

Minutes
Planning Board
September 1, 2014

Present: Neil Schuster, Chairperson; Don Girouard, Donna Bailey, Peter Scontras, Michael O'Toole, Marty Devlin, Rene Ittenbach. Also Patrick Fox, Director of Public Works, and Bob Hamblen, City Planner.

5:00 p.m.
Workshop

Discussion of MU-3 zone issues.

Discussion of Rte. 112 Corridor Update Study.

5:30 p.m.
Regular Meeting

1. Minutes of August 18, 2015 --
2. Public Hearing: contract zone review of a request to allow a single family residential building permit to be issued for Lot 202, Oceanside Drive. Applicants are J. George and Nancy S. Driscoll. Tax Map 11, Lot 116. Zoned R-1c and Shoreland Overlay.

Girouard: I'm recusing myself from this review, as I'm sole heir to the owners of 6 Overlook Drive.

Hamblen: the applicants, Nancy and George Driscoll, have submitted a contract zone application that would allow them to split the 0.26 acre parcel at 15 Oceanside Drive into two lots, one of which is developed and includes their residence, the other of which would be a vacant (save for a utility shed) and developable lot.

The application for a contract zone is complete, based on submission requirements found in Sec. 1403-3 of the Zoning Ordinance – see completed checklist.

O'Toole: I move that the Board find the application for a contract zone submitted by applicants George and Nancy Driscoll to be complete, seconded by Devlin, and so voted, 6-0.

Hamblen: two lots existed per the "Plan of Land for M.H. Kinney, Saco, ME called Kinney Shores", labeled as 201 (Driscoll residence) and 202. Lots had 50 feet of frontage on both street and the beach. Several decades later Saco had decided that larger minimum lot sizes make for a better overall environment. Also, the state's shoreland zoning regulations established in the early 1970s now identify minimum shoreline requirements. Plenty of 5,000+/- s.f. lots still

exist and are grandfathered. However, today the City requires a 7,500 s.f. minimum lot size and both the City and the DEP require 100 foot minimum shore frontage and 100 foot minimum lot width for shore front lots.

The Driscolls acquired the property in question in 1980, then nine months later deeded to a Celeste Murray, then deeded back from Murray to the Driscolls on the same day. The property was held in joint tenancy until Feb. 28, 1986, at which time George and Nancy deeded the vacant portion of the property to Nancy only.

In 2009 the Driscolls submitted a building permit application to the Code Enforcement Office, seeking to construct a single family dwelling on the vacant portion of the property. Dick Lambert denied the application, pointing to Section 502-1(2) and the language that states as follows:

“If two or more vacant, contiguous lots or parcels are in single or joint ownership of record at the time of adoption or amendment of this Ordinance, if these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendment, the lots shall be combined to the extent necessary to meet the dimensional standards, except where the contiguous lots front onto different streets or where the lots were legally created and recorded as part of an approved subdivision after March 22, 1972, the date of adoption of Saco's subdivision standards.”

The Driscolls having owned the two lots jointly for about six years in the 1980s had prompted the combining of the two lots. The Driscolls filed an Administrative Appeal and Variance Request with the City, and hearings were held by the ZBA in September and October, 2009. The ZBA voted to deny the appeal on Oct. 26, then to deny the variances requested on Nov. 30.

The Driscolls appealed to Superior Court, which denied the appeal on Oct. 5, 2010. The matter was then appealed to the Maine Supreme Judicial Court, which found against the appeal on Sept. 22, 2011. Having exhausted that process, the applicants have rightly recognized that an avenue remains open for them: contract zoning. See input from City Attorney Tim Murphy, and also from Natalie Burns. Ms. Burns invited DEP Assistant Shoreland Zoning Coordinator Mike Morse into the discussion, and his input is reflected in e-mail correspondence.

Devlin: was the lot conforming in 1980? **Hamblen:** not sure, will need to research. **G. Driscoll:** the two lots were fully taxable for many years. The DEP established zones that on a broad basis established the lot as unbuildable, but after a closer look the ability to build on it was established. Prior to 1983 lots in the dunes were buildable, per the DEP. **N. Driscoll:** we always intended two lots, and still feel justified in there being two lots. **G. Driscoll:** there is a 50 foot seawall and planted sea grass which prepped this lot for a building. Development of this lot will mean tax revenue for the City. A single family dwelling would be consistent with other lots on the street. **O'Toole:** why did you wait until 1986 to convey the lot to Nancy? **N. Driscoll:** we were educating our kids. Up until this year we have had two deed, always got two tax bills, and regarded our property as two lots. Why recently has the City decided to send us only one bill? **Devlin:** I've seen elsewhere where a second unbuildable lot abutting a buildable lot in the same

ownership is identified by the town as '-1,' such as 116-1 (as was true of the Driscoll's "unbuilt lot" until the current fiscal year.

Ittenbach: I move to open the public hearing, seconded by Devlin, and so voted, 7-0. **Ed Radin:**

there are three remaining unbuilt lots in the neighborhood, and the other two don't have this restriction. It is appropriate for the City to make amends. Would rather have a house built on it than the existing house expanded onto it. The City used to deny permits to those who abutted the old Dummy RR line and wanted to build on it. Since then, several have been built, and the area is pretty well built out now. Some 50' x 50' lots exist. This is an unfair burden on the Driscolls. This avenue of appeal is a small change. **Don Girouard:** my parents are Raymond and Lavette Girouard, 6 Outlook Ave. The agenda states "to build on Lot 202." More accurately it is to build on Lot 116-1, which is considered today to be a single parcel, Lot 116. The application is not complete. The Dow and Coulombe survey is not properly a plot plan, showing the location of proposed buildings – the Board should conclude that the application is incomplete. Without a plot plan, the Board can't conclude whether desired setbacks are met, or if lot coverage limitations is met. If the latter is greater than 2,180 s.f., then another standard needs to be modified for the proposed Lot 116-1. If the Dow and Coulombe plan is to be used, then the existing encroachment onto Lot 116-1 needs to be addressed. In Sec. II.D of the draft agreement, there is no spec for the remaining Lot 116 for lot coverage requirement under shoreland zoning. The four standards that must be met for a contract zone, found in Section III.A: on the 1914 Kinney Shores subdivision plan there were 210 lots, all 50' x 100'. Today there are 142 lots, as mergers of lots have reduced the 210 by 68 lots. Today there are about 45 lots at 5,000 s.f. The existing lots average about 8,896 s.f. in area. Driscoll's lot is not unusual.

Re: III.B, Figure 6-2 showing the Future Land Use plan in the Comp Plan, the Coastal Residential Area, the development standards should hold. The CRA has an average lot area of 8,705 s.f. The Driscoll proposal suggests a greater density, which is not in accord with the Comp Plan. There were 40 original waterfront lots on the Kinney Shores plan, which were built on between 1916 and 1968, before zoning. Ten of the 33 present day lots are merged into larger lots. The Driscoll property is not a unique lot. The Board has wrestled with contract zoning before, but this only provides relief from zoning requirements. It sets a dangerous precedent. **Bruce Curran:** is contract zoning more for commercial uses than for residential? The handout provided by the planning office recommends a neighborhood meeting – has this been done? **N. Driscoll:** we're aware that the existing building encroached on the property line – this has been corrected. We were thinking of a 20' x 40' house. We thought this was a preliminary meeting. We can produce six neighbors or more who support this. **G. Driscoll:** we've been fighting for this for 25 years.

Ittenbach: a 50' x 100' foot lot could work. My concern is with the findings of the Law Court. If a positive recommendation is forwarded to the Council then a precedent is established. Non-abutting properties could have a similar situation. **O'Toole:** re: completeness of the application, this proposal is not for a specific building, so I'm okay with the application being complete. **Schuster:** you're asking us to split what the Law Court said is one lot. **O'Toole:** if there had been no appeals, would this be differently considered? **Carol Radin:** why aren't we advised before

changes are made? **Hamblen:** can't speak to what was done in 1985. These days City makes a strong effort to notify abutters, hold public hearings, get the word out to affected individuals and neighborhoods. **Mayor Pilon:** the Assessor may have precipitated the combining of lots after meeting with the Driscolls – were the lots merged to reduce their taxes? Why were the lots not merged years ago? **Girouard:** under Sec. 1403-3.b the application is not complete. The merged lots are not unique, and the application is not consistent with the Comprehensive Plan. **Radin:** the lot is unique in location. There are two other 50' lots, and the Driscolls shouldn't be saddled with this quirk of the Zoning Ordinance. **Joel Swartz:** one of the two lots are labeled "unbuildable" by the City. **Ittenbach:** the application does not request a building on a lot, it requests a lot to be created. So, the application is complete for our purposes. **Devlin:** I don't think the application is complete. **Schuster:** is that a motion to reconsider? **Ittenbach:** what's the difference if we act on the contract zone, complete or not? It wouldn't affect my decision. **Bailey:** nor mine. **Scontras:** it's a question of process. **I move to find the application incomplete, seconded by O'Toole. Voted 2-4 (Schuster, Ittenbach, Bailey, O'Toole), motion fails.**

O'Toole: I move to close the public hearing, seconded by Scontras, and so voted, 6-0.

Scontras: this issue went through the process all the way to the state Supreme Court. Because of a glitch or lack of notice, the ordinance was adopted and the lots became merged. I grew up spending summers on Palmer Avenue. In 1914 there were no zoning regulations. The City introduced zoning which has evolved; it's a dynamic process. Today's standards should apply – I won't go against the Maine Supreme Court. **Devlin:** I agree that the application is not complete. Was the lot buildable from 1980-'85? I own two lakefront lots, one unbuilt. The town has labeled it as unbuildable, and that's how it is. **O'Toole:** the Law Court decided what the ordinance said and was it rightly applied. The Driscolls have asked something different. The contract zone wouldn't overrule the Law Court. But, I feel this is not the right purpose for a contract zone. Contract zones should be used sparingly. The purpose statement mentions special situations, desirable growth, differing land uses – not just to get around the regulations. **Devlin:** that's why I'm interested in whether it was ever a buildable lot. Was there opportunity to build, and did they miss the boat? **O'Toole:** they missed the conveyance from husband and wife, to wife. **Devlin:** I agree with Don that the application is not complete. If there wasn't a process of notice prior to the merger, then that's unfair. **Ittenbach:** there appear to be several documents the applicant has that we don't. **O'Toole:** where's the public benefit?

Scontras: hearing what points were decided by the Law Court was helpful. I would like to know: was this a buildable lot once? **O'Toole:** the intent of contract zoning is being met without the public benefit. **Devlin:** we're trying to fit a round peg into a square hole. **Schuster:** do we have enough to move forward, or is more information needed? **Ittenbach:** whether the lot can be built on or not is a moot point – should this be handled as a contract zone, period? **Schuster:** shall we move on? **Bailey:** yes.

Schuster: the application needs a positive recommendation on the four standards in order to move forward to the Council with a positive recommendation. **O'Toole: I move that the Board find that the parcel identified as Map 11, Lot 116 is a parcel of an unusual nature and location, seconded by Bailey. Vote was 3-3 (Scontras, Ittenbach, Schuster) and therefore fails.**

O'Toole: I move that the Board find that the proposed rezoning is consistent with the 2011 Comprehensive Plan. No second, the motion fails.

O'Toole: I move that the Board find that the proposed use is consistent with the existing and permitted uses within the original zone, seconded by Bailey. Vote was 3-3 (Devlin, Scontras, Schuster) and therefore fails.

O'Toole: I move that the Board find the conditions proposed are sufficient to meet the intent of Section 1403 of the Zoning Ordinance. No second, the motion fails.

Bailey: I move that the Board forward a negative recommendation to the City Council for the contract zone proposed by J. George and Nancy S. Driscoll for the property at 15 Oceanside Drive, seconded by Devlin, and so voted, 6-0.

Meeting adjourned at 7:30 pm

Respectfully submitted by,

Bob Hamblen
City Planner