Minutes of the Regular Meeting of January 15, 2004
Held in the Olde Stone Building,
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE


Staff: Mark London (Executive Director), Jennifer Rand (DRI Coordinator), Bill Veno (Senior Planner), Bill Wilcox (Water Resources Planner), Christine Flynn (Affordable Housing and Economic Development)

1. COLEMAN SUBDIVISION (DRI No. 575) – PUBLIC HEARING


Richard Gallogly, counsel, and Glenn Provost, agent, represented the owners, Richard and Melanie Coleman.

There being a quorum present, Christina Brown, Hearing Officer, called the public hearing to order at 7:37 P.M. and read the Public Hearing Notice.

1.1 Applicant’s Presentation

Glenn Provost explained the purpose of the subdivision, namely to create three lots, one approximately 10 acres, that would have access over North Ridge Road, and two unbuildable lots.
- Though the 10-acre lot had access, it didn’t have 40’ frontage, so a “hammerhead” configuration is proposed at the entry point.
- This plan would allow construction of one dwelling on the 10-acre lot, and in five years, a guesthouse.
- Each of the two unbuildable lots would be added to two existing lots owned by the Colemans, facing Meetinghouse Road. Each of these houses has a house and the right to...
build guesthouses. The addition of land behind each house would add more space. They also want to preserve options for the future, by having 6-acre lots.

- The Colemans also own a 7-acre parcel with access from Kings Highway. They could build on that site today and, in five years, build a guest house.
- Today, they could have five houses on the property, namely the two existing houses and two guesthouses on the Meetinghouse Road lots and one new main house on the 7-acre property. In five years, they could add a guesthouse to the 7-acre lot. Thus, the total would be 6 houses.
- After approval, they could add one house to the 10-acre lot and one guesthouse in five years, for a total of 8 houses on 30 acres.
- He distributed a topographic map, to address the concern expressed during the site visit about building at the top of the ridge on the site. He noted that there is another ridge between this site and Kings Highway, which is equal in elevation to this property. There is no way that someone could see back from Kings Highway to the house.
- The access to the 7-acre lot is from Kings Highway. A road extending about halfway up this right-of-way already exists and it would have to be extended to allow access to this lot.

Richard Gallogly said that the intention is to make the 10-acre lot available for sale. Megan Ottens-Sargent asked whether the intention was to divide the two 6-acre lots (the enlarged lots of the two existing houses). Glenn Provost said they are not proposing any division greater than what is proposed here and if they wanted to in the future, they would have to come back to the MVC. Richard Gallogly said they have no plans to divide them now, but don’t want to have their hands tied for what might happen in ten years.

Linda Sibley said that the concern about the visual impact of a house at the top of the ridge is not only from Kings Highway but also from other houses. Richard Gallogly said that many houses can be seen from other houses. Glenn Provost said that it would only be practical to put one house of the 10-acre lot on the ridge and if there were ever another house built on this lot, it would not be on the ridge.

Deacon Perrotta asked about the road maintenance. Glenn Provost said it could be done either in two ways, a covenant or by posting a bond or cash. This would be a private road built to town specifications.

Glenn Provost said that, in his opinion, based on planning board regulations, the 7-acre lot could not be further divided since it doesn’t have a 40’ right-of-way to a public way.

Richard Gallogly concluded by saying that, if the Commission imposed a condition to the effect that the 10 and 7-acre lots could not be further divided; he believed that the owners could accept that condition.

1.2 Staff Report

Jennifer Rand gave a staff report
- It was referred because it was a piece of land that has been subdivided in the past 8 years. Billy Meegan clarified that it was also referred under other criteria. Richard Gallogly questioned some of the criteria, but agreed that it was a DRI.
- There is a letter from the Meetinghouse Road Association, asking for provision requiring the developer to repair damage to the road as a result of heavy traffic during construction,
and that the owners be required to pay their pro rata share of the annual maintenance of North Ridge Road and related costs.

- A letter from John Flender asking for establishment of a trail easement from the Middle Road Sanctuary across the Coleman property to Meeting House Road.
- Letters from James Lengyel, Executive Director of the Land Bank and Dick Johnson, Executive Director of Sheriff’s Meadow Foundation, also suggesting the importance of establishment of a trail easement.
- The eastern part of the property falls in the Meetinghouse Road and Tiasquam River DCPC. Within the district, regulations prohibit structures on ridge tops if visible from the public way. This would not apply if the house were built in the western part. She does not believe that this would be visible. There are also regulations dealing with slope when the house is built.

Jim Athearn and Jane A. Greene asked whether a trail or the ocean is considered a public way. Jennifer Rand checked the regulation and clarified that neither are public ways.

Russell Walton, member of the Chilmark Planning Board, said that the intention when the district was established was to protect views from Meetinghouse Road, Middle Road, and Old Kings Highway.

Bill Wilcox said that the property is within the Chilmark Pond watershed, a nitrogen-limited pond. There are wetlands between the property and the pond, which would reduce the nitrogen loading somewhat. He sees no problem with the proposal, especially if the 7 and 10-acre lots are not further divided.

1.2 Testimony from Public Officials

Billy Meegan, Chair of the Chilmark Planning Board spoke.

- This property has been before the planning board four times since 1998. It was first for the ANR division of the 7-acre lot, a second application was withdrawn, a third, a form C, was similar to this proposal but was not referred to the MVC (because there were covenants against future subdivision). That Form C subdivision was approved by the Planning Board, but never filed by the owners. The form C for this proposal is the fourth proposal.
- Taking into consideration all the contiguous land under one ownership, this proposal involves 30 acres. The Planning Board considers the impacts of the 30 acres.
- The Planning Board held a public hearing at which neighbors expressed concern about the impact. The neighbors had expressed concern about the full impact, since there is nothing to stop the lots from being reconfigured and further subdivision taking place with a form A subdivision, Approval Not Required.
- The maximum potential development would see each of the two new six-acre lots being divided into two (i.e. 4 lots) plus the 10 and 7-acre lots could be redivided into five lots. Thus, there could be a total of 9 lots with 9 main houses and 9 guesthouses.
- There has been incremental development on this property before, and he expressed concern that there could ultimately be a considerable number of houses without addressing the need for affordable housing.

Mitchell Posin, Chilmark Planning Board, said that the plan that was approved by the Planning Board included smaller lots behind the two houses, so the total area was less than 6 acres and could not then be subdivided.
Billy Meegan said that this is the first time with this proposal that the possibility was raised that the 10 and 7-acre lots would not be subdivided, referring to Richard Gallogly’s statement that the owners would not object to such a condition. Until things are in writing, he is concerned about the subdivision including affordable housing and the trail easement.

John Flender, member of the Chilmark Planning Board, indicated where the trail easement would be desirable, namely along the north edge of the property.

Linda Sibley asked what the Chilmark requirements are for affordable housing. Russell Walton, also a member of the Chilmark Planning Board, said there is a provision to allow for a Youth Lot for a subdivision up to 36 acres and another lot if larger than 36 acres. He added that a youth lot must be a minimum of 1 acre and maximum of 3 acres. Linda Sibley noted that the MVC guidelines would not require an affordable housing site even if the site could be subdivided into 9 lots.

Billy Meegan distributed a copy of a real estate ad for the 10 and 7-acre lots, which indicated the possibility of further subdivision. Richard Gallogly said that the agent has been asked to sell these two lots, but the referenced division is not the intention of the owner.

Russell Walton said that at the time this proposal was submitted, the owner had not been prepared to undertake to not further divide the property. Billy Meegan said that the possibility of not further dividing the 10 and 7-acre lots goes a long way to resolving the Planning Board Concerns.

Jim Athearn asked about Chilmark regulations dealing with building on peaks above certain elevations. Russell Walton said that the zoning regulation prohibits building above 280’, i.e. part of Peaked Hill and part of Prospect Hill, that the DCPC regulation further prohibits construction on a ridge that would be visible from a public way as named in the regulation.

Billy Meegan said there are guidelines saying that the roofline should be kept below ridgelines or tree lines, town-wide. Russell Walton added that the guidelines are in effect town-wide, the specific prohibitions are in effect only in the DCPC.

Jane A. Greene asked whether the access from North Ridge Road is restricted exclusively to the 10-acre parcel. Richard Gallogly said that he would check.

Russell Walton showed a map illustrating the potential trail easement from the Sheriff’s Meadow property to Meetinghouse Road.

1.3 Public Testimony

Sheila Muldaur, abutter and seller of the easement from North Ridge Road, spoke.

- In 1977, she was approached by Tom Lawless about selling an easement to the Coleman family. Melanie Coleman told her that they were planning to build their dream house there. They agreed on a price and she sold the easement.
- Then she heard that there would be a subdivision. The neighbors were concerned and there was a petition circulated. She was devastated. Had she known that there was a potential for a subdivision, she wouldn’t have sold it. She had understood that the easement was only for one house.
- People are concerned about linking up from the hammerhead entrance on North Ridge Road to the 7-acre property as it could overload the fragile road.
- She read a letter from Danny Kortchmar expressing concern about the impacts of the subdivision.
• She confirmed that she had no objection to a trail using the easement providing there was a sign saying that her driveway was private.
• She wondered if it is legal to go into a subdivision through another subdivision road.
• She is thrilled to hear Mrs. Coleman's change of heart to the effect that the 10 and 7-acre lots would not be subdividable. She wondered whether she would be willing to put the same restriction on the 6-acre lots.
• She wanted to know, if the plan is approved, what the applicant would have to do to change the plan in the future. She also wanted to know whether there was a possibility that the right-of-way over her property could be extended into the 7-acre property rather than them accessing it from the other side.

1.4 Commissioners Questions

In response from a question by Linda DeWitt, Glenn Provost said that he participated in the other three applications and Richard Gallogly said that it was his first.

Linda DeWitt asked the Chilmark representatives to further clarify the town's policy on affordable housing. Billy Meegan said that the town has no regulation requiring affordable housing. It has only been achieved through the MVC. The Planning Board would like to see provision that if it were to be further subdivided in the future, there would be a possibility of getting affordable housing. If there is potential for 18 units, there should be some requirement that there be affordability, maybe of a guesthouse.

Christina Brown asked whether the applicant is offering an affordable housing lot. Richard Gallogly said no. Andrew Woodruff said that in West Tisbury a subdivision of four lots would be required to contribute a resident homesite lot.

Jane A. Greene asked that the hearing remain open until it is clarified whether the easement across the Muldaur property allows for further subdivision.

Linda Sibley also asked whether the subdivision would overburden Meetinghouse Road subdivision road. She wondered whether Sheila Muldaur had the right to grant the easement.

Richard Gallogly said that he didn't think the easement is within the Commission's purview, since the owner couldn't stop the easement from being used, if its use overburdened the property. Christina Brown responded that the Commission can examine the impacts of the easement, in the process of weighing the detriments and benefits of the proposal. Linda Sibley said that when the MVC approved the Meetinghouse subdivision, traffic issues might have been part of that consideration.

Jane A. Greene said that if the MVC might approve something that allows further subdivision, the MVC should know whether this could be done.

Billy Megan said that, from a Chilmark Planning Board point of view, if all of Coleman's property were limited to 8 houses and the two other 6-acre lots were not further subdivided, and no further subdivision of the 10- or 7-acre lots, the board would favor it even if no youth lot were included. He added that the trail easement is very important; that is in the town's master plan as it is being updated.

Andrew Woodruff asked about the trail easement. Richard Gallogly said that he would have to discuss this with the owners. He knows the owners would not agree to restrictions on the 6-acre lots.
Megan Ottens-Sargent asked about the possibility of also having a youth lot. Richard Gallogly said that he would discuss it with the owners, but he is doubtful.

Jim Athearn asked about what would have to be done to divide the two 6-acre lots. There is a right-of-way that would allow for the road construction. Since the owners would have to build a road, they would need a form C subdivision approval, and would have to come back to the MVC.

Linda Sibley expressed the need for affordable housing on the Island and noted that with 30 acres under one ownership, the owners could find a way to carve out a one-acre lot. It should be possible to do this and not economically impact the potential of the property.

Andrew Woodruff noted that there is a building envelope on the 10-acre lot and wondered whether the owners would consider one for the 7-acre lot. He also asked whether the owners would consider a no-cut zone.

1.5 Applicant's Summary

Richard Gallogly said that the proposal before the Commission is what is being asked for, not what is in the broker's advertisement. When Sheila Muldaur sold the easement, it was for the entire property, including what is now the 7-acre lot, so it would still apply to the whole property. He added that there is a separate easement from the North Ridge Road Association.

Billy Meegan said that when the form A was approved, there was a frontage on the Sheriff's Meadows property that is overgrown and it is not clear whether it is accessible. There is a condition that a road not on the property must be brought up to standard prior to construction.

Glenn Provost said that he presented that application to the Chilmark Planning Board and the owners never said that the 30-foot way was the access. The legal access is the 20' right-of-way and this can be brought up to town standards.

Megan Ottens-Sargent said that it is relevant that the lot may not be further subdivided.

Christina Brown continued the public hearing to January 22, 2004 at 7:30 p.m.

Recess from 9:30 to 9:40 P.M.

Commission Chairman Jim Athearn assumed the chair.

2. FAIRWINDS (DRI - 548 M-1) - MODIFICATION REQUEST


Attorney Marcia Cini represented the owners.

Marcia Cini said that the project has been approved by the Tisbury ZBA.

- The proposal was reduced from 24 to 14 units, in the process of MVC approval. The Tisbury ZBA proposed reducing it from 14 to 12 units. The plan is not reconfigured.
- The Tisbury ZBA strongly recommended that two of the duplex units become single-family homes. The result would be less traffic and less density. There would be enhanced treatment in the two duplexes.
- The result would eliminate one affordable and one moderate housing unit. The applicant has worked hard over the past year to address the concerns of the community. It was
unanimously approved last Thursday night. It would be a small change. There would no longer be the need for a condominium format.

Jennifer Rand said that there was a condition that there be no more than 14 units in 10 buildings and that wouldn't change. The proposed conditional changes are with respect to the number of affordable and moderate units. In addition, the proposed new deed restriction would give first priority to Tisbury residents, then to Island residents. The Commission previously approved a deed restriction giving first priority to Island residents.

*Jennifer Rand said that there was a condition that there be no more than 14 units in 10 buildings and that wouldn't change. The proposed conditional changes are with respect to the number of affordable and moderate units. In addition, the proposed new deed restriction would give first priority to Tisbury residents, then to Island residents. The Commission previously approved a deed restriction giving first priority to Island residents.*

Linda Sibley moved, and it was duly seconded, that the proposed modifications of conditions are not substantial, and do not require a public hearing, and to approve the modifications.

Jim Athearn said that the proposed modifications would be in the spirit of the Commission's decision.

Christina Brown suggested separate motions to approve the modification from 14 units in 10 buildings to 12 units in 10 buildings, and to accept the change from 4 80% and 3 moderate to 3 80% and 2 moderate. She believes that both would be in the spirit of the earlier decision.

Andrew Woodruff noted that the compressed density was desirable for the neighborhood, and that it would be a shame to lose the affordable and moderate-income units is regrettable since it would have had little negative impact.

Linda Sibley revised her motion to separate two components, moving first, and it was duly seconded, that the proposed modifications of conditions are not substantial and do not require a public hearing. Voice vote. In favor: 9. Opposed: 0. Abstentions: 1. The motion carried.

Linda Sibley moved, and it was duly seconded, that the changes requested by the applicant be approved, namely that there would be three affordable (80% of median income) and two moderate units, and that the deed restriction would give first priority to Tisbury residents. Roll call vote. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, Katherine Newman, M. Ottens-Sargent, L. Sibley, A. Woodruff. Opposed: 0. Abstentions: D. Perrotta. The motion carried.

3. LUPC MEETINGS

- Monday, January 26 at 5:30 P.M. B.A.D.D. Company, and first discussion on major revision of standards and criteria
- Monday, February 2 at 5:30 P.M. Tar Kiln, Inc. proposed modifications, and discussion on revision of standards and criteria.

Megan Ottens-Sargent suggested that it would be preferable to have site visits at times other than 8 A.M., for people with school-age children. Deacon Perrotta prefers the afternoon, maybe late afternoon for most of the year. Katherine Newman suggested going in the late afternoons when there is daylight, and doing something else in the dark of winter. She also asked for signs to indicate where a site visit is to be held.
4. APPROVAL OF MINUTES

Christina Brown moved, and it was duly seconded, that the minutes of the meeting of December 18, 2003 be approved as written. Voice Vote. In favor: 6. Opposed: 0. Abstentions: 3. The motion carried.

5. OTHER BUSINESS

5.1 Committee Chairs

Jim Athearn said that he has appointed the heads of committees, carrying forward last years Chairs; Christina Brown as Chair of LUPC, Richard Toole as Chair of PED, and Megan Ottens-Sargent as Co-Chair of PED.

5.2 Cape and Islands Regional Planning Alliance (CAIRPA)

Mark London explained that a draft Memorandum of Understanding has been drawn up that would commit the Nantucket, Cape Cod and Martha's Vineyard commissions to work together on mutual concerns.

John Best moved and it was duly seconded that the Commission approve the draft CAIRPA Memorandum of Understanding. Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion carried.

5.3 Committee Meetings

Jim Athearn noted that the following committee meetings were held recently.
- The Open Space and Landscape committee met and started working on the drafting of guidelines.
- PED met and is monitoring the work on the Community Development Plans with the towns.

Linda Sibley reported that the Process and Procedures Committee has completed its first run through of revisions to the DRI regulations. They are now re-reading the draft to see whether there is any fine-tuning to do. Mark London said that he was completing draft DRI guidance documents and a new application form that parallel the work done on the regulations. Linda Sibley noted that the Committee would like to rename the regulations the "DRI regulations."

5.4 Commission Meetings

Mark London said that the public meeting on charitable contributions is tentatively scheduled for February 5.

5.5 Other Business

Jennifer Rand reported that Bridge Housing had received its housing certification and is moving ahead with its submission to the Housing Appeals Committee. Bill Wilcox added that Bridge Housing has begun installation of monitoring wells.
The Meeting was adjourned at 10:23 p.m.

[Signature]
Chairman

March 18, 2004

Date

[Signature]
Clerk-Treasurer

8/18/2004

Date