



**Town of Scituate  
Planning Board**

**Special Permit – Flexible Open Space Development – Deer Common**

**Decision:** **APPROVED with Conditions**  
**Date:** March 3, 2008  
**Location:** 530 Chief Justice Cushing Highway  
**Assessor's Map #** 37-2-19  
**Plan:** Deer Common Definitive Flexible Open Space Development Plan at 530 Chief Justice Cushing Highway in Scituate, Massachusetts by Ross Engineering Co., Inc., dated September 27, 2007, with revisions through January 11, 2008  
**Owner:** Busi Investment Trust, Sonja Busi, Trustee  
**Applicants:** Deer Common, LLC

Members Hearing Special Permit: Donald Walter, Chairman; William Limbacher, Donna Chisholm, Mary Patricia Brennan, and Mark Fenton

**Background:**

The property contains 19.28 acres fronting on Chief Justice Cushing Highway, a state highway. It is located in the Residential A-1 Zoning District and the Water Resource Protection District and is occupied by a single family dwelling. The land is wooded and has two large wetland areas on the site which, with other wetlands, total 170,255 sq. ft. The north side of the property is adjacent to a 60' wide electric pole line easement.

The applicants are Deer Common LLC. The application included a Purchase & Sale Agreement for the applicants with the present owner, Sonja Busi. The applicants requested a Flexible Open Space Development Special Permit under Section 550 of the Scituate Zoning Bylaw. The property is proposed to be divided into 12 buildable lots. A detention basin and septic system will occupy additional lots.

Flexible Open Space Development is an alternative to conventional development described in Scituate Zoning Bylaw Section 550. Its intent is preservation and permanent protection of open space. New lots can be created which do not have the normally required minimum area, frontage and lot width. The number of homes is established by approval of a Conventional Density Sketch Plan showing the amount of development the property can support under typical zoning and Subdivision Rules and Regulations.

**Procedural Summary:**

An application for a Flexible Open Space Development Special Permit was filed with the Town Clerk on October 11, 2007. A Public Hearing on the Flexible Open Space Development Special Permit was duly advertised and notices sent to all abutters in accordance with MGL Chapter 40A. The Public Hearing on the Flexible Open Space Development was opened on November 29, 2007, when the hearing was immediately continued at the request of the applicant to December 20. It was subsequently continued to January 24, 2008, when the hearing was closed. A letter was received from the Board of Health indicating their approval of the plan. The plan was approved with conditions on February 28, 2008.

**Hearing Summary:**

Atty. Michael Hayes and Paul Mirabito, PLS, represented Deer Common LLC before the Planning Board. At the first Public Hearing, they described the plan and told the Board the applicant would be willing to bring a water main to the property line so it could be looped. The Planning Board's consulting engineer, Mr. David Nyman of ENSR, Inc., was present at the first Public Hearing. The Board inquired whether more Low Impact Development techniques could be used so the size of the detention basin could be reduced. There was discussion that the Flexible Open Space Development would result in lower impact on the natural area, including wildlife habitat, because of the amount of open space that would be preserved (according to Mr. Mirabito, approximately 11 acres.)

At the January 24, 2008 Public Hearing, Dave Nyman described changes to the detention basin which had been made by the engineer at his recommendation. The Board asked that the development help with the need for a sidewalk on Chief Justice Cushing Highway so children within this close distance could get to the High School and Cushing School more safely. They discussed whether the applicant could provide funds to be used towards a sidewalk, even if the funds did not cover the entire cost. On February 28, 2008, the Board continued to discuss this issue and the possible obstacles in detail, and agreed to pursue it through conditions on the plan and further investigation.

Comments were received from the DPW, Board of Health, Water Resources Committee, and Traffic Rules Committee.

**Public Input:**

Neighbors and abutters to the property commented on the plan during the December 20, 2007 and January 24, 2008 Public Hearings.

On December 20, Mr. Yuknis of 1 Christopher Wren Rd. asked whether there could be more of a barrier between his property and the development.

On December 20, Elizabeth H. Taylor (Tompson), owner of land on First Parish Rd., asked whether existing vegetation could be used as a buffer, rather than removing vegetation and replanting. Mr. Mirabito said the vegetation had to be removed so the detention basin could be constructed. She also asked about a requirement for a setback from the electric pole easement. Mr. Mirabito was not aware of a required setback. There was discussion of rain gardens and the possibility of a tributary to the Reservoir on the property. Atty. Hayes said there was no tributary on the property. On January 24, she asked for additional clarification about the vegetation that would remain and the vegetation that would be cut.

On December 20, Mr. Steve Rafferty, 91 Williamsburg La., asked for clarification of the Flexible Open Space Development bylaw. He also asked if the town could regulate the size of houses on the lots. Dave Nyman said the drainage plan presupposed a certain size home. If that changed, they would need to inform the Planning Board so they could determine if there would be an impact. Mr. Rafferty expressed concern about drainage, shared septic system costs and screening for his house. These were addressed by Mr. Mirabito. On January 24, he asked for some dimensions on the home sizes. Mr. Mirabito said the footprint would be 2,400 to 2,800 sq. ft.

Mrs. Sarah Murdock, 377 First Parish Road, asked for clarification on the differences between a conventional subdivision and a Flexible Open Space Development Subdivision. The Planning Board explained the differences.

**Decision:** The Planning Board approved the Special Permit with the following conditions:

1. The Deer Common Flexible Open Space Development shall be constructed according to a plan entitled "Definitive Flexible Open Space Development in the Town of Scituate, Massachusetts 530 CHIEF JUSTICE CUSHING HIGHWAY", Scale: 1" = 100'; Dated: September 27, 2007; Owner/Applicant: Sonja Busi, Trustee, Busi Investment Trust, 530 Chief Justice Cushing Highway, Scituate, MA 02066; Ross Engineering Company, Inc., Professional Engineers – Land Surveyors, 683 Main Street, Norwell, MA 02061, with any modifications necessary to conform to the conditions below.
2. Construction shall meet all requirements of the Fire Department, Building Department, Board of Health and Conservation Commission, the State Building Code, and all applicable federal, state and local laws and regulations.
3. The total number of residential lots on the site shall not exceed twelve (12). There shall be no further subdivision of any lot shown on the plan for the purpose of creating additional building lots.

### **ROAD CONSTRUCTION**

4. All lots on the plan shall access over the proposed subdivision road and/or common driveway. No further extensions or attachments of any other roadways or Common Driveways to the proposed subdivision roads shall be permitted.
5. The proposed subdivision road shall be constructed according to the "Roadway Cross Section" shown on Sheet 11 of the plan. The requirement for vertical granite curb shall be waived except in the location of the four catchbasins near the entrance. The Common Driveway shall be constructed according to the "Common Driveway Cross Section" shown on the plan, except the plan shall be revised to meet these conditions prior to endorsement of the plan. A stop sign shall be installed at the intersection with Chief Justice Cushing Highway.
6. Upon obtaining appropriate permissions from the Town, the developer shall deposit \$33,000 to a fund for sidewalks on Route 3A.

### **OPEN SPACE, LANDSCAPING AND LIGHTING**

7. Once drainage improvements and the landscaping shown on plan are complete, the area designated as "Open Space" on the plan shall remain undisturbed except for removal of dead trees and pruning dead limbs.
8. A deed restriction shall be recorded prohibiting construction on or alteration of land or vegetation within the "Open Space" area, except for removal of dead limbs or dead trees. The deed restriction shall include an easement to the Homeowners Association and the Town allowing access for maintenance and repair of the detention basin, drainage system and other utilities.
9. In order to provide maximum stormwater recharge in the Water Resource Protection District, all property shown behind the tree line on the plan shall be kept undisturbed in its natural state, except for tree removal in locations specifically approved by the Planning Board. Prior to the pre-construction conference, this line shall be adjusted on the plan to include areas behind the cul-de-sac where no grading is shown.
10. Lighting shall be installed as per a plan approved by the Board of Selectmen. Light fixtures shall not exceed 14' in height and the style shall be as proposed by the applicant.

## **DRAINAGE, WATER AND UTILITIES**

11. All construction shall conform to the requirements of the Water Resource Protection District.
12. All water mains and appurtenances shall be installed according to the specification of the DPW. The water main shall be owned by the town and located within an easement which shall allow the town to have access for maintenance and repair.
13. Construction shall conform to all requirements of the Board of Health as per the attached memorandum from Jennifer Sullivan, Public Health Director dated November 7, 2007.
14. The drainage system shall be maintained according to the applicant's O & M Plan for drainage facilities, attached to these conditions of approval, as modified to reflect all comments by CEI.
15. Prior to endorsement of the Definitive Plan, the applicant shall provide the Planning Board with a letter from the manufacturer including a list of qualified contractors who are trained to maintain the sediment separator. Prior to the issuance of the first building permit, the applicant shall provide the Planning Board with copies of contracts for one year of maintenance for the sediment separator and the drainage facilities.
16. The Applicant has agreed to bring the water line to the property line as shown on the plan. Predicated on the Town obtaining an easement across the abutting property for purposes of looping water into Christopher Wren Road, the applicant will provide all labor and materials to accomplish said connection. The developer will deposit \$33,000 towards a fund for sidewalks to be constructed on Route 3A upon obtaining appropriate permission. If the town receives this deposit, the applicant will be required to provide only labor and not materials for this connection.

## **HOMEOWNERS ASSOCIATION**

17. The road shall remain private and shall be maintained by a Homeowner's Association until it is brought into conformance with current standards of the Town of Scituate Subdivision Rules and Regulations, and subsequently accepted by Town Meeting as a public way. The Common Driveway and detention basin shall remain private and shall be maintained by a Homeowner's Association.
18. The Homeowners Association with membership to include the developer and after sale of the lots, the owners of property in the development, shall provide funding for inspection, maintenance and repair of roadway, the common driveway (as applicable), drainage facilities, landscape plantings, and open space. The Association shall maintain an account always containing at least one year's costs for this maintenance and repair. Until a Homeowners Association is formed, maintenance and repair shall be performed by the owners/developers.
19. The Planning Board shall be provided with copies of the Homeowners Association Agreement signed by purchasers of lots and/or homes prior to closing. The applicant and/or association shall notify the Planning Board, the Board of Health and DPW of the name, address and telephone number of the officers of the association within seven (7) days of election.
20. The Homeowners Association shall provide and annual report of their maintenance activities to the Planning Board, Board of Health and DPW.

21. The Homeowners Association Agreement shall describe all responsibilities of the Homeowners Association contained in conditions of this plan. This Agreement shall be recorded at the Registry of Deeds.
22. Prior to endorsement of the Definitive Plan, the Homeowners Association will be reviewed by Town Counsel and if necessary, modified to include any Town Counsel recommendations.

## **CONSTRUCTION – GENERAL**

23. Construction work shall not begin prior to 7 AM weekdays and 8 AM Saturdays, and shall cease no later than 5 PM weekdays and Saturdays. No work shall be performed on Sunday.
24. Construction of the proposed subdivision road, the common driveway, and the proposed drainage system shall be supervised by a registered professional engineer who shall certify in writing to the DPW and Planning Board at completion that the subdivision road, the common driveway, and the drainage system were constructed in accordance with the approved plans.

This certification shall be accompanied by as-built plans, signed and stamped by a registered professional land surveyor and the supervising engineer. Prior to the issuance of an occupancy permit, a registered professional engineer shall inspect the lot and certify to the Building Commissioner that the grading conforms to that shown on the Flexible Open Space Development plan.

25. All clearing and earth moving operations shall only occur while erosion and sedimentation control measures, approved by the DPW, after consultation with the Conservation Agent, are in place. Such control measures shall remain in place until the DPW determines, after consultation with the Conservation Agent where applicable, that the danger of erosion or sedimentation no longer exists.
26. A pre-construction conference shall be held with representatives from the applicants, their engineer, the site contractor(s), the DPW, the town's consulting engineer and the Town Planner. A list of all contractor contacts, including names and telephone numbers, shall be provided to the DPW. At least one telephone contact shall be available 24 hours per day in the event of an emergency.
27. The boundary of the non-disturbance area described in Condition #9 above will be staked by the developer. The developer shall provide funds required for the town's consulting engineer to approve the location of these stakes as conforming to the plan, with the inspection and approval to be made prior to release of any lots. These stakes shall be maintained or replaced throughout construction of the development. Any corporate or individual purchasers of the lots shall be informed in writing with a copy to the Planning Board that any tree removal in that area will be subject to further Planning Board approval prior to any work being undertaken. This condition shall also be noted in the Homeowner's Agreement.
28. Any significant changes to the plan as a result of the pre-construction conference shall require review and approval by the Planning Board.
29. An As-Built Plan shall be provided within sixty days of completion of the roadway.
30. No Certificate of Occupancy shall be issued until the Building Commissioner is satisfied that access, construction of the proposed subdivision roads, installation of necessary utilities including the drainage system and site stabilization are in compliance with the approved plans and the Special Permit.

31. This Special Permit shall be void if it is not recorded at the Registry of Deeds within 45 days of expiration of the appeal period following approval of this Special Permit. This period shall be tolled in case any appeals are taken. The applicant shall provide proof to the Planning Board that the Special Permit was recorded.
32. The applicant shall assume responsibility for notifying all parties in interest of the recording of this Special Permit, according to the requirements of the Planning Board.
33. This Special Permit shall lapse within two (2) years from the date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A. This period shall be tolled in case any appeals taken.
34. An Easement Plan showing all public and private easements will be provided to the DPW with the As-Built Plans for the road, the common driveway, and drainage system.

**Vote:** All members present (Donald Walter, Chairman; William Limbacher, Donna Chisholm, Mary Patricia Brennan, and Mark Fenton) voted in favor of granting the Special Permit with conditions.

SCITUATE PLANNING BOARD

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The Planning Board certifies that it has complied with all statutory requirements of MGL Chapter 40A, Sections 9 and 11, and will file copies of this decision with the Town Clerk. The Planning Board further certifies that it has taken into consideration all testimony rendered at the Public Hearing, the comments and suggestions of other boards which have reviewed and made comments on the plans, and all plans and documents submitted by the applicant.