

Aquinnah Planning Board Plan Review Committee Meeting November 8, 2017

Members Present: Peter Temple, Chairman, Jim Wallen, Sarah Thulin, Jim Mahoney, Jo Ann Eccher, Isaac Taylor, Berta Welch and Jim Newman

Others Present: Town Administrator Jeffrey Madison, Vernon Welch, Carla Cuch, Adriana Ignacio, Reid Silva, Wendy Swolinsky, Tim Burke, Micheal Stutz

Meeting begun at 6:38 pm.

Prior to opening the hearing, discussion was had on whether there was a quorum for the hearing. Berta and Jim N. were recused due to conflict. Discussion was had on whether Isaac was in conflict. Being that his father is a lease holder of a Menemsha lease lot, the potential for Isaac having a direct financial gain in the decision was discussed. The PBPRC determined that even if Isaac did not sit for the hearing, there were 5 members to make quorum. The PBPRC discussed whether a decision was going to be made within one meeting. The interested parties in the application stated that they did not have an issue with Isaac sitting on the Committee for the hearing if he felt he did not have a conflict of interest. Ultimately, the Committee felt that because a decision most likely was not going to be made within one meeting, Isaac could sit for the meeting and follow up with the State Ethics Committee to get a final determination and if an issue is determined he would not vote on the decision at the continued hearing. Jim W disclosed for the record that he and Wendy Swolinsky work in the same real estate office, but they do not make any financial benefit off each other and are independent agents.

Peter informed the Committee of another potential issue that could delay a decision being made. At the site visit, there was a question about the height restrictions in the Marine Commercial District. Town Council was not able to give an answer and is not clear yet if there is a height issue. If there is, the Committee could not address it tonight but could approve a special permit subject to an opinion from Council on height. In the Coastal District, house height is determined from the base flood elevation. In Menemsha, the flood elevation is measured at 12ft. However, the Committee found that Menemsha is exempt from the Coastal District bylaws. In addition, the bylaws state that if the structure is out in the open it cannot be higher than 18ft. Reid informed the Committee that if height is measured from mean average grade then relocating the existing structure would not meet the height ridge height limit of 18ft unless the special permit allowed up to 24ft, which the Committee can approve. Based on this finding, the Committee continued the meeting by opening the hearing.

PBPRC opened a hearing to act upon a request for Special Permits from The Town of Aquinnah of Boathouse Road Map 3 lot 34 under sections 2.3, 2.4-1, 10.2, 13.4-1 and 13.4-11 of the Aquinnah Zoning Bylaw for the relocation of a preexisting nonconforming structure located on Lot "A" to lot "B" (as shown on a Plan of Lease Lots, Gay Head (Menemsha) Mass. 7 July 1992), construction of piles and decking on Lot "B" and re-construction of a new structure on Lot "A" in the flood plain and the Marine Commercial District. The Committee found the following

issues that needed to be addressed:

1. Whether it is an allowable use to have more than one structure on the lot and in the proposed location where the structures are sited within the flood plain.
2. Whether the siting of the structure would meet the requirements for a special permit for structures located in the flood plain.
3. Whether the structures meet the design guidelines, fit the character of the neighborhood and are otherwise appropriate.

In addition, the Committee found that there could be potential issues concerning the historical nature of the pre-existing non-conforming structure on Lot A. Where there is no Historical Commission for the Town certain zoning bylaws do address maintaining the character of the Town. The Committee found that no other applications had been submitted to the Army Corp of Engineers or other State Committees for the proposed project.

Reid Silva presented the plans to the Committee. The proposed project is to relocate the existing structure on Lot A to Lot B and a construct an identical structure on Lot A to replace what was there. The new construction would be designed based on the idea of two sister buildings in which the new construction would be of similar materials and dimensions to that of the pre-existing structure located on Lot A. The Committee found that the Lot is within the Flood Plain and Velocity Zone and would require a special permit for new construction where new construction is located landward of mean high tide. In addition, the Committee found that the current structure on Lot A is lower than the Flood Plain (the flood plain is 12 ft and the deck on Lot A is 5.3 ft). If in moving the structure to Lot B and was located above the Flood Plain, the structure would sit 4' higher than the road. To avoid this, the proposed plan would be to reconstruct the deck at an elevation of 7 which would be 1' lower than the road. This led to a conversation on height restriction for the area. The Committee found that while the structure's height is 16'3" and under the 18' maximum in an open and highly visible area, if relocated to Lot B and placed in the Flood Plain at an elevation of 7', the ridge height of the structure would measure to be 23'3" above mean average grade. A Special Permit would need to be granted to allow for a maximum height of 24'. The PBPRC found that given the actual height of the structure and the siting next to the road at the same level as other structures in the neighborhood, it would not look over height to passerby, and should be allowed as long as the height does not exceed 24' above grade. In addition, if the Committee permitted the structure to go to 24', Counsel's opinion would not be needed.

Continuing the discussion on the Flood Plain and Velocity Zone, the Committee found that if the structure were to be relocated from Lot A to Lot B, it would need to be modified to meet Velocity Zone building codes, which would include breakaway walls. This led to the discussion of the historical value of the existing structure and if it was structurally sound to be moved. In addition, a discussion was had on whether making major changes to the structure and bringing it to code with

breakaway walls would change the building from a historical perspective. Reid noted that the structure can move without being damaged and that the building would not undergo any demolition to be brought to code if moved to Lot B. Peter read the following from the MVC policy for DRI review concerning demolition “demolition of any structure that has been identified as having historical significance by a local historic commission or architectural commission, by general plan of the Town, by the Massachusetts Historical Commission, or listed with the National Massachusetts Register of Historical Places; or was constructed before January 1, 1900 – with MVC Concurrence.” Jo Ann read a portion of an article from the Martha’s Vineyard Gazette dated April 17th, 2014 stating that the “the 240sf shack was built around 1865 and sits at the head of the harbor on Boathouse Road ... It is the oldest Menemsha fishing shack, surviving the hurricane of 1938.” While Swolinsky stated that in her research she could only date the shack back to the late 1920’s. Although its age could not be determined, and there was some evidence that it may be over 100 years old, the Committee found that referral to MVC would not be required because even if the structure would be significantly modified if relocated (brought up to code with breakaway walls) it would not be demolished, which is the MVC DRI trigger.

The Committee found, based on all of the above, that the siting of a new structure on Lot B met the requirements for siting a building in the Flood Plain and Velocity Zone listed in bylaw sections 10.2-2C, 10.2-3 and 10.2-4.

The Committee discussed the issue of use within the Marine Commercial District. Reference was made to the Menemsha Lease Agreement between the Town of Aquinnah and Chilmark. Ultimately, the Committee determined that the agreement was outside of their zoning purview and found that within the Marine Commercial District, the addition of a second structure, or even more, is consistent with the goals of the District which is to provide jobs and income to Town residents. The Committee found that, for zoning purposes, the lease lots are recognized as one lot and there is no limit on density in the Marine Commercial District, except when an application is requesting for the total footprint to exceed 2,000sf. The Committee found that the structure on Lot A, including decks, is 578sf and that if the existing structure were to be relocated to Lot B the footprint of that Lot would increase to 529sf including 197sf of deck and 64sf of ramp. The new structure built on Lot A would replace the same footprint (578sf) that was there and therefore, the 2,000sf restriction would not apply to this application.

In reviewing the siting and setbacks of the plan, the Committee determined that relocating the existing structure to Lot B, it would be sited equally distant from the lease lot lines and there would be sufficient space between the road and the structure so that it wouldn’t obstruct the flow of traffic. Although the relocated structure on Lot B and the new structure on Lot A would be sited within 30’ of the property line and within 40’ of the centerline of the road due to the topography of the lot, the Committee would be able to grant a Special Permit if the siting is in harmony with the goals of the bylaws. The Committee found that the siting is consistent with setbacks in, and the character of, the neighborhood and meets the

goals of the bylaw for maintaining the character of the Town and should be allowed.

The Committee opened the meeting to the public and took questions from the floor. Tim Burke, Swolinsky's attorney, questioned the length of time to acquire permits from ConCom, State Committees and the Army Corp of Engineers. Reid stated that the licensure could take up to a year and the whole process, if permits are in order within the next three months, could take up to a year and a half before beginning construction. Burke then asked what was to prevent the Town of Chilmark from negating the decision made by the PBPRC. The Committee informed everyone that Chilmark officials and abutters were notified of the hearing and that there is a 20-day appeal period which begins when the permit is filed with the Town Clerk.

There was further discussion concerning the height and calculation of the mean average grade and how the mean average grade was calculated. There was discussion concerning whether an archeological survey had been conducted. Reid stated that a project notification form had not been filed with MHC but that one could be. The Committee noted that every project that disturbs the ground by way of excavation requires a referral to MHC. Reid informed the Committee that grade beam would be on the inside of the shore and on Town land, where on the shore side, piles would be driven. However, the shore side is State land because it is land below mean and below water. The Committee felt that the argument that it is not Town land would be sufficient enough to not require a survey because the land is not within their jurisdiction.

Sarah, the Conservation Commission appointee to the PBPRC, expressed concerns with moving the structure from Lot A to Lot B and re-building on Lot A and the impact it would have. She further discussed how moving the structure over and building a new structure on the same site where a structure already exists seems more complicated than just building a new structure on Lot B and leaving the pre-existing structure on Lot A. In addition, she voiced her concerns regarding the disturbance to the resource area if the structure on Lot A were to be relocated. However, the Chair noted that her concern of disturbance was not within the PBPRC purview and more within ConCom's jurisdiction.

Discussion took place on the advertisement and the application. Peter read the application for the record. After a discussion and review of the application and advertisement, the Committee felt that the application had conflicting language. While the ad did not read "to reconstruct or construct a new building on Lot B", which is what the applicant was requesting, the Committee did not deem it significant enough change for re-advertisement. In addition, the Committee found that the applicant was only requesting to relocate the structure on Lot A and not the deck or pilings on the Lot. Sarah made a motion to approve the building of a new structure on Lease Lot B. The motion was not seconded.

The issue of whether Isaac had a conflict of issue was discussed again along with how to make a logical decision on the application before the Committee. Berta Welch stood and stated she felt that there was much ambiguity with Isaac sitting

throughout the hearing while adding his opinions, when normally if there are any feelings of conflict of interest for a member in a hearing, the Committee asks that member to recuse themselves and not try to sway the Committee in any way. Isaac recused himself.

After further discussion on the historical nature of the structure and the DCPC guidelines and strong opinions voiced from Committee members on what the least impact on the site would be, the PBPRC could not reach an agreement on the risks and wisdom of relocating and significantly modifying the existing shack given its historical significance, so the applicant requested to amend the application such that the existing structure would remain on Lot A and that an identical new structure be constructed on Lot B. Peter entertained a motion to approve the plans presented showing two buildings on the Lot with the condition that the structure on Lease Lot A remains on that lot along with all the pilings and deck and a new building of the same size be approved to be built on Lease Lot B conditioned upon the following: subject to the orders and conditions set by the Conservation Commission, subject to all State approvals and approval from the Army Corp. of Engineers, the height of the new structure on Lease Lot A is not to exceed 24', footprint and visual appearance of the new structure shall be identical to the existing structure on Lease Lot A, all trim must be of natural materials and/or neutral colors, no white paint, all exterior lighting will comply with the Town's Exterior Lighting Bylaw, no skylights, subject to the submission and PBPRC approval of architectural drawings/elevations of the new structure. Motion was moved by Sarah and seconded by Jim M. **The PBPRC voted 5-0. The motion passed.** A Special Permit for the following was granted: special permit for the height over 18' in an open and highly visible area, not to exceed 24', special permit for the construction of a new structure on a municipal lot with a setback of 16.4' from the property line and 14.9' from the centerline of a road, special permit for the siting of the structure on the lot, and a special permit for construction and siting of a new structure on the Flood Plain and in a Velocity Zone (Flood Plain Permit).

Meeting adjourned at 9:26 pm.

*Respectfully submitted,
Sophia Welch
Board Administrative Assistant*