



Town of Duxbury Massachusetts Planning Board

Minutes 01/12/09

The Planning Board met in the Duxbury Senior Center, 10 Mayflower Street, Ellison Room on Monday, January 12, 2009 at 7:00 PM.

Present: Amy MacNab, Chairman; Brendan Halligan, Clerk; George Wadsworth, Vice-Chair; John Bear, Cynthia Ladd Fiorini, and Harold Moody.

Absent: James Kimball.

Staff: Diane Grant, Administrative Assistant.

Ms. MacNab called the meeting to order at 7:01 PM.

OPEN FORUM

Planning Board Elections: Mr. Wadsworth reported that he has decided not to run for Board of Selectmen, and that he will be running for another term on the Planning Board.

OTHER BUSINESS

Millbrook Crossing Project Eligibility Letter: Board members reviewed a draft letter to the Board of Selectmen regarding project eligibility for a proposed 40B development at this site and made minor amendments. The letter reaffirmed the decision of the Board of Health to deny a mounded septic system on the site for an earlier special permit.

MOTION: Mr. Wadsworth made a motion, and Mr. Halligan provided a second, to approve a letter to be sent from the Planning Board to the Board of Selectmen regarding Millbrook Crossing 40B Project Eligibility.

VOTE: The motion carried unanimously, 6-0.

PUBLIC HEARING ON ANNUAL TOWN MEETING WARRANT ARTICLES

The public hearings commenced at 7:15 PM. Mr. Halligan read the public hearing notice into the record for tonight's public hearings. Ms. MacNab explained to the public that three zoning articles would be addressed tonight, and although the Board is responsible for the public hearings, it is not necessarily a proponent of all of the articles. After the public hearing closes for each article, the Board can vote to recommend, to not recommend or not to make a recommendation for Annual Town Meeting.

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The mission of the Town of Duxbury is to deliver excellent services to the community in the most fiscally responsible and innovative manner while endeavoring to broaden our sense of community and preserve the unique character of our town.

**PUBLIC HEARING ON A PROPOSED AMENDMENT TO REZONE PARCELS
LOCATED AT 20 AND 30 TREMONT STREET (ISLAND CREEK) FROM
RESIDENTIAL COMPATIBILITY TO NEIGHBORHOOD BUSINESS 1**

Ms. MacNab opened the public hearing at 7:15 PM. Mr. Halligan read the public hearing notice and the correspondence list into the record:

- Article and materials submitted by applicant to Board of Selectmen on 12/08/08
- Abutters' list for public hearing notification (notices mailed on 12/18/08 and 12/19/08)
- Public hearing notice published in *Duxbury Clipper* on December 24 and December 31, 2008 and January 7, 2009.

Present for the discussion to represent the property owners, Island Creek Village North LLC, were Mr. Ed Marchant, Mr. Tom Duggan, and Mr. Andy Koines of Keith Properties, along with their engineer, Mr. Paul Brogna of Seacoast Engineering. Ms. MacNab informed the public that although the Planning Board holds the public hearing, they are not necessarily proponents of the article which was submitted by the property owners.

Mr. Marchant presented the article, noting that two sites on the property are part of a 40B proposal currently under comprehensive permit review by the Zoning Board of Appeals (ZBA). The new project proposes 238 residential units and 28,000 SF of commercial structures. The Board of Selectmen had recommended that the developers rezone two parcels as commercial, which is currently allowed under 40B regulations. The developers wish to work with the Town.

Mr. Marchant noted that one member of the ZBA expressed a concern that rezoning prior to approval would set a precedent. He distributed a section of the comprehensive permit entitled, "Regulatory, Historic Zoning, Historic Permitting, Planning, and Economic Reasons Supporting Inclusion of a Limited Amount of Commercial Space at Island Creek Village North," which supports the applicants' proposal for commercial space.

Mr. Brogna of Seacoast Engineering described the site proposed for rezoning, showing the Board a large-scale set of plans. The area proposed for rezoning is 2.5 acres, just over ten percent of the entire site under comprehensive permit review. The Board confirmed zoning history with the applicants and also with input from Ms. Sally Wilson, resident of 120 Bay Road and former ZBA member and former member of the Comprehensive Plan/Zoning Bylaw Implementation Committee (CPZBIC). Mr. Brogna noted that 95 and 104 Tremont Street had been rezoned from RC to NB in prior years, and most commercial properties in that area are zoned NB1 or NB2. He stated that current residents of Island Creek would like to have a convenience store and it would reduce traffic and increase tax revenues. Ms. MacNab noted that residential and commercial tax revenues are the same, and in recent years two other proposed rezones within the area were defeated at Town Meeting.

Mr. Bear clarified with the applicant that the rezoning would affect portions of two parcels, 110-452-004 and 110-452-003, not the entire parcels. Ms. MacNab confirmed the owner's name on the parcels, and Mr. Marchant responded that although the name differs, both are controlled by Keith Properties.

Mr. Dennis Murphy, Chairman of the Zoning Board of Appeals, spoke to the article, objecting that the applicants appear to be requesting this rezoning during the comprehensive permit application process when the applicants have known of their intention to rezone the property well before the

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application was filed. Mr. Murphy contended that the purpose of the zoning change is to make the commercial component of the comprehensive permit appealable to the Housing Appeals Committee (HAC). He noted that the ZBA has not made a formal recommendation regarding the proposed warrant article.

Mr. Marchant responded that the applicants believe it makes sense to include a commercial component to the project, and the applicants are not trying to circumvent the ZBA approval process. He did acknowledge that if the property is rezoned, the applicants would have a right to appeal a denial or conditions on the commercial component. If the property is not rezoned, the applicants would lose that right.

Ms. Susan Mangione of 19 Sampson Street stated that she is concerned with access to the development, noting that there is a significant amount of traffic already. Mr. Brogna noted that two traffic study reports have been performed that confirm current traffic issues and recommending traffic lights at the Route 3 interchange adjacent to the site. A second existing egress would be improved and widened if the application moves forward.

Mr. Jamie MacNab of 269 Old Tobey Garden Street noted that the original Island Creek development approval stipulated no further development. He objected to the size and scope of the current proposal. He suggested that the density should be decreased.

MOTION: Mr. Bear made a motion, and Mr. Moody provided a second, to continue the public hearing regarding an owner's petition to rezone portions of Assessor's parcels 110-452-004 and 110-452-003 from Residential Compatibility to Neighborhood Business 1 to January 26, 2009 at 7:45 PM.

VOTE: The motion carried unanimously, 6-0.

PUBLIC HEARING ON A PROPOSED AMENDMENT TO REZONE A PARCEL LOCATED ADJACENT TO 2 TREMONT STREET (FIRST BAPTIST CHURCH) FROM RESIDENTIAL COMPATIBILITY TO NEIGHBORHOOD BUSINESS 1

Ms. MacNab opened the public hearing at 7:55 PM. Mr. Halligan read the public hearing notice and the correspondence list into the record:

- Article and materials submitted by applicant to Board of Selectmen on 12/08/08
- Abutters' list for public hearing notification (notices mailed on 12/19/08)
- Public hearing notice published in *Duxbury Clipper* on December 24 and December 31, 2008 and January 7, 2009.

Mr. James Dowd was present as a member of the First Baptist Church representing the pastor. He stated that the church decided that the timing was good to request a rezone of the parcel. Mr. Wadsworth asked why the church is requesting a rezone when they are exempt from zoning. Mr. Dowd responded that of the three parcels owned by the church, they are requesting to rezone only one. Ms. Ladd-Fiorini asked if the church had considered a land swap with the Island Creek development adjacent to their property, and Mr. Dowd stated that he is unaware of any land swap discussion.

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Mr. Halligan noted that he would be reluctant to support the article because it takes control away from the larger adjacent site. He has concerns with the applicants' plan to rezone. Ms. MacNab also expressed concern with the proposal considering the size of the parcel at 3.7 acres. She asked for public comment.

Ms. Lorrie Hall of 175 Abrams Hill stated that with the amount of land in the parcel, a large box store such as Home Depot could be built.

Mr. Jamie MacNab of 269 Old Tobey Garden Street noted that the site is located at the gateway to Duxbury and could add a significant commercial component.

MOTION: Mr. Bear made a motion, and Mr. Moody provided a second, to continue the public hearing regarding a proposed warrant article to rezone parcel 110-452-001 from Residential Compatibility to Neighborhood Business 1 to January 26, 2009 at 8:00 PM.

VOTE: The motion carried unanimously, 6-0.

PUBLIC HEARING ON A PROPOSED REVISION TO ZONING BYLAWS ARTICLES 300 AND 400 RELATIVE TO CHANGES WITH THE DENSITY AND DIMENSIONAL REQUIREMENTS WITHIN A NEIGHBORHOOD BUSINESS ZONE

Ms. MacNab opened the public hearing at 8:47 PM. Mr. Halligan read the public hearing notice and the correspondence list into the record:

- Planning Board minutes of 05/19/08, 6/16/08, 08/11/08, 10/06/08, and 11/03/08
- Email from D. Murphy to A. MacNab dated 12/08/08 re: ZBA request for more information on draft article
- Warrant article submitted to Board of Selectmen on 12/09/08
- Letter from T. Tucker dated 12/10/08 re: Economic Advisory Committee's support for proposed article
- Public hearing notice published in *Duxbury Clipper* on December 24 and December 31, 2008 and January 7, 2009
- Emails from the following residents against the proposed article:
 - L. Hall to "Environmentalists of Duxbury" (forwarded by C. Ladd-Fiorini to Planning office 01/08/09)
 - L. Hall (dated 01/08/09)
 - N. & B. Riegel (dated 01/08/09)
 - C. Langford (dated 01/09/09)
 - S. Sovick (dated 01/12/09)
 - G. Orosz (dated 01/12/09)
 - J. & D. Arkema (dated 01/12/09)
 - A. Maxemchuk (dated 01/12/09).

Mr. Jackson S. Kent of 1351 Tremont Street, owner of Bayside Marine at 441 Washington Street, presented the article on behalf of a working group that proposed the revisions to the Zoning Bylaws. He stated that the intent of the proposed article is to improve parking, minimize parking lot damage, and keep treatment of drainage.

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Mr. Kent stated that during his applications before the Planning Board and Zoning Board of Appeals (ZBA), there was a significant amount of discussion regarding alleviating off-street parking. Under current Zoning Bylaws fifty percent coverage is allowed, including buildings and walkways. Applicants often negotiate with Boards to allow materials such as crushed stone that eventually becomes compacted and does not drain. Both the Planning Board and Conservation Administrator,, Mr. Joseph Grady, prefer water to be treated before it drains. In 2008 Mr. Kent put forward an article at Annual Town Meeting that was eventually withdrawn because it was determined that more study was required.

Mr. Bear reported that a working group was formed approximately six months ago, including Mr. Kent and Dr. Scott Oliver as local business owners; Mr. Bear and Ms. Ladd-Fiorini as Planning Board representatives; and Town department heads Mr. Grady, Building Inspector Mr. Scott Lambiase, and Planning Director Ms. Christine Stickney. One objective of the working group was to help improve off-street parking. Mr. Kent and Ms. Stickney did extensive research. Mr. Bear noted that the Neighborhood Business Districts represent only a small portion of land in the Town of Duxbury. Mr. Kent noted that the shape of the lot controls the amount of open space on the lot.

Dr. Scott Oliver of 20 Bradford Road, local business owner who served on the working group, made a brief presentation. He noted that the commercial property encompasses only three percent of Town land. The article affects only one percent of Town land. He stated that the Town needs some commercial properties and the Town residents benefit from having them. The question is, how much of the commercial property in the Town should be asphalt. Controversies have arisen in the past regarding the definition of pervious versus impervious surfaces, and the proposed bylaw is designed to eliminate that question. The proposed bylaw makes sense based on research on other surrounding communities. The current lot coverage bylaw is outdated. Dr. Oliver submitted 75 signed petitions in support of the proposed bylaw.

Ms. Ladd-Fiorini noted that the bylaw study group was working in conjunction with a Parking bylaw study group which separated out parking requirements based on use. Discussion ensued regarding treatment of groundwater runoff.

Ms. Lorrie Hall of 175 Abrams Hill Road noted that plant material in open space on the lot would take care of soluble pollutants, and that is why it is important to maintain an adequate percentage of open space.

Mr. Moody noted that he has considered the proposed 80 percent lot coverage versus the current 50 percent maximum. He researched neighboring Towns, including Cohasset and Norwell. Those Towns appear to have more lenient lot coverage allowances than the Town of Duxbury.

Ms. Patricia Loring of 245 Washington Street asked if wetlands are included in open space calculations under the proposed bylaw. Ms. MacNab and Mr. Wadsworth concurred that wetlands should not be included in open space calculations. Mr. Bear noted that only one or two properties in Town have a pond, and there is only one lot in the Neighborhood Business District with wetlands but that lot most likely does not have sufficient upland to develop.

Ms. Loring noted that Mr. Kent had asked her to look at existing commercial properties in Town, and she looked at several newer developments. Her conclusion is that the current zoning is not working. Although she did not have site plans to review or lot line markers, it appeared that some properties have ninety percent lot coverage or higher.

Ms. Sara Wilson of 120 Bay Road noted that a change from fifty percent site coverage maximum to eighty percent is too radical. The proposed coverage strays from the original intents of the Neighborhood Business District, which are 1) environmental – enough undisturbed land to allow for recharge, and 2) aesthetic – compatible with neighborhoods. She stated that most current commercial properties in Town have a residential look. An existing commercial property at 104 Tremont Street shows that the current bylaws work. An increase in lot coverage percentages will produce visual blight and an increase in traffic. She noted that although only one percent of the Town's land may be currently affected, property owners can request rezoning in the future. She stated that the Town has plenty of businesses now to take care of residents' needs.

Mr. Morgan Lamarche of 21 Prior Farm Road and owner of Millbrook Square, a mixed use commercial area on Railroad Avenue, stated that he supports the intent of the proposed bylaw. He noted that his property currently is half-paved and half graveled and it is costly to maintain. Paving graveled areas would not increase traffic.

Ms. Wilson noted that if the proposed parking bylaw passes, there may be room for compromise to allow up to sixty percent lot coverage. The proposed eighty percent does not allow enough space for trees or retention ponds. Mr. Kent agreed that some degree of compromise should be considered.

Mr. Wadsworth asked Mr. Murphy if the Zoning Board of Appeals (ZBA) could work with a sixty percent lot coverage, and Mr. Murphy responded that the ZBA could work with that percentage, noting that the ZBA would follow the Planning Board's lead from Administrative Site Plan Review. Mr. Murphy noted that the Town would benefit from requiring paved surfaces to treat groundwater runoff, and all runoff should be treated.

Mr. Paul Brogna of 21 Village Way noted that he is representing himself as a resident. He stated that stormwater regulations are changing and drainage regulations are becoming more complex and innovative. He urged the Board to consider new technologies that may offer ways to treat runoff.

It was agreed that more time would be necessary for public input and further review.

MOTION: Mr. Bear made a motion, and Ms. Ladd Fiorini provided a second, to continue the public hearing regarding a proposed amendment to the Duxbury Zoning Bylaws regarding Lot Coverage to January 26, 2009 at 8:15 PM.

VOTE: The motion carried unanimously, 6-0.

**PUBLIC HEARING ON A PROPOSED REVISION TO ZONING BYLAWS
ARTICLES 300 AND 400 RELATIVE TO CHANGES WITH THE DENSITY AND
DIMENSIONAL REQUIREMENTS WITHIN A NEIGHBORHOOD BUSINESS
ZONE**

Ms. MacNab opened the public hearing at 9:35 PM. Mr. Halligan read the public hearing notice and the correspondence list into the record:

- Planning Board minutes of 02/04/08, 6/16/08, 08/11/08 and 11/03/08
- Email from C. Stickney to S. Oliver (member of Parking Working Group) dated 12/08/08 re: Chronology of Town Meeting process
- Warrant article submitted to Board of Selectmen on 12/09/08
- Letter from T. Tucker dated 12/10/08 re: Economic Advisory Committee's support for proposed article
- Public hearing notice published in *Duxbury Clipper* on December 24 and December 31, 2008 and January 7, 2009.

Mr. Bear noted that he and Mr. Wadsworth served as Planning Board representatives to the Parking working group. Other members of the working group included Mr. Scott Lambiase, Director of Inspectional Services, and Ms. Christine Stickney, Planning Director. Mr. Bear noted that Ms. Stickney did extensive research and was helped by Mr. Lambiase. He stated that the proposed bylaw better reflects actual usage to determine parking requirements.

Ms. MacNab noted that the proposed bylaw includes some new ideas such as queuing and reserve parking to be set aside to anticipate future needs. Mr. Bear added that the new bylaw requires all parking to be blacktopped.

Ms. MacNab invited public comment. Mr. Dennis Murphy, Chairman of the Zoning Board of Appeals (ZBA), questioned, in response to a point made by Mr. Brogna at the previous hearing on lot coverage, if new technologies were addressed in the proposed Parking Bylaw. Board members reviewed Section 603.4 of the proposed bylaw and agreed that wording should be considered to incorporate future innovations into requirements for parking materials.

Mr. Jamie MacNab of 269 Old Tobey Garden Street asked if reserve parking would be counted toward open space, and Ms. MacNab responded that it would not.

MOTION: Mr. Bear made a motion, and Mr. Moody provided a second, to continue the public hearing regarding a proposal to revise Zoning Bylaws regarding parking to January 26, 2009 at 8:30 PM.

VOTE: The motion carried, 6-0.

ADJOURNMENT

The Planning Board meeting adjourned at 9:50 PM. The next meeting of the Planning Board will take place on Monday, January 26, 2009 at 7:00 PM at the Duxbury Town Offices, Small Conference Room, lower level.