

MINUTES OF REGULAR PLANNING BOARD MEETING OF APRIL 26, 2010
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 7:02 p.m. with four Planning Board members and Planning staff present. Mr. Larrivee was unable to attend.

Administrative Items

(1) Approval of Minutes

Regular Meeting of April 12, 2010

A motion was made by Mr. Toomey, duly seconded by Mr. Haran for discussion, and unanimously voted (4-0) to approve the minutes of the regular Planning Board meeting of April 12, 2010 as written.

Public Hearing of April 12, 2010 “Proposed Zoning Amendments”

A motion was made by Mr. Toomey, duly seconded by Mr. Haran for discussion, and unanimously voted (4-0) to approve the public hearing minutes of April 12, 2010 “Proposed Zoning Amendments” as written.

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

John Reed No. Hixville Road February 22, 2010

The Planning Director stated this ANR plan is for property located on No. Hixville Road and it is a conveyance plan. The parcel to be conveyed is labeled “non buildable” and will be added to the “resolve” superfund lot. No new buildable lots are being created. He recommended the plan be endorsed.

Brief discussion ensued.

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A motion was made by Mrs. Miller, duly seconded by Mr. Toomey, and unanimously voted (4-0) to endorse the ANR plan prepared for John Reed dated February 22, 2010 for property located on No. Hixville Road.

(3) Correspondence

Legal Notices from Board of Appeals
Legal Notices from Conservation Commission

A motion was made by Mrs. Miller, duly seconded by Mr. Toomey for discussion, and unanimously voted (4-0), to acknowledge and file the above referenced legal notices.

(5) Update on Planning Board's F/Y'10 budget through March

A motion was made by Mrs. Miller, duly seconded by Mr. Toomey, and unanimously voted (4-0) to acknowledge and file the update on the Planning Board's F/Y'10 budget through March.

(6) Update on Project Timeline Chart

The Planning Director mentioned that he spoke with Town Counsel about Section 16 and his legal review will be complete in a couple of weeks.

The Board asked Mr. Perry to include response information on his updates.

(7) Chapter 91 Waterways License Application for Saladar Nominee Trust for property located at 840 Smith Neck Road

A motion was made by Mrs. Miller, duly seconded by Mr. Toomey, and unanimously voted (4-0) to acknowledge and file the Chapter 91 Waterways License Application for Saladar Nominee Trust for property located at 840 Smith Neck Road.

(8) Chapter 91 Waterways License Application for Mary Huidekoper for property located at 21 Old Jetty Road

A motion was made by Mr. Toomey, duly seconded by Mr. Haran, and unanimously voted (4-0) to acknowledge and file the Chapter 91 Waterways License Application for Mary Huidekoper for property located at 21 Old Jetty Road.

(9) SRPEDD 20 hours of assistance

The Planning Director noted that he discussed with Dave Cressman the possibility of using the annual allotment of staff hours at SRPEDD to coordinate a FEMA application for the Community Rating System. He mentioned the FEMA Community Rating System allows flood insurance discounts to property owners, if the Town takes certain actions. Mr. Perry stated that he also spoke with Sandy Conaty at SRPEDD who agreed SRPEDD could do this as a project.

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Discussion ensued.

A motion was made by Mrs. Miller, duly seconded by Mr. Toomey, and unanimously voted to approve use of this year's Planning Board allotment of SRPEDD hours for the FEMA Community Rating System application on condition the Select Board also vote to use their 20 hour allotment for this project as well. Otherwise, the Planning Board will use their time for a smaller project.

At this time Mrs. Miller made mention she heard the funding to improve Faunce Corner Road is in jeopardy. She will be getting more information soon.

(11) Planner's Report

- The Planning Director spoke of a request from Jim Hughes, the applicant of the recently approved OSRD development for 840 Smith Neck Road, to substitute iron pipe rather than concrete bounds to mark the corners of lots in the above referenced OSRD subdivision.

Discussion ensued.

A motion was made by Mrs. Miller, duly seconded by Mr. Haran, and so voted (3-1) with Mr. Toomey opposed to allow the use of iron pipe instead of concrete bounds to mark the corners of lots in the Definitive OSRD Subdivision entitled "840 Smith Neck Road" and so notify the Department of Public Works.

At this time, the Chairman conveyed to those present that this agenda item will be continued after tonight's scheduled public hearing.

Public Hearing

(4) 7:15 P.M. – PUBLIC HEARING - Definitive (OSRD) Subdivision Plan entitled "Bethany Estates" which proposes to create a 3-lot subdivision from a 6.36-acre tract of land off Old Westport Road

In a roll call vote, a motion was made by Mrs. Miller, seconded by Mr. Haran, and unanimously voted (4-0), to recess the Planning Board's regular meeting at 7:21 p.m. in order to go into a public hearing concerning a Definitive OSRD Subdivision Plan¹ entitled "Bethany Estates".

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

The regular meeting resumed at 8:21 p.m.

¹ For more information, see minutes of Planning Board Public Hearing of April 26, 2010 "Bethany Estates"

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Administrative Items

(10) Initial review of Definitive (OSRD) Subdivision Plan entitled “Bethany Estates”

Following the close of this evening’s public hearing, the Planning Director commented this plan has been laid out in accordance with the requirements of the OSRD By-Law and the Subdivision Regulations. Mr. Perry stated approval will require two votes. First, the Special Permit by roll call vote which requires a 4/5th vote. Since one Board member is not present this evening, the vote must be unanimous. Second, a vote on the Definitive Subdivision Plan under the Subdivision Control Law. He proceeded to identify all the specific conditions and modifications to the draft certificates he had prepared for the Board’s consideration.

In a roll call vote, a motion was made by Mrs. Miller, duly seconded by Mr. Toomey, and unanimously voted (4-0), to approve the Special Permit for a Definitive OSRD Subdivision Plan entitled “Bethany Estates” in accordance with the following:

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

Certificate of Action for a Special Permit Definitive OSRD Subdivision Plan entitled “Bethany Estates”

There was a Planning Board public hearing which was opened on Monday, April 26, 2010 and closed on Monday, April 26, 2010 regarding the application of Bethany Larson, 397 Old Westport Road, Dartmouth, MA 02747 who requested a Special Permit under the Dartmouth Zoning By-Laws, Section 6 - Open Space Residential Design (OSRD) to allow a reduction in lot frontage, lot area, lot shape, lot coverage, building setbacks, and driveway and parking requirements for house lots shown on a plan entitled “Bethany Estates” dated March 1, 2010 for property owned by Bethany Larson. The plan submitted to the Planning Board and Town Clerk on March 4, 2010 proposes to create 3 buildable lots with 1 open space parcel from land (Assessor’s Map 49, Lot 25) located south of Old Westport Road.

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 April 26, 2010 and after the close of the above described public hearing, the Planning Board voted – Lorri-Ann Miller - yes, John Haran – yes, Joseph Toomey, Jr. – yes, John Sousa – yes, to grant a Special Permit to the petitioner, Bethany Larson, 397 Old Westport Road, Dartmouth, MA 02747 for property owned by same (Assessor’s Map 49, Lot 25) for an OSRD development to allow a reduction in lot frontage, lot area, lot shape, lot coverage, building setbacks, and driveway and parking requirements for house lots in accordance with Section 6 of the Zoning By-Laws.

The Planning Board granted the Special Permit for an OSRD development because it found that the plan met the following purposes of Section 6.100:

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- The plan conforms to existing topography and natural features better than a conventional development since the use of a common driveway minimizes grade and drainage changes to the land, as well as, consuming less land for development.
- The plan allows for greater flexibility and creativity in the design of this residential development by choosing the most appropriate house sites based on existing site features to preserve.
- The plan preserves a field which can be used for agriculture.
- The plan eliminates the construction cost and maintenance of a new street, utilities and public services, and develops the site in a more economical and efficient manner in harmony with the site and neighborhood.
- The plan preserves and enhances Dartmouth's traditional New England landscape by preserving a field and the setting of an existing historic house.
- The plan minimizes the total amount of disturbance on the site.
- The plan preserves open space for passive recreational use.
- The plan does not create more buildable lots than could be allowed by a conventional subdivision plan.

In accordance with Section 6.500, the Planning Board modified the following requirements of the Dartmouth Zoning By-Laws for the lots shown on the plan:

Section 4B.401, Lot Area - to allow 20,000 square feet as the minimum required lot area and the minimum required upland area.

Section 4B.402, Lot Shape - to allow the lot shapes as shown on the plan for the lots.

Section 4B.403, Lot Frontage - to allow 0 feet, minimum frontage.

Section 4B.404, Setbacks - to allow a 10-foot minimum setback from all lot lines or right-of-way lines except that the setback from Old Westport Road shall be at least 30 feet.

Section 4B.406, Percentage of Lot Coverage - to allow 65% maximum lot coverage for lots 1, 2 and 3 only.

Section 4B.407, Driveway and Parking Setbacks - to allow a 5-foot minimum setback from property lines for parking and driveways (also without the requirement for an evergreen screen) on the property.

The Planning Board grants the Special Permit for "Bethany Estates" with the following conditions and restrictions:

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1. The Planning Board grants the Special Permit for an Open Space Residential Development in substantial conformance with the following plans:

<u>Title</u>	<u>Sheet</u>	<u>Date</u>
Bethany Estates OSRD, Cover Sheet	--	March 1, 2010
Subdivision Plan of Bethany Estates	--	March 1, 2010
Bethany Estates, Existing Conditions	2	March 1, 2010
Bethany Estates, Site Context Plan	3	March 1, 2010
Bethany Estates, Overall Development Plan	4	March 1, 2010
Bethany Estates, Detail Sheet	5	March 1, 2010

2. The Planning Board grants the Special Permit in conformance with the Certificate of Action for a Subdivision Plan dated April 27, 2010 for a plan entitled "Bethany Estates".
3. The Special Permit is only approved for three buildable lots.
4. A Trust Document satisfying the requirements of Section 6.801 and 6.802 of the Dartmouth Zoning By-Laws shall be approved by the Planning Board prior to endorsement of the subdivision plan.
5. In accordance with Section 6.802, a conservation restriction, meeting the requirements of Section 6.802, shall be provided prior to release of lots in the subdivision plan. The Planning Board may allow release of some lots at its discretion as long as sufficient lots are held to ensure compliance with this condition.
6. The fiberglass boundary posts defining the boundary between the buildable lots and the open space parcels shall not be removed and must be maintained as boundary delineation markers. The markers shall be maintained in good condition, and noted in the Trust Document. At least two fiberglass boundary posts shall be provided on each lot side that abuts open space.
7. The OSRD Trust document shall include provisions for:
 - a. Maintenance of common driveways with respect to road surface and vegetation clearance of driveway shoulders.
 - b. The field/agricultural land areas identified on the plan shall be maintained as a field or for agricultural use. In order to keep the land a field for agricultural use, the designated field/agricultural areas shall be mowed at least twice a year, tilled once a year, or kept in agricultural production each year.
 - c. The wooded areas identified on the plan shall remain in a predominantly natural condition. Clearing for trails (no wider than 5 feet), removal of diseased or dead trees, invasive plant management, and forestry management are allowed. If forestry is undertaken, a forestry plan prepared by a forester shall be approved by the Planning Board.

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8. The note on the plan on Section 4B.404 regarding reductions in zoning requirements for setbacks must be changed to reflect the actual requirements voted by the Planning Board (lot coverage).
9. The Open Space Trust document, as well as the Subdivision Plan, and any covenants and restrictions associated with the Subdivision Plan, shall be duly executed and recorded at the Bristol County (S.D.) Registry of Deeds.
10. A bond shall be posted by the developer in an amount determined by the Dartmouth Department of Public Works to mow the field/agricultural land areas twice a year for a 5-year period. This bond shall be securable by the Dartmouth Planning Board and approved by the Planning Board and Town Counsel as to form. This bond shall be posted prior to release of lots for building or sale. The bond will be used only if the Planning Board determines the field is not maintained by the association of lot owners.

All conditions of approval shall be met within one (1) year from the date of filing of the Planning Board decision in the Office of the Town Clerk. A reasonable extension of said time shall be granted by the Planning Board in the case of an appeal to the Superior Court under Massachusetts General Laws (M.G.L.), Chapter 40A, Section 17 or if good cause is shown to the Planning Board for an extension.

Appeals, 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 Special Permit 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.

A copy of the recorded decision certified by the Registry of Deeds is necessary before a Building Permit, dependent on the Planning Board's decision, can be issued by the Director of Inspectional Services. Copies of the approved plans and this decision are on file in the Town Clerk and Planning Board offices. Copies of the complete minutes of the public hearing are available upon request at the office of the Planning Board.

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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Next, the vote under Subdivision Control Law, a motion was made by Mrs. Miller, duly seconded by Mr. Toomey, and unanimously voted (4-0), to approve the Definitive OSRD Subdivision Plan entitled "Bethany Estates" in accordance with the following certificate of action:

Certificate of Action for a Definitive (OSRD) Subdivision Plan
entitled "Bethany Estates"

Pursuant to M.G.L., Chapter 41, Section 81U, (The Subdivision Control Law), you are being notified that the Planning Board, at its regular meeting of April 26, 2010, approved with conditions the Definitive OSRD Subdivision Plan entitled "Bethany Estates" for a 3 lot subdivision at 397 Old Westport Road.

The plan was prepared by Prime Engineering, Inc. for Bethany Larson, 397 Old Westport Road, Dartmouth, MA 02747 for land owned by same. The plan was submitted to the Planning Board office on March 4, 2010. The applicant is also requesting a Special Permit for Open Space Residential Design, as provided for in Section 6 of the Zoning By-Laws, to allow a reduction in frontage, area, lot coverage, lot shape, driveway setback, and setback requirements for buildings.

The approved Definitive Subdivision Plan consists of the following:

<u>Title</u>	<u>Sheet</u>	<u>Date</u>
Bethany Estates OSRD, Cover Sheet	--	March 1, 2010
Subdivision Plan of Bethany Estates	--	March 1, 2010
Bethany Estates, Existing Conditions	2	March 1, 2010
Bethany Estates, Site Context Plan	3	March 1, 2010
Bethany Estates, Overall Development Plan	4	March 1, 2010
Bethany Estates, Detail Sheet	5	March 1, 2010

The conditions of approval are listed below:

1. This Definitive Plan is subject to an Open Space Residential Design Special Permit dated April 27, 2010.
2. The zoning requirement table needs to reflect the zoning requirements that have been modified by the Special Permit regarding: lot coverage.
3. The common driveway over Parcel A shall be shown on the plan within an easement. Concrete bounds to define the edge of the easement on the west side of the easement from Old Westport Road to the rear of lot 1 shall be shown on the plans.
4. The building envelopes need to be defined at the corners by permanent concrete markers or drill holes in stonewalls to identify in the field the corners of the buildable lots. At least two fiberglass posts shall be provided on each side of lots which abut open space. The above markers shall be shown on the plan.

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5. The following notes must be added to the plan:
 - A. "Approval is conditional upon the requirements of M.G.L., Chapter 41, Section 81U, that no building shall be constructed on the proposed house lots 2 or 3 without the prior written consent of the Board of Health."
 - B. "Owners of lots 2 and 3 are responsible for their own trash disposal."
 - C. "The developer will be responsible for filing an "Application for Inspectional Services" with the Department of Public Works and pay the required fees for the Department of Public Works to inspect the development."
6. A water main at least 2" in diameter must be installed to service lots 2 and 3 with individual 1" water services off this main. The Fire Chief should determine if sufficient protection exists or whether a hydrant is necessary for these lots, which would require at least a 6" water main. The 2" line should extend to a point where the 1" service to lot 3 can be installed perpendicular to the main. Approximately 10 feet beyond this service the 2" main can be reduced to a 1" water service to lot 2. A gate valve shall be installed at the Old Westport Road layout line and water curb stops shall be installed for each 1" water service. A separate 1" water service to the existing house may be installed along the frontage of lot 1 with a curb stop at the front property line.
7. A utility easement of sufficient width should be shown on Parcel A for the water main and services to the proposed lots. Other utilities may be placed within this easement with the appropriate separation between them.
8. All of the existing utilities, (water, sewer, drainage, gas, etc.) within the layout of Old Westport Road should be shown accurately on the plans. With the proposed water main crossing some of these utilities, the locations of these utilities may conflict with the water main installation.
9. Old Westport Road is edged with granite curbing and a paved sidewalk behind this curbing. The new roadway must be designed with handicap accessibility for the sidewalk along Old Westport Road. Any granite curbing that will be removed must be returned to the Department of Public Works.
10. An as-built set of plans will be required at the completion of the subdivision.
11. A properly executed covenant shall be prepared by the applicant and noted on the plan and recorded at the Registry of Deeds that lots 1, 2, and 3 cannot be separated in ownership until the following occurs:
 - A. The plan is revised in accordance with the conditions above, as well as, any revisions listed in the Special Permit OSRD Certificate.
 - B. Seven copies of the revised plan are delivered to the Planning Office.

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- C. The revised subdivision plan is recorded at the Registry of Deeds and a copy of the recorded plan is delivered to the Planning Office including a copy of the recorded covenants and conservation restrictions.
 - D. The Planning Board approves the deed restriction on the open space parcel for conservation purposes. The Planning Board may allow release of some lots at its discretion as long as sufficient lots are held to ensure compliance with this condition.
12. The Director of Inspectional Services shall not issue a building permit for lot 2 and 3 until a lot release signed by the Planning Board is delivered to the Building Department for the lot requested to be built upon.
13. The field/agricultural areas shall be outlined on the plans. The woodlands to be protected shall be outlined on the plans.

In accordance with M.G.L., Chapter 41, Section 81-R, and as part of the Board's approval of said plan, the following waivers from its Subdivision Regulations were granted:

- 3.303 Streets
- 3.304 Curbing
- 3.305 Shoulders
- 3.306 Pedestrian Circulation
- 3.307 Street Trees
- 3.308 Street Signs
- 3.309 Street Monuments, except monuments shown on the plan shall be installed.
- 3.310 Drainage
- 3.311 Water Service, except as provided on the plan
- 3.312 Sewer Service, except as provided on the plan

The above waivers are needed because the applicant is submitting a "subdivision plan" that creates no new roads and has chose to voluntarily submit to the subdivision process. This has been done in order to apply for the OSRD Special Permit for a subdivision plan. The above waivers are in the public interest in order to develop an OSRD subdivision that provides open space that protects agricultural land and the existing rural character of the neighborhood.

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

(11) Planner's Report (cont.)

- The Planning Director attended a Finance Committee meeting to explain the intent of the three zoning articles going to Town Meeting. He also mentioned there are two more zoning articles being proposed for Town Meeting both from the Select Board. One is the Municipal Wind Turbine and the other is a recycling overlay district in the north end of Town.

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Discussion ensued. Concerns were raised as to whether legal deadlines would be met. Board members also inquired as to whether the overlay district bylaw would conflict with existing Town bylaws. The Planning Director was asked to follow-up with Town Counsel.

- Mr. Perry said the Department of Public Works will be submitting a Scenic Road request to cut trees on Reed Road north of Blueberry Acres.

(12) For Your Information/New Business

- Public Hearing Notice for proposed Section 35, Land Based Municipal Wind Turbine
- Board of Appeals decisions
- Planning Staff timesheets

Board members discussed the newly created position of Director of Development and what other strategic moves and repositioning is being considered by the Select Board.

Long-Range Planning

(13) Discussion of proposed areas for Office Industrial District

The Planning Director noted that since only three Board members were present at the last meeting, the Board deferred sending the draft bylaw to the reviewers. Mr. Perry explained the maps prepared for this evening's discussion reflect the general consensus from that meeting.

The map shows the creation of a possible Office Industrial District in the area along Faunce Corner Road between the railroad and the APR land.

Discussion ensued with a slight revision to the map.

Planning staff was instructed to send the draft bylaw to the zoning reviewers and Town Counsel for input.

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 May 10, 2010, in room #315, Town Office Building, 400 Slocum Road. He then called for a motion to adjourn the meeting.

A motion was made by Mr. Haran, seconded by Mr. Toomey, and unanimously voted (4-0), to adjourn this evening's meeting at 9:22 p.m.

Respectfully submitted,
Mrs. Joyce J. Couture
Planning Aide