



Town of Duxbury Massachusetts Planning Board

Minutes 03/09/09

The Planning Board met in the Duxbury Town Hall, Lower Level, Small Conference Room on Monday, March 9, 2009 at 7:00 PM.

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

Absent: John Bear and James Kimball.

Staff: Thomas Broadrick, Planning Director; and Diane Grant, Administrative Assistant.

Ms. MacNab called the meeting to order at 7:08 PM.

OPEN FORUM

New Planning Director: Ms. MacNab welcomed Mr. Thomas A. Broadrick, AICP as the new Planning Director, effective March 4, 2009. Mr. Broadrick had previously served as Planning Director for the Town of Duxbury from 1993 to 2002.

OTHER BUSINESS

Since it was not yet time for the scheduled public meeting, the Board addressed other business.

Subsidized Housing Inventory: Ms. MacNab referenced a letter from the Department of Housing and Community Development (DHCD) to Mr. Jonathan Wittten, Chairman of the Board of Selectmen, dated January 27, 2009. Mr. Broadrick noted that the DHCD was not counting certain affordable housing units because building permits had not been issued. Ms. MacNab suggested that Mr. Broadrick confer with Mr. Dennis Murphy, Chairman of the Zoning Board of Appeals, for more background on the permits and the general process.

Engineering Invoices:

MOTION: Mr. Halligan made a motion, and Ms. Ladd-Fiorini provided a second, to pay the following engineering invoices:

- Invoice #26495 dated February 28, 2009 in the amount of \$2,221.25 for services related to Adams Court preliminary subdivision review
- Invoice #12577 dated March 3, 2009 in the amount of \$1,792.50 for services related to 454 Franklin Street Administrative Site Plan Review.

VOTE: The motion carried unanimously, 5-0.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

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.

Date: March 9, 2009

Page 2 of 9

Meeting Minutes:

MOTION: Mr. Wadsworth made a motion, and Mr. Halligan provided a second, to approve meeting minutes of January 12, 2009 as written.

VOTE: The motion carried unanimously, 5-0.

ADMINISTRATIVE SITE PLAN REVIEW: 454 FRANKLIN STREET / INDUSTRIAL TOWER & WIRELESS, LLC

Ms. MacNab opened the public meeting at 7:18 PM. Present for the discussion to represent the applicants were Mr. John Champ and Mr. Rick Vosi of Industrial Tower and Wireless, LLC, and their legal representative, Atty. Jeffrey Angley. Also present was the Town's consulting engineer, Mr. Walter Amory of Amory Engineers. Mr. Halligan read the public meeting notice and correspondence list into the record:

- Application, plans and materials submitted to the Planning Department on 02/06/09
- Mutual Extension form signed by applicant on 02/09/09
- Letter from W. Amory dated 02/12/09 re: peer review
- Public meeting notice published in the Duxbury Clipper on 02/18/09 and 02/25/09
- Notice to Town Department Heads dated 02/19/09 re: 02/24/09 site visit and request for comments
- Memo from T. Mayo dated 02/24/09 re: no Board of Health comments
- Email from W. Carrico dated 02/26/09 re: Fire Department no change from comments dated 04/08/08
- Memo from J. Grady dated 03/04/09 re: Conservation issues
- Letter from J. Bracco dated 03/05/09 re: opposition to application
- Letter from D. Sherman submitted 03/05/09 re: opposition to application.

Atty. Jeffrey Angley noted that he is standing in for his brother, Atty. Edward Angley, who was not available for tonight's public meeting. Atty. Angley introduced the project, an application for a 170-foot monopine with a 3,600 square foot equipment building.

Atty. Angley noted that the project is essentially unchanged from last year's application. Since 2006 Industrial Tower has been looking for a site to address a gap in cell phone coverage, and this site and another on Temple Street were being considered. The Franklin Street site was deemed a better site from a coverage point of view. On March 13, 2008 a variance was granted for the tower height. The applicants filed with the Planning Board and Conservation Commission last year, but due to issues with the site owner performing unrelated work without a special permit, the applicants withdrew their applications.

Atty. Angley stated that the applicants have a new agreement to purchase the site so it will be under the applicants' complete control. The variance is still in place, and the Temple Street site is still on hold until the Franklin Street site has been approved. Ms. MacNab asked if the purchase and sales agreement was available, and Atty. Angley noted that it has been prepared but he is not sure it is relevant. Ms. MacNab requested a copy of the purchase and sales agreement for the record. Atty. Angley stated that he would need to check with the attorney for the owners, the Williams family.

Mr. Moody confirmed with the applicants that the purchase and sales agreement is for the entire site. He asked if they plan to lease the site back to Mr. Williams, and Atty. Angley responded that they are not. Mr. Williams is required to vacate the property before the title is transferred.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

Date: March 9, 2009

Page 3 of 9

Atty. Angley noted that the applicants have revised their original plans to incorporate comments included in Amory Engineers' review letter dated February 12, 2009, including showing all drainage culverts and a notation regarding swale materials. The owners have filed a Notice of Intent with the Conservation Commission, with a public hearing scheduled for April 7, 2009. Ms. MacNab asked about the illegal work going on at the property and Atty. Angley noted that a cease and desist order had been issued. The owners are still living on the property.

Ms. MacNab noted that due to the number of Conservation issues, it may be prudent to wait until they are addressed before proceeding with Administrative Site Plan Review. It was decided to review engineering issues. Mr. Walter Amory of Amory Engineers, Town consulting engineer provided comments based on his review letter dated February 12, 2009.

Mr. Amory noted that the access road from Franklin Street is steep and eroded, and is in need of repair. A Notice of Intent has been filed with the Conservation Commission to upgrade the road, along with removing hazardous waste and other materials from the site. Mr. Amory requested that any work required by the Conservation Commission should be included on the site plan, including boulders spaced at ten-foot intervals along the roadway. Mr. Amory noted that it is essential that the road is safe for passage, especially for emergency equipment.

Another concern is the condition of the drainage culverts along the access road. The culverts do not have adequate capacity to handle a ten-year storm and there is a potential for washing out the road. Also, there is a considerable amount of beaver activity upstream from the road. Debris that washes out from the beaver dam may have overwashed the road during a recent storm. Mr. Amory noted that hydro-analysis is required in order to determine the appropriate size of culvert required.

Ms. MacNab asked if Mr. Amory has concerns regarding crossing the wetlands on the property with heavy equipment, and Mr. Amory responded that those concerns have been addressed with proposed temporary bridging during construction. The problems with the culverts remain, however, even without considering the requirements for heavy equipment access, and Mr. Amory recommended that the access road be repaired and stabilized before heavy equipment is utilized.

Mr. Wadsworth asked if drainage into the wetlands is a problem, and Mr. Amory responded that swales are recommended, although none are shown on plans at this point. Atty. Angley noted that this issue will be taken care of through the Conservation Commission.

Mr. Vosi noted that the current owner and occupant, Mr. Williams, has an agreement with Industrial Tower to comply with the Notice of Intent, and also to repair the access road and construct drainage swales. Ms. MacNab noted that, as the applicant, Industrial Tower is ultimately responsible for any work that is required for project approvals. Mr. Champ noted that all work conditioned in their agreement with Mr. Williams will need to be completed by June 1. Ms. MacNab suggested that the applicant consider scheduling their next public meeting with the Board after the June 1 deadline.

Mr. Broadrick advised the applicant to address issues outlined in a memo dated March 4, 2009 from Mr. Joseph Grady, Conservation Administrator, along with a review letter from Ms. Lenore White of Wetland Strategies, Inc. dated June 16, 2008.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

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.

Date: March 9, 2009

Page 4 of 9

Mr. Wadsworth noted that at a Development Review Team meeting in March 2008, the Fire Department had recommended that the access road should be widened. Mr. Amory responded that the recommended 18-foot width is in excess of what is realistically needed, since there is expected to be a limited amount of traffic on the site. Ms. MacNab noted that the Fire Chief should be consulted regarding current recommendations.

Ms. MacNab opened the floor to public comments:

Mr. Roger Welch of 460 Franklin Street noted that he is an abutter on the same side of the road, and stated that during the past month the access road has flooded ten times due to beaver activity. Mr. Welch suggested that the water level on the upstream side should stay where it is now.

Mr. Frank Prosl of 474 Franklin Street noted that this is an environmentally sensitive piece of land. He also noted that the road regularly gets washed out by rainstorms.

Ms. Amanda McLeod of 589 Franklin Street asked how the applicants became aware of the site, and Atty. Angley responded that Mr. Williams wrote a letter to the Zoning Board of Appeals (ZBA), and the ZBA brought the site to the attention of Industrial Tower. Ms. MacLeod asked why the alternative site on Temple Street was not used, and Atty. Angley noted that the Temple Street site was at a lower site elevation and a 170 foot tower would not provide adequate coverage.

Mr. Alex Sungeroff of 333 Franklin Street stated that the Franklin Street site is preferred because the Temple Street site residents were vocal opponents of a cell tower in their neighborhood.

Ms. Marion O'Connor of 452 Franklin Street noted that she has lived on an abutting property for 25 years, and approximately ten years ago a former owner started using the bog road as a travel way. Over the past ten years the river has risen and flooded her property and killed trees. She stated that the current owner, Mr. Williams, has made the problem worse by filling the wetlands. There is standing water which poses a health issue with mosquitoes. She did not understand why this proposal is coming up again when it was withdrawn. She blamed the Town for not having a cell tower zoning district.

Mr. Broadrick explained that the ZBA has granted a variance to allow a 170-foot cell tower on the site. The reasons this site was chosen over the Temple Street site can be found in the ZBA decision. Due to state and federal regulations, a cell tower is allowed due to a gap in coverage. At this time the Planning Board is going through the Administrative Site Plan Review, and the Conservation Commission has jurisdiction over the wetlands issues.

Ms. O'Connor asked what the neighbors can do to protect their health issues with the mosquitoes, and Ms. MacNab advised her that mosquitoes are a Board of Health concern. The ZBA handles zoning enforcement issues, and the Planning Board reviews the site to ensure the least impact of the project to the area. Mr. Wadsworth added that the Conservation Commission deals with wetlands issues.

Mr. Kevin Craig of 626 Temple Street spoke in favor of the proposed project. He noted that the proposed Temple Street had visibility issues, with a failed balloon test. With the current owners leaving the site, it will have a good steward with Industrial Tower as the new owner.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

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.

Date: March 9, 2009

Page 5 of 9

Mr. Warren Bowen of 349 Franklin Street asked why the current cell tower on Mayflower Street could not be used, and Ms. MacNab responded that it was determined that cell phone coverage was deficient in the area under review.

Mr. Welch asked how the applicant can go back and forth between sites. Atty. Angley noted that both the Temple Street and Franklin Street sites are active applications with the ZBA.

Mr. Prosl expressed concern that the present owner, Mr. Williams, should be in attendance to ensure that issues with the site will be addressed. Atty. Angley assured the residents that Industrial Tower will be good stewards of the property. Ms. McLeod confirmed with the applicants that they have no plans for site development beyond the current application.

Ms. Jenny Maas of 333 Franklin Street objected to the access road as an illegal road over a river on one of the most environmentally fragile pieces of land in the Town. She objected to the aesthetic appearance of a cell tower that neighbors will have to look at. She suggested that the Town should consider purchasing the property and restoring it as conservation land.

Ms. MacNab agreed that a monopole would look aesthetically more pleasing than the proposed monopine, and Atty. Angley noted that the ZBA special permit variance was for approval of a monopine. Mr. Wadsworth agreed with Ms. MacNab that a monopole would have less of a visual impact. Mr. Broadrick noted that it would require going back to the ZBA to change the tower from a monopine to a monopole.

Mr. Broadrick noted that a variance has already been granted to approve a cell tower at the application site on Franklin Street. He also noted that sometimes applications trigger improvements to existing site issues.

Ms. MacNab noted that the Conservation Commission public hearing is scheduled for April 7, 2009. Mr. Amory noted that the Conservation Commission requires that all restoration work from a previous enforcement order needs to be completed by June 1, 2009. Mr. Vosi stated that the work could be completed earlier, requesting an earlier continuation of the public meeting.

MOTION: Mr. Halligan made a motion, and Mr. Wadsworth provided a second, to continue the public meeting for Administrative Site Plan Review of 454 Franklin Street until May 11, 2009 at 7:15 PM, with plans and materials due by April 27, 2009.

VOTE: The motion carried unanimously, 5-0.

PUBLIC MEETING: ISLAND CREEK ASSISTED LIVING FACILITIES REVIEW

Ms. MacNab opened the public meeting at 8:40 PM. Present for the discussion were Mr. Dennis Murphy, Chairman of the Zoning Board of Appeals (ZBA) and Mr. Thomas Houston, consulting engineer for the ZBA. Mr. Halligan read the public meeting notice and correspondence list into the public record:

- Application, plans and supporting documentation submitted to ZBA on 09/15/08
- Letter from D. Murphy to A. MacNab dated 12/17/08 re: ZBA request for PB review of assisted living facility
- Staff memo from C. Stickney to PB dated 12/19/08 re: applicability of request for review
- PB minutes of 01/05/09
- Memo from A. MacNab to D. Murphy dated 02/11/09 re: PB request for ZBA to direct applicants to file with PB
- Email from D. Murphy to T. Houston dated 02/11/09 re: request for peer review
- Emails between D. Grant and T. Houston dated 02/11/09, 02/18/09, 02/19/09 and 02/23/09 re: scope of review
- Memo from D. Grant to T. Houston dated 02/17/09 re: confirming public meeting for assisted living review
- Memo from A. MacNab to D. Murphy dated 02/17/09 re: confirming public meeting for assisted living review
- Public meeting notice published in the Duxbury Clipper on 02/18/09 and 02/25/09
- Fax from M. Sullivan to ZBA and PB dated 02/19/09 re: applicants' request for waivers from assisted living facility review
- Emails between E. Marchant, D. Grant and D. Murphy dated 02/19/09 and 02/24/09 re: ZBA response to request for waivers
- Report submitted on 02/19/09 by email from T. Houston/Professional Services Corporation, PC titled, "Peer Review of the Comprehensive Permit Application for 'Island Creek Village North' 30 Tremont Street (Route 3A), Duxbury, MA"
- Distribution memo to Town Department Heads dated 02/20/09 re: request for comments
- Memo from T. Mayo dated 02/24/09 re: Board of Health comments
- Letter from W. Carrico dated 02/24/09 re: Fire Department comments same as 01/04/08 DRT.

Ms. MacNab noted that this review is part of a comprehensive permit application. Of 238 units proposed in the comprehensive permit, 94 are assisted living units. Usually a proposed assisted living facility would be reviewed under Zoning Bylaw Sections 410.3 and 800. She also noted that the applicants have taken the position that the assisted living facility review should be done under the comprehensive permit process and not separated. The Zoning Board of Appeals (ZBA) has requested Planning Board review of the assisted living facility in a letter dated November 27, 2008 because the applicant had not requested a waiver from Planning Board review of the assisted living facility. The applicant subsequently requested waivers in a letter dated February 19, 2009.

Mr. Broadrick noted that a fax dated March 9, 2009 was received today from the applicants' attorney objecting to the Planning Board holding a public meeting for the assisted living facility review. Mr. Broadrick reported that today he had spoken with the applicants' representative, Mr. Ed Marchant, and was told that the applicants do not agree to using their ZBA escrow funds for Planning Board review. Mr. Broadrick suggested that the Board consider reviewing the facility as part of the comprehensive application review.

Mr. Murphy noted that this is the first assisted living facility the ZBA has seen as part of a comprehensive permit. No blanket waivers were requested with the initial permit, and waivers are not

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

considered until late in the process. He stated that any assistance the Planning Board can provide would be appreciated. Among the issues raised at the December ZBA public hearing were:

- Adequacy of the site plan
- Setbacks from the riverfront zone
- Pharmaceutical discharge that is not governed by state regulations.

Mr. Broadrick noted that he had suggested that the applicants consider offering some of the assisted living units as affordable housing, and Mr. Marchant had told him that it is a non-medical assisted living facility. Mr. Wadsworth noted that his mother lives in assisted living facility in another town, and medical tests are performed and medical staff visits. If the project includes an Alzheimer's unit, staffing would require parking spaces. Mr. Broadrick noted that although an Alzheimer's wing is mentioned, the application does not specify the number of units proposed.

Mr. Houston was asked for his comments. He noted that the existing site encompasses over 22 acres, with commercial space in front and residential units in the rear of the property. According to the USGS map, there is a brook located just outside the property line, and the applicants assert that they cannot find this brook.

Including existing and proposed buildings, the entire project would have approximately ten owners. The site is currently owned by two land holdings: Island Creek East and Island Creek West. With the new project they would need to create a third entity, Island Creek North.

Regarding access, the applicants propose a divided boulevard onto an unsignaled entrance on Tremont Street. This would cause significant traffic issues, especially with the number of elderly residents on the property. Mr. Houston recommends signaled control of the intersection. He noted that the ZBA has recommended that the applicants consider relocating the entrance to directly across from the Route 3 off-ramp. The applicants take the view that this land is under control of First Baptist Church, so Mr. Houston recommends that the ZBA pursue a possible signal offset 150 feet from the Route 3 off-ramp. Ms. MacNab noted that it may take five to ten years before a traffic signal is installed. Mr. Houston noted that if the communities affected offer to help fund the design, the state may expedite the installation relatively quickly.

Mr. Houston stated that overall there is a general dearth of information on parking within the site, and it appears that overall there are not enough parking spaces allotted. Because there is a range of institutions called "assisted living," the use needs to be defined more clearly to determine the staff and residential parking requirements. Ms. MacNab confirmed with Mr. Houston that the proposed assisted living facility is located on land owned by the applicants.

Mr. Murphy noted that Planning Board comments are due to the ZBA by April 16, 2009 in preparation for the public hearing on April 23, 2009. The tentative deadline for issuing the comprehensive permit is June 11, 2009. Mr. Murphy anticipates that there may be one or two hearings on this topic after April 23.

After discussion, it was agreed that Mr. Broadrick would prepare a draft document for the Board's review, with input from Mr. Houston's comprehensive permit report. Ms. MacNab noted that the staff report should cover both the comprehensive permit and the assisted living facility.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

ZBA REFERRAL: 34 FRIENDSHIP LANE / HERNDON

Present for the discussion were the applicant's representatives: Mr. Kevin Leary, builder, and Atty. John Truelove. Mr. Leary noted that the applicant is proposing to demolish a two-story structure and rebuild on a pre-existing nonconforming lot. He showed Board members a large plan that depicts the three parcels involved on the north side of Friendship Lane, all belonging to the applicant, Mrs. Nancy Herndon. Mr. Leary noted that these lots will be combined and a new dwelling structure will be built.

Ms. MacNab asked if all current structures are shown on the plan, and Mr. Leary confirmed that they were. Mr. Broadrick asked if those structures, a barn and a garage, existed prior to zoning, and Atty. Truelove noted that Friendship Lane may be an easement rather than a road. Mr. Leary showed Board members the proposed and existing footprints and setbacks.

MOTION: Mr. Wadsworth made a motion, and Mr. Halligan provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit application for 34 Friendship Lane.

VOTE: The motion carried unanimously, 5-0.

WORK SESSION: ANNUAL TOWN MEETING RECOMMENDATIONS AND PREPARATION

Article 46: Wind Facilities Bylaw - Ms. MacNab noted that there may be fatal flaws in language included in the proposed bylaw, especially concerning Zoning Board of Appeals (ZBA) special permitting. Mr. Halligan noted that the Board is not privy to comments and recommendations from the ZBA. Board members agreed that it may be best to recommend indefinite postponement of the article for further review and revision.

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd-Fiorini provided a second, to recommend indefinite postponement of Article, 46, Wind Facilities Bylaw to Annual Town Meeting.

VOTE: The motion carried unanimously, 5-0.

Article 39: Lot Coverage – Ms. Ladd-Fiorini proposed a revote of this article. She noted that the Conservation Commission recently voted to approve the proposed bylaw amendment to allow for 80 percent maximum lot coverage, and the Board of Selectmen has also recommended approval of the article. Mr. Broadrick noted that Mr. J.R. Kent, a proponent of the proposed bylaw, would consider a reduction in lot coverage maximum to 75 percent.

MOTION: Mr. Moody made a motion, and Mr. Wadsworth provided a second, to recommend approval of Article, 39, Lot Coverage and Dimensional Intensity, as proposed to Annual Town Meeting.

DISCUSSION: Mr. Wadsworth noted that the most recent issue of the Planning Commissioner's Journal recommends reducing the size of parking areas based on the EPA

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

position encouraging vegetated swales. Ms. Ladd-Fiorini noted that the working group that researched and proposed the article never intended for open space to be used for open swales.

Ms. MacNab expressed her concern with the coverage percentage as applied to large parcels. She agrees with an idea presented by the Planning Director, who recommended a sliding scale of lot size and lot coverage.

VOTE: The motion failed (2-3), with Ms. Ladd-Fiorini and Mr. Moody voting in the affirmative, and Ms. MacNab, Mr. Wadsworth and Mr. Halligan voting against.

MOTION: Mr. Moody made a motion, and Mr. Wadsworth provided a second, to recommend approval of Article, 39, Lot Coverage and Dimensional Intensity, with an amendment to reduce the maximum lot coverage to 75 percent.

DISCUSSION: Mr. Wadsworth stated that he believes 75 percent lot coverage is still too high, and it may not receive the required two-thirds vote at Annual Town Meeting. Ms. MacNab agreed.

VOTE: The motion failed (2-3), with Ms. Ladd-Fiorini and Mr. Moody voting in the affirmative, and Ms. MacNab, Mr. Wadsworth and Mr. Halligan voting against.

Board members concluded that they could make no recommendation to Annual Town Meeting regarding this article. Mr. Halligan noted that his position has shifted from an earlier vote based on residents' concerns with the high percentage of lot coverage proposed. Some knowledgeable residents have recommended to him a 60 to 70 percent lot coverage maximum.

ADJOURNMENT

The Planning Board meeting adjourned at 10:47 PM. The next meeting of the Planning Board will take place on Monday, March 30, 2009 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.