

MINUTES OF REGULAR PLANNING BOARD MEETING OF OCTOBER 5, 2009
Held at 7:00 p.m., Room #315, Town Office Building
400 Slocum Road, Dartmouth, MA

Planning Board

Mr. John V. Sousa, Chairman
Mr. Joseph E. Toomey, Jr., Vice-Chairman
Mr. John P. Haran, Clerk
Mrs. Lorri-Ann Miller
Mr. Arthur C. Larrivee

Planning Staff

Mr. Donald A. Perry, Planning Director
Mrs. Joyce J. Couture, Planning Aide

The Chairman called the meeting to order at 7:00 p.m. with four Planning Board members and Planning staff present. Mr. Toomey arrived shortly thereafter at 7:08 p.m.

Administrative Items

(1) Approval of Minutes

Regular Meeting of September 21, 2009

A motion was made by Mrs. Miller, seconded by Mr. Haran for discussion, and so voted (4-0), to approve the minutes of the regular Planning Board meeting of September 21, 2009 as written.

(2) Invoices

Hathaway Publishing dated October 5, 2009 for \$32.00
re: 1 year renewal of The Chronicle

A motion was made by Mrs. Miller, seconded by Mr. Haran for discussion, and unanimously voted (4-0), to approve the invoice for Hathaway Publishing dated October 5, 2009 for \$32.00.

(3) Correspondence

Legal Notices from City of Fall River
Legal Notices from Town of Westport
Legal Notices from Town of Freetown
Legal Notices from Board of Appeals
Legal Notices from Conservation Commission

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A motion was made by Mrs. Miller, seconded by Mr. Larrivee, and unanimously voted (4-0), to acknowledge and file the above referenced correspondence.

(4) Endorsement of Approval Not Required (ANR) Plans

Ronald Bogusky & Barbara Purdy Rock O'Dundee Road Sept. 15, 2009

The Planning Director stated this ANR plan is for a 41-acre parcel of land at the northeast corner of Rock O'Dundee and Bakerville Road. It creates 1 buildable lot with an existing dwelling and 3 parcels which will be available for future OSRD subdivision and open space preservation. Mr. Perry noted the buildable lot meets the requirements of the Single Residence B Zoning District and the parcels are labeled non-buildable at this time. He recommended the plan be endorsed.

Directly, Richard Rheaume, the engineer/surveyor for this property gave an explanation of how this ANR plan relates to the future OSRD subdivision plan.

A motion was made by Mrs. Miller, seconded by Mr. Haran for discussion, and unanimously voted (4-0), to endorse the Approval Not Required (ANR) plan of Ronald Bogusky and Barbara Purdy for property located on Rock O'Dundee Road dated September 15, 2009.

Mr. Toomey arrived at this time being 7:08 p.m.

(12) Endorsement of Definitive OSRD Subdivision Plan entitled "Subdivision Plan of 840 Smith Neck Road"

The Planning Director stated the Town Clerk has certified there has been no appeal, all the legal documents have been received, and the plan is ready to be endorsed.

Richard Rheaume, Prime Engineering, spoke on behalf of the applicant. He asked that in addition to endorsing the plan this evening, could the Planning Board also conditionally release lot 1 this evening and lots 2, 3, 4, and 5 will not be released until a permanent Conservation Restriction is recorded.

A motion was made by Mr. Haran, duly seconded by Mrs. Miller and so voted (4-1) to endorse the Definitive OSRD Subdivision Plan entitled "Subdivision Plan of 840 Smith Neck Road and conditionally release lot 1. Mr. Larrivee opposed.

(8) Approval of Planning Board meeting schedule through December

A motion was made by Mr. Larrivee, duly seconded by Mr. Haran, and unanimously voted to acknowledge and file the Planning Board meeting schedule through December.

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(9) Report with Recommendation to Town Meeting on street petitions for Fall Annual Town Meeting

The Planning Director explained that the Department of Public Works reported all work on these streets has been completed. However, the recommendation is not favorable at this time because Town Counsel would like “proof of title” and a “grant of easement” for these streets to be provided by the developer/applicant petitioning acceptance for these streets.

Lee Castignetti, Long Built Homes, was present for this discussion. He stated Long Built Homes’ attorney, Chip Mulford, has been working with Town Counsel to satisfy Town Counsel’s requirements for Blossom Court.

Concern was voiced that some developers would be caught in an impossible situation being subject to changes which may be onerous to comply with and individual lot owners within those subdivisions may inherit legal obligations which they were not willing parties to.

The Board felt before the Town begins to implement changes to its current policy regarding street recommendations, Town Counsel should meet with the Planning Board for a discussion on this matter.

A motion was made by Mr. Larrivee, seconded by Mrs. Miller, and unanimously voted to send Town Counsel a letter requesting to meet with him to discuss proposed revisions to the street acceptance procedure. The Planning Board would like to understand the reasons for different conditions of street acceptance, particularly who should own the fee to the street. The Planning Board also indicated that they would like to delay implementation of any changes until after it has been discussed with all the Board’s involved in the street acceptance process.

In addition, the Planning Board voted to forward the following recommendation to Fall Annual Town Meeting:

Planning Board Report with Recommendation concerning Street Petitions for Fall Annual Town Meeting of October 20, 2009

- **Blossom Court** – This street is located in the Dartmouth Preserve Subdivision off Old Westport Road. The Department of Public Works reports that all work has been completed in accordance with the approved plans. The Planning Board recommends favorably on the acceptance of Blossom Court.
- **Masthead Lane** – This street is located in the Masthead Subdivision located off Gulf Road. The Department of Public Works reports that all work has been completed in accordance with the approved plans. The Planning Board recommends favorably on the acceptance of Masthead Lane.

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Appointments and Public Hearings

- (5) **7:15 P.M. – PUBLIC HEARING – Proposed amendments to the Dartmouth Zoning By-Laws which would amend Section 2 and Section 19, Floodplain District to ensure the by-law meets FEMA requirements**

A motion was made by Mrs. Miller, duly seconded by Mr. Haran, and unanimously voted (5-0) to recess the regular meeting at 7:37 p.m. in order to go into the public hearing¹ on the proposed amendments to the Dartmouth Zoning By-Laws which would amend Section 2 and Section 19, Floodplain District to ensure the by-law meets FEMA requirements.

The regular meeting resumed at 7:47 p.m.

Administrative Items

- (10) **Report with Recommendation to Town Meeting on zoning article for Fall Annual Town Meeting**

A motion was made by Mr. Larrivee, duly seconded by Mr. Haran, and unanimously voted to forward the following report with recommendation to Fall Town Meeting:

Planning Board Report with Recommendation on Article 12 Fall Annual Town Meeting, October 20, 2009

The proposed Zoning By-Law was the subject of a public hearing held on October 5, 2009, notice of which was properly published in The Chronicle on September 16, 2009 and September 23, 2009. Notice of the public hearing was also sent to SRPEDD/SEED; Municipal Zoning and Land Use; the Planning Board's of Fall River, New Bedford, Westport, Freetown, and Gosnold; and posted in the Town Office Building.

Article 12, would amend the Dartmouth Zoning By-Laws by changing existing Section 2 and Section 19, Floodplain District. The purpose of the amendments is to adopt a revised Flood Hazard Map and ensure the zoning bylaw text is consistent with the revised map and Federal Emergency Management Agency requirements.

Failure to adopt the revised maps would result in loss of FEMA flood insurance for hundreds of property owners and the loss of FEMA disaster relief funds after a storm such as a hurricane.

The maps have been revised particularly along the coast where the flood elevations, and the kinds of zones properties are located in have changed. Additional properties are also included in the flood zone as a result of the revisions. Property owners still have available a map amendment process through FEMA if the property

¹ For more information, public hearing minutes of October 5, 2009 "Amend Section 19 Floodplain District"

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owner does not believe the property is located in a flood zone.

Anyone can access the revised Flood Hazard maps online www.FEMA.GOV through the Map Service Center.

The Planning Board voted unanimously to recommend favorably on passage of Article 12, in order to ensure responsible planning and development in flood zones, to continue the FEMA Flood Insurance Program in Dartmouth and to maintain eligibility to receive storm related disaster relief funds.

Appointments and Public Hearings

- (6) 7:30 P.M. – PUBLIC HEARING – Proposed amendment to the conditions of approval for the Definitive (OSRD) Subdivision Plan entitled “Pelegs Island Farm” (Assessor’s Map 9, Lots 17 & 18; Map 13, Lot 31; Map 14, Lot 1) located off Barney’s Joy Road**

In a roll call vote, a motion was made by Mr. Larrivee, seconded by Mr. Haran, and unanimously voted (5-0), to recess the Planning Board's regular meeting at 7:51 p.m. in order to go into a public hearing concerning a proposed amendment to the Definitive OSRD Subdivision Plan² entitled “Pelegs Island Farm”.

Lorri-Ann Miller – yes; John Haran – yes; Joseph Toomey, Jr. – yes; Arthur Larrivee – yes, John Sousa – yes.

The regular meeting resumed at 7:59 p.m.

Administrative Items

- (11) Action on proposed amendment to the conditions of approval for the Definitive (OSRD) Subdivision Plan entitled “Pelegs Island Farm”**

Following the close of this evening’s public hearing, the Planning Director recommended the Planning Board approve this amendment. He noted the certificate of approval should be revised by deleting conditions #6 and #10 since the DNRT restrictions addressed these concerns. Planning Board members agreed that they liked the language of the DNRT restriction regarding forestry uses.

In a roll call vote, a motion was made by Mrs. Miller, duly seconded by Mr. Haran, and so voted (4-1), to approve the amendment to the Special Permit for a Definitive OSRD Subdivision Plan entitled “Pelegs Island Farm” in accordance with the following:

Lorri-Ann Miller – yes; John Haran – yes; Joseph Toomey, Jr. – yes; Arthur Larrivee – no; and John Sousa – yes.

² For more information, see minutes of Planning Board Public Hearing of October 5, 2009 “Pelegs Island Farm”

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CERTIFICATE OF ACTION FOR AN AMENDMENT TO A SPECIAL PERMIT **“PELEGS ISLAND FARM” DEFINITIVE OSRD SUBDIVISION PLAN**

There was a Planning Board public hearing which was opened on Monday, October 5, 2009 and closed on Monday, October 5, 2009 regarding the application of Amelia S. Koch, Trustee of Salt Creek Farm Realty Trust, 211 Sargent Road, Brookline, MA 02445 who requested to amend a Special Permit dated July 14, 2009, granted by the Planning Board under the Dartmouth Zoning By-Laws, Section 6 - Open Space Residential Design (OSRD) for a plan entitled “Pelegs Island Farm” (Assessor’s Map 9, Lots 17 & 18; Map 13, Lot 31; Map 14, Lot 1) located off Barney’s Joy Road. The amendment requests to modify the requirements of Conditions #6 and #10 of the Special Permit dated July 14, 2009.

Complete copies of the minutes of the public hearing and discussion of the Planning Board decision are available in the Town Clerk and Planning Board offices.

DECISION

At its regular meeting of October 5, 2009 and after the close of the above described public hearing, the Planning Board voted – Arthur Larrivee – no, Lorri-Ann Miller - yes, John Haran – yes, Joseph Toomey, Jr. - yes, John Sousa - yes, to modify the Special Permit dated July 14, 2009 for the Pelegs Island Farm Definitive OSRD Subdivision Plan (Assessor’s Map 9, Lots 17 & 18; Map 13, Lot 31; Map 14, Lot 1).

The Planning Board modified the Special Permit by deleting conditions #6 and #10. The Planning Board found that the Conservation Restriction held by the Dartmouth Natural Resources Trust had conditions A(4), B(3), B(14) which has a similar intent and provided for better management of the property.

Appeals of this amendment, if any, shall be made pursuant to M.G.L., Section 17, Chapter 40A, and shall be filed within twenty (20) days after date of filing of such notice in the Office of the Town Clerk.

The amendment does not become effective until the Town Clerk certifies that no appeal of the decision has been filed in Superior Court within the 20-day statutory appeal period; or that if an appeal has been filed, it has been dismissed or denied and a certified copy of the decision is recorded in the Bristol County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner’s certificate of title.

The applicant or petitioner is responsible for filing the certified decision in the Registry of Deeds and for paying the recording fees.

Approval of this Special Permit does not imply compliance with other Town ordinances, standards, and/or requirements administered by other Town agencies.

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(13) Endorsement of Definitive OSRD Subdivision Plan entitled “Pelegs Island Farm”

The Planning Director reported that the plans have been properly revised and supporting documents provided except for an executed covenant.

After brief discussion, a motion was made by Mrs. Miller, duly seconded by Mr. Haran for discussion and unanimously voted (5-0) to conditionally endorse the Definitive OSRD Subdivision Plan entitled “Pelegs Island Farm”. This endorsement is conditional upon receipt of a covenant that would guarantee the plan and all required legal documents are recorded at the Registry of Deeds.

Appointments and Public Hearings

(7) 8:00 P.M. – APPOINTMENT – Peter Bullard re: Informal discussion of proposed 4 lot OSRD subdivision off Little River Road

present Attorney Peter Bullard, representing Elizabeth Atkins
Allen Quintin, engineer

At the onset of this discussion, Mr. Toomey secluded himself from participating as a Planning Board member. Mr. Toomey stated he is the owner of lot 9 as shown on the plan presented and will be sitting in the audience to ask questions as an abutter.

The Planning Director stated this proposal is for a 4-lot subdivision on the north side of Little River Road. He said the plan is very beneficial to the Town since it creates only 2 new buildable lots and preserves 50 acres of open space with a large area of preserved frontage on the Little River. The OSRD plan shows a common driveway which will link to an existing common driveway serving the existing two houses. The new common driveway will provide access to the two new lots and an existing cemetery. The new common driveway will use an existing opening on Little River Road and for the most part the changes would not be visible from Little River Road. He pointed out the applicant would like the Planning Board’s opinion on the design of the subdivision, layout/size of lots, access, and open space designation.

Discussion ensued. A Board member asked if there was any plan to link trails with abutting DNRT land, noting that there should be a public benefit in granting an OSRD.

The Planning Board was generally pleased with the plan design. However, the Planning Board did state that the representatives need to get input from the Fire Chief before drafting the plan for formal submittal.

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Administrative Items

(14) Planner's Report

- At the start of this agenda item, the Chairman recognized David Cressman, the new Executive Administrator, who was sitting in the audience this evening. Board members indicated they have an open door policy and expressed to Mr. Cressman that communication is a good attribute and he should feel free to work with the Planning Director on Town matters, and Mr. Perry will in turn report back to the Planning Board.
- Kerri Murphy, Coalition for Buzzards Bay, is working on a more realistic buildout for the Little River watershed which will have important consequences in controlling nitrogen loading for that estuary.
- Walgreen's has come to an out of court settlement with an abutter. They will be submitting an off-street parking plan that shows future connections to the abutting property but that connection will not be made now.

(15) For Your Information/New Business*

- Board of Appeals decisions
- Public Hearing notice for Definitive (OSRD) Subdivision Plan entitled "OSRD Subdivision Plan prepared for Ronald T. Bogusky and Barbara Purdy"
- Planning staff time sheets

Concluding discussion, the Chairman asked if there was any other business this evening. There was none. Mr. Sousa noted that the next Planning Board meeting is scheduled for October 19, 2009, in room #315, Town Office Building, 400 Slocum Road. He then called for a motion to adjourn the meeting.

A motion was made by Mrs. Miller, seconded by Mr. Haran, and unanimously voted (5-0), to adjourn this evening's meeting at 8:49 p.m.

Respectfully submitted,
Mrs. Joyce J. Couture
Planning Aide