

Open Space Minutes, 7-13-2005

Attendees

Anne Madden (chair)
Dawne Fusco
Don Bourquard

Mickey Culver
Patricia Reeser
Jean Lambert

Mike Mokrzycki

Topics covered

- Minutes of 6/1/05 and 7/11/05
- Committee reappointment and organization
- Priority Parcel List
- Richardson/Gerrish: Restrictive Covenants re Lot 1 Cherry Hill
- Community Preservation Act
- Goals for 2005-2006

Minutes of 6/1/05 and 7/11/05

The minutes of the June 1 and July 11 meetings were unanimously approved.

Committee reappointment and organization

The committee noted that the Board of Selectmen told us on July 11 that we all have been reappointed for another year. Annie advised that she would like to give up the chairmanship after this year. The committee voted unanimously for Annie to remain chair for another year and for Janet Thibeau to continue as co-chair if she is willing.

Priority Parcel List 2005

The committee discussed the priority parcel list and will continue to review it at the next meeting.

Richardson/Gerrish: Restrictive Covenants re Lot 1 Cherry Hill

The committee heard from the owners of Cherry Hill Lot 1, Cheryl Richardson and Michael Gerrish; the designer of the house being built there, Laine Jones; and neighbors regarding compliance with restrictive covenants on the property.

Annie Madden said she had been alerted to a complaint about the colors of the house and noted that any variances from the covenants must be approved by the OSC.

Cheryl Richardson said that as she and Gerrish have been building the house they have been very aware of and have complied with the covenants. She said their plan was to build an "old-world home" similar in style to the Victorian house across the street. She said they knew that under the covenants the sidings had to be in earth tones. Richardson showed the committee the color charts they used to select the color of the stucco they are using as siding for parts of the house. She said they knew the color had to be a brown tone so they started the selection process from between Pantone colors 472U and 473U and settled on Sto (the stucco manufacturer) color number 20610, which she described as a terra cotta color. Richardson also showed a panel with stucco of that color, and photographs of the already-stuccoed part of the house showing the color in various lights of day.

Richardson said that if the selected color was a mistake it was an honest mistake. She said the color clearly was a brown tone color.

Annie Madden asked about the stone being installed as siding on part of the house. Richardson said that stone is brown and would cover the front of the house. She and Laine Jones described which parts of the house will be colored stucco and which will be stone. Richardson also noted that the yellow covering currently appearing on parts of the house and detached garage is a Tyvek-type house wrap, not the final siding.

Richardson addressed neighbor Ed Madden (no relation to the OSC chair), owner of Cherry Hill Lot 3, saying they had not yet had a chance to discuss these issues. Richardson noted that color is very subjective. She also addressed other elements of the property, noting that it is in “rough grade state” – the septic system is not yet installed and privacy trees are still to be planted in front of the house and along the side lot line with the abutting property. Richardson said these will be wide and tall trees.

Richardson spoke to the siting of the house and other elements of the property. She said they had to abandon their original plan to build a shared driveway with Lot 2 (which they also own) because the septic system was re-sited, and because of the need to limit the driveway to 10% grade several trees along the roadside had to be cut down. She said they paid to have two or three septic designs drawn. She also said they originally planned to have a 3-car garage under the house with the house farther down the hill from where it is now sited, but when their landscape architect, Frank Todd, he told them “absolutely not” because they’d have to take a chunk out of the top of the hill. Richardson said that was the last thing she wanted to do because when she bought the two lots she wanted to preserve the integrity of the hillside.

Richardson concluded her presentation by saying to Ed Madden that she and Gerrish are happy to work with him to create a privacy barrier to address his concerns “unless there’s something we don’t know about.”

Annie said the OSC wouldn’t deliberate the issue in this meeting but would probably meet early the following week and also likely would discuss the issue with the Board of Selectmen. She then opened up the session to questions from the committee.

Don Bourquard asked if Richardson had a plot plan and she showed the committee the latest iteration by Frank Todd, although she said some elements are a little different. She said there have been many renditions of the plot plan.

Mickey Culver asked about the square footage of the living space. Richardson noted she has given the committee a letter affirming that this is less than the 5,000 square foot maximum under the restrictive covenant. She also said the house is within the height restriction of 35 feet.

The committee then heard from Kevin Madden, an attorney representing Ed Madden, his brother and the owner of Cherry Hill Lot 3. Kevin Madden said the goal of the protective covenants approved by the town as part of the Cherry Hill land acquisition was that whatever is built on that hill is to simply melt into the view from the road by the

reservoir. He said that the Richardson/Gerrish house sits on the hill and is “the most stark thing you see” from the reservoir area; he described it as “the castle on the hill.”

Kevin Madden noted that the first restrictive covenant said the house on Lot 1 was to be built on the downhill slope but that the house actually was sited at the top of the hill. He said he didn’t find anything on record indicating that there was a public hearing or any other OSC action to approve the change in siting of the house.

Kevin Madden said there’s no reason the septic system for Lot 1 couldn’t have been on the downslope of the property rather than in front of the house.

Kevin Madden disputed that the color of the stucco is an earth tone; he maintained that it is pink. He also said the covenants allow using stone as a veneer for the foundation of the home but did not allow for facing other parts of the house with stone. And he said the trim and window colors of the Richardson/Gerrish house – dark brown and green colors – violate a covenant that he said restricted those colors to white.

Kevin Madden said the problem is not with Richardson/Gerrish but with the builder who negotiated the covenants with the town, Great Woods Post and Beam. He said the OSC represents the town to ensure the covenants are complied with and can mediate some of the issues currently in dispute. He said Ed Madden would have to make decisions on whether to enforce the covenants; he said Ed Madden paid a lot of money for his property and now is “not getting what he bargained for.”

Mickey Culver asked Kevin Madden to clarify the areas in which he believes the Lot 1 house is not in compliance with the siding. Kevin Madden listed five:

1. the siting of the house, on the ridge of the hill rather than the downslope
2. the color of the siding
3. the nature of the siding (stone vs other)
4. trim and window colors
5. square footage of the living space

Open Space Committee consensus was that the only issue presently before us is paint color.

Kevin Madden also said he assumes the living space in the house is just the first and second floors because there is a third floor and if the living space there is heated, the total heated living space would exceed 5000 square feet. He also said there appears to be potential living space over the detached garage. Cheryl Richardson said the space over the garage will not be heated and will be used only for storage. Laine Jones said the garage needed to be built in the style that it was to ensure it would match the house.

Annie Madden noted that under the covenants, the trim doesn’t have to be white; the covenant says “All trim will be subject to the same limitation on colors as siding, with the addition of white.” Kevin Madden agreed with this.

Annie asked Kevin Madden to prioritize his/Ed Madden’s concerns. He said they have varying amounts of interest in all of them. He said he appreciates that the property is in

rough grade state but it's a "huge" house that stands out and overpowers Ed Madden's home. Laine Jones noted that the same could be said for the Victorian house across the street; Kevin Madden said he understands that but that house is not subject to covenants. He said he is concerned about what would happen if Great Woods Post and Beam builds a home on Lot 2.

Patricia Reeser asked Kevin Madden what would be a "win" from his perspective. He said he couldn't give an answer to that in this meeting but would suggest that Richardson/Gerrish, through their architect or maybe through an attorney, negotiate with them on various issues although he understood that the only issue currently before the OSC is color.

Mickey Culver asked Kevin Madden about the scope of the complaint he submitted to the OSC. Kevin Madden said his understanding is the OSC is only authorized to deal with the color of the siding, although if the committee doesn't believe the house is properly situated it would have a lot of work to do in determining why that happened and whether to grant relief on siting. Cheryl Richardson said "Otherwise we'd have to move our house, right?"

Patricia Reeser asked about the timing of the complaint, as the house has been under construction for at least a year. Kevin Madden noted that there is no provision under the covenants for waiving rights.

Annie Madden opened the session to comments from the public. John Thurlow, a neighbor, said he has no problem with the Richardson/Gerrish house nor with Ed Madden's house. Thurlow's wife, Ellen, also spoke approvingly of the new houses and said she just wishes the neighbors could talk to one another if something is going wrong.

(Annie Madden and other members of the committee took the opportunity to thank the Thurlows for their generosity to the community, including their recent donation of open space to Essex County Greenbelt. In turn, John Thurlow complimented Greenbelt and Annie said she hoped the Thurlows could spread the word among other landowners of the benefits of preserving open space.)

Cheryl Richardson noted that Kevin Madden mentioned potential Great Woods involvement in Lot 2. She noted that she and Gerrish are the deeded owners of Lot 2 as well as Lot 1 and that Great Woods no longer is working for them. Richardson also said she and Gerrish will not be building a house on Lot 2 "as long as (the dispute over Lot 1) doesn't cost us an arm and a leg."

Richardson said to Ed Madden that he said the day before that he wanted to meet with her and she was willing to do so until he informed her that he would be bringing an attorney.

Kevin Madden suggested Richardson/Gerrish could have a problem with their title unless the OSC issues a variance on the siting of the dwelling. Richardson replied, "If you're looking for money ..." Kevin Madden said that wasn't what he was saying.

Kevin Madden and Cheryl Richardson agreed that there are issues they need to resolve that are not before the OSC. They indicated they would meet and then report back to the OSC.

Community Preservation Act

The committee discussed the comments of the Selectmen and others present at the Selectmen's meeting Monday night regarding the Community Preservation Act.

The committee unanimously approved authorizing the chair to write a letter to the Board of Selectmen expressing support for town adoption of the Community Preservation Act and putting the issue on the fall Town Meeting warrant. (motion: Mickey Culver; second: Patricia Reeser)

Annie Madden delegated to Jean Lambert the task of initially drafting the letter.

GOALS for 2005-06

Committee consensus is that these should be the committee's main goals for the coming year:

- CPA
- Stewardship/management of lands
 - Don Bourquard to get Greenbelt stewardship documentation
 - Phase 2 – outreach, volunteer project coordination
- Work with the new Workforce Housing Trust on the affordable housing issue
 - Patricia Reeser noted that the OSC's role will entail noting which properties on the Priority Parcel List may be suitable for affordable housing.
- Web site
 - Publicize all the above efforts

Further re Richardson/Gerrish:

The committee discussed how to proceed further and agreed to meet again to discuss this issue on Tuesday, July 19, at 8 p.m.