest existing grade to the highest point of the house. They would like to see the height of the building minimized. That is the biggest concern the area where they don't have the ability to plant to screen the house.

Marvin Duncan 94 Beacon Street has questions about frontage and the thinks it is a large house

Christine Trowbridge 7 Bradlee Road – Asked if the massing if it could be reduced.

Jill Alder 9 Bradlee Road - her second floor will look at the house she thinks slightly redoing the house because it has a very big little bit lower and smaller.

Burkes discuss adding more plants. James Burke showed a photo of all the trees that have been removed and stated the last abutter's house is 210 feet away

Bob Schaeffner asked about the size. Two stories to eve line is large, the garage area is 29' and two stories. He worries about the character certain balance two story façade on that side two stories with dormers.

Christine Trowbridge 7 Bradlee stated the garage section is also overlooking because of the size of this lot long narrow.

Rossana Ferrante is concerned with the massing and character of house.

Jim Burke states that the Trowbridge's took down trees which are causing the lack of vegetation. They agreed to pull stumps out as favor.

Barton HYTE said even if the trees were there there is still a huge façade and concurs with Bob to take down the mass.

Rosanna Ferrante asked if that was an option. Look at redesigning and the height even if you had to stretch it out to reduce the massing. Board discussion ensued by slight mitigation lowering the eve comes down , lower eve line two dormers in bedroom make a different scale. Thinks the effect is too much. Make different roof lines two smaller dormers.

The applicants agree to look at the plans and agreed to a continuance of the public hearing until the next planning board meeting June 12, 2018 at 7:30 PM

A motion was made and seconded to continue the public hearing until June 12, 2018 at 7:30. All in favor 5-0.

May Reorganization

Town planner stated that last year the board expressed a desire to have a re-organization meeting annually after the May election. It was decided that the regularly scheduled meetings held on the second Tuesday of each month at 7:30 PM in Abbot Hall would continue. The slate of Robert Schaeffner as chair, Edward Nilsson and vice chair and Barton HYTE as secretary was moved and seconded. All in favor.

MAPC representative

Steve Leverone agreed to serve in this position that was vacated by the death of planning board member James Bishop. The planner will inform the selectmen so that Mr. Leverone can be appointed to that position.

Old /New Business

Since the zoning recodification did not pass at town meeting the board discussed next steps with the reorganization meeting and how that impacts moving forward on other projects slated for this year.

The planner updated the board on the on housing plan grant, RRROW project and coastal resiliency project

A motion was made and seconded to adjourn all in favor 5-0

Respectfully submitted

Rebecca Cutting