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Zoning Board:
Derek DePetrillo, *Chair*
John Schillizzi, *Vice Chair*
Drew Dana
C.J. Fitzwater, *Alternate*

Zoning Board of Appeals

Town of Salisbury

5 Beach Rd
Salisbury, MA 01952

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159 BEACH ROAD (Lot 9), ADMINISTRATIVE APPEAL DEC 22 P 2: 01 OF BUILDING INSPECTOR DECISION

CASE #21-000030

APPLICANT: Larkin Real Estate Group, Inc. (the "Applicant")

PROPERTY OWNER: Joanne F. Blais and Edward Foote Jr. (the "Owner")

DATE: December 22, 2021

PROPERTY: Lot 9, 159 Beach Road, Assessors Map 28, Lot 1 (the "Property"); located in the Beach Center ("BC") Zoning District.

APPLICATION: Appeal of the Building Commissioner's October 13, 2021 Decision denying a building permit to construct a two-family dwelling on the Property (the "Application")

PROCEDURAL HISTORY

1. On November 11, 2021, the Applicant filed the Application with the Zoning Board of Appeals (the "Board") appealing the October 13, 2021 decision of the Town's Building Commissioner denying a building permit application for construction of a two-family dwelling on the Property because the Applicant has not obtained Site Plan Review pursuant to the Town of Salisbury Zoning Bylaw, Chapter 300 (the "Bylaw"), Article XVIII, §300-111B(1)(b) and has not complied with the Inclusionary Zoning requirements of Article XIII, §300-75A of the Bylaw (the "Application"). In denying the Building Permit, the Building Commissioner also determined that the plot plan submitted along with the building permit application did not properly identify the Property or include the legal address of the Property as it did not show frontage on Beach Road.

2. A notice of the public hearing on the Application, a true copy of which is on file in the Office of the Town Clerk, was:

a) Published in the Newburyport News, a newspaper with general circulation in the Town of Salisbury on November 29, 2021 and December 6, 2021;

b) Posted in a conspicuous place in the Salisbury Town Hall on November 30, 2021, which was at least fourteen (14) days prior to the public hearing; and

c) On November 30, 2021, which was at least fourteen (14) days prior to the public hearing, mailed to the Petitioners, abutters, owners of land directly opposite the property in question on any public or private street or way, abutters and abutters to the abutters within three hundred (300) feet of the subject property, the Planning Boards of the abutting towns. The notice was mailed to the names and addresses shown on the most recent tax list provided by the Assessors Office.

4. A public hearing on the Application was held on December 14, 2021.

5. All documents considered by the Board, including but not limited to, the Application, all documents submitted by the Applicant, Town Departments and members of the public and the building department file are hereby incorporated by reference in this decision. All documents and plans received during the public hearing are part of the record on file relative to this Decision.

6. During the public hearing, the Applicant, through counsel, presented the Application to the Board and clarified that the Applicant is not contesting or appealing so much of the Building Commissioner's decision that determined that the Inclusionary Zoning requirements of Article XIII, §300-75A of the Bylaw apply to the Applicant's project. The Applicant is only contesting and appealing that Site Plan Review is required.

7. Members of the public were provided with the opportunity to and did participate in the public hearing.

8. At the end of the public hearing the Board deliberated on the Application and made the following findings and decision based on the documents and information submitted regarding the Application and at the public hearing.

FINDINGS

The following was presented to the Board and is included in the Board's record of this matter:

1. 159 Beach Road is approximately .72 acres in size.

2. On September 22, 2021, the Planning Board endorsed a plan entitled "Plan of Land (Approval Not Required)" prepared by Warren A. Wagner, dated September 8, 2021, which plan is recorded in the Essex South District Registry of Deeds in Book 40318, Book 371 (the "ANR Plan") and divided 159 Beach Road into fourteen numbered Lots. This matter involves Lot 9 on the ANR Plan ("Lot 9").

3. A plan entitled "Plot Plan", prepared by Civil Design Consultants, Inc., dated November 9, 2021 was filed with the Application and shows the dwelling and related improvements to be constructed on Lot 9.

4. The Applicant, through counsel, contends that the proposed duplex does not trigger Site Plan Review.

5. The Applicant, through counsel, agreed and acknowledged that Article XIII, §300-75A of the Bylaw, containing Inclusionary Zoning provisions does apply to the proposed project.

6. In support of its position, the Applicant cited to the definition of Lot in the Bylaw as well as to Article XVIII, §300-111B(1)(b) and Article XIII, §300-75A of the Bylaw.

7. Lot is defined in the Bylaw as "an area or parcel of land or any part thereof, not including water area, in common ownership, designated on a plan filed with the administrator of this bylaw by its owner or owners as a parcel to be used, developed or built upon as a unit under single ownership or control. Any subsequent subdivision of a lot into two or more lots shall be subject to and conform to all the regulations of the district."

8. Article XVIII, §300-111B(1)(b) of the Bylaw provides: "Any residential construction project consisting of more than three dwelling units on any single lot is considered a major project subject to site plan approval from the Planning Board."

9. The Applicant's position is that the proposal is not a major project subject to site plan approval because it is proposing to construct one duplex on one Lot, being Lot 9 and there is no specific segmentation provision in the definition of Lot or Article XVIII of the Bylaw.

10. The Building Commissioner informed the Board that in April of 2021 he learned through a communication between the then Assistant Planner and the Applicant, that the Applicant is intending to construct multi-family dwellings on thirteen of the Lots shown on the ANR. The Applicant provided similar information to the Town's Assessor.

11. On April 20, 2021, the Applicant and its representatives met with the Building Commissioner and other Town Officials regarding the Applicant's plans to develop the Property. Based on information provided by the Applicant, the Building Commissioner understood that the Applicant is intending to continue to own and control 159 Beach Road and to develop it for residential dwelling use with 26 units.

12. The Applicant, through counsel, confirmed at the hearing that it will own the land shown on the ANR Plan and does intend to develop at least some of the additional lots shown on the ANR Plan.

13. The Building Commissioner's position is that Site Plan Review is required and necessary because the Applicant is going to construct more than three dwelling units on 159 Beach Road and that the entirety of 159 Beach Road is considered a single Lot under the definition of Lot in the Bylaw because 159 Beach Road is a parcel of land in common ownership, designated on a plan, being the ANR Plan, filed with the Building Commissioner, by its owner as a parcel to be used, developed or built upon as a unit under single ownership or control.

14. In addition, in reaching his determination that the proposal is a major project requiring Site Plan Review, the Building Commissioner noted that there are no minimum lot size, set back or frontage requirements in the BC Zoning District nor are there any limitations on the number of units that may be constructed on a Lot and considered the intent of Site Plan Review as set forth in Article XVIII, Section 300-109 which provides: "this bylaw recognizes that certain developments of land, though generally suitable for location in a particular zoning district, are, because of their nature, size, complexity or other reasons of probable impact, capable of affecting the stated purposes of this bylaw, unless careful consideration is given to certain critical design elements. It is the intent of this bylaw to provide a mechanism for the review of an applicant's attention to such critical design elements within developments that are subject to review."

15. The Building Commissioner concluded that the Applicant filed a single building permit application for Lot 9 alone seeking to avoid having to obtain Site Plan Review.

16. The Planning Board and DPW each submitted comments to the Board relative to the Applicant's plans to develop 159 Beach Road identifying areas of concern that need to be considered through Site Plan Review including water, sewer, drainage, curb cuts, access, lighting, and public safety. Abutters and other members of the public also expressed similar concerns including at to traffic, access, parking, drainage and public safety.

17. The Town's Planning Director addressed the Board in support of the need for Site Plan Review for this project.

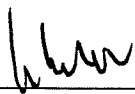
18. Members of the Board noted that the Applicant originally proposed one larger project to the Town and now it appears that the project is being presented so as to avoid Site Plan Review. The Applicant disputed that point contending that in no event is it subject to Site Plan Review.

19. The Building Commissioner reiterated to the Board that the Applicant is not now challenging his determination regarding the applicability of the Inclusionary Zoning provisions of the Bylaw.

DECISION

Based on and in consideration of the above findings and the documents and information submitted regarding the Application and at the public hearing, the Zoning Board of Appeals voted by a vote of four (4) in favor (Derek DePetrillo, Drew Dana, John Schillizzi and C.J. Fitzwater) and none (0) opposed to uphold the October 13, 2021 Decision of the Building Commission denying an application for a building permit for 159 Beach Road, Assessor's Map 28, Lot 1 based on the grounds given by the Building Commissioner for the Building Commissioner's interpretation and application of the Site Plan Review and Inclusionary Zoning Requirements of the Town's Zoning Bylaw.

The Application before the Zoning Board is denied and the October 13, 2021 Decision of the Building Commissioner regarding the application for a building permit for 159 Beach Road, Map 28, Lot 1 is affirmed.



Derek DePetrillo, Chair

Filed with the Town Clerk on December 22, 2021

Appeals of this Decision, if any, shall be made pursuant to G.L. c. 40A, §17 and shall be filed within twenty days of the date of filing of the Notice of this Decision in the office of the Town Clerk.