



Town of Duxbury Massachusetts Planning Board

Minutes 05/11/09

The Planning Board met in the Duxbury Town Hall, Lower Level, Small Conference Room on Monday, May 11, 2009 at 7:00 PM.

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

Absent: Josh Cutler (attending Coastal Zone Management Stormsmart Coasts meeting in Kingston) and Brendan Halligan, Clerk.

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

Ms. MacNab called the meeting to order at 7:04 PM.

OPEN FORUM

Upcoming Events: Ms. MacNab reminded the Board of the reception in honor of past Selectman Mr. Andre Martecchini to be held on May 13, 2009. Mr. Bear noted the Land Use Forum scheduled by the Board of Selectmen to be held on May 20, 2009 at the Senior Center.

95 Tremont Street: Mr. Bear noted an article on the effect of the economy on medical profession in a recent issue of the *Boston Business Journal* that quotes Dr. Scott Oliver, owner of the medical building at 95 Tremont Street. He is quoted as stating that volume is down twenty percent due to the economic downturn, which Mr. Bear noted may help alleviate the parking issues at the medical building. Ms. MacNab reported that the applicant's special permit will expire soon. She encouraged zoning enforcement to make sure the owner is complying with uses granted under the special permit. Mr. Broadrick noted that the owner is meeting compliance requirements as long as his special permit remains in effect. He agreed to speak with the Zoning Enforcement Officer, Mr. Scott Lambiase, regarding the situation.

CONTINUED PUBLIC MEETING, ADMINISTRATIVE SITE PLAN REVIEW: 454 FRANKLIN STREET / INDUSTRIAL TOWER AND WIRELESS, LLC

Ms. MacNab opened the public meeting at 7:15 PM. Present to represent the applicants were Atty. Jeffrey Angley, Mr. Donald Cody, and Mr. John Champ. Also present were property owners, Mr. George Williams and Mr. Matthew Williams. Mr. Walter Amory of Amory Engineers was present as Town consulting engineer. Mr. Bear read the correspondence list into the public record:

- Mutual Extension form to continue public meeting to 05/11/09
- Letter from J. Maas dated 03/09/ re: opposition to application
- Letter from N. & D. D'Amato dated 03/11/09 re: opposition to application, with attachments from <http://www.cyburban.com> and another non-cited source
- Letter from Amory Engineers dated 04/03/09 re: summary of 04/01/09 meeting w/ staff and applicant
- Order of Conditions from Conservation Commission dated 04/22/09

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- Letter from N. Sharpe dated 04/28/09 re: concern with potential soil contamination
- Notice of Intent plan dated 03/05/09 and submitted by the applicant to the Planning Office on 05/04/09
- Memorandum from T. Broadrick to Planning Board dated 05/06/09 re: ITW questions
- Proposed Site Plan dated 05/06/09 and submitted by the applicant to the Planning Office on 05/07/09
- Document entitled, "Site Plan Review Access Analysis," dated 05/06/09 and submitted by the applicant to the Planning Office on 05/07/09.

Atty. Angley spoke on behalf of the applicants, noting that at the last Planning Board meeting, March 9, 2009, there was a Conservation Commission application pending which may have required a change in the site plan. Also at that meeting Mr. Amory had recommended that the road is in need of repair and the Fire Department was recommending that the road be widened to 18 feet to accommodate emergency equipment.

Atty. Angley reported that on April 1, 2009 he had met with Mr. Amory, Mr. Broadrick; Mr. Joseph Grady, Conservation Administrator; Mr. Scott Lambiase, Director of Inspectional Services; and Mr. Champ of Industrial Tower. At that meeting and at a subsequent meeting of the Conservation Commission, it was determined that the Conservation Commission prefers to minimize disturbance to the wetlands. Therefore, the road will not be widened or substantially improved, and utilities across the wetlands will be placed overhead rather than underground. However, culverts underneath the access road will be upgraded.

Ms. MacNab confirmed with the property owner, Mr. George Williams, that an Order of Conditions has been issued and a Certificate of Compliance is near completion for work required by the Conservation Commission. Atty. Angley confirmed that the Williamses were ordered to remedy an encroachment to the wetlands and this work has been completed. As soon as Industrial Tower takes ownership of the land, the Williams will vacate the property and all current business activities on the property will cease. Mr. Matthew Williams stated that all stumps have been removed and all of the firewood on the property is gone. The purchase will take place once Planning Board and Zoning Board approvals are granted.

Mr. Moody asked what will happen to the property after Industrial Tower purchases it from Mr. Williams, and Mr. Cody responded that initially the dwelling will be rented to someone other than Mr. Williams. Eventually the portion of the property with the dwelling will be sold but Industrial Tower intends to maintain ownership of the access road and cell tower site. Mr. Broadrick confirmed with Atty. Angley that this would be done via the Approval Not Required (ANR) process with the Planning Board.

Ms. MacNab referenced Amory Engineers letter dated April 3, 2009 and asked how the deadline date of July 1, 2010 was set for the culvert upgrading. Mr. Amory responded that it was an arbitrary date set for after construction of the tower is completed. Mr. Cody added that, upon approval, Industrial Tower intends to complete construction of the cell tower this summer when the water level is at the lowest of the year. The applicants will file with the Conservation Commission for culvert construction since the activity will occur within the wetlands buffer.

Mr. Wadsworth expressed concern over the current condition of the access road and specifically the load-bearing capacity of the road after construction of the cell tower. Atty. Angley responded that

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although the road has inherent capacity to handle heavy loads, it will not be used to full capacity once the cell tower has been built.

Mr. Wadsworth expressed concern with emergency access to the site considering propane tanks will be used at the cell tower site. Mr. Cody noted that two access roads to the site exist. Mr. Bear noted that the Fire Department's memorandum dated April 8, 2008 requested that the access road be wide enough to handle a truck and a car at passing width. There is no dwelling at the end of the access road. As long as the culvert can bear the load for fire access, Mr. Bear stated that he would agree that the road should remain as currently exists. Ms. Ladd-Fiorini agreed that disturbing the wetlands should be avoided if possible. Atty. Angley agreed to add an emergency secondary access to site plans. He noted that the owners do not have a right-of-way for this access and it would be used for emergency access only.

Mr. Broadrick advised the Board to consider that, although most cases call for following the Fire Department's recommendations, in this case they do not need to design for the worst-case scenario. The Conservation Commission has requested boulders be placed along the access road to ensure that the road is not widened. Ms. MacNab agreed that if homeowner health and safety were an issue it would be different, but in this case it is not in the Town's best interest to require that the road be upgraded to 18 feet in width.

Mr. Amory noted a typographical error on Sheet 2 of the site plan, and Mr. Champ agreed to correct it.

Ms. MacNab noted correspondence dated April 28, 2009 from an abutter, Ms. Nancy Sharpe of 465 Franklin Street, who expressed concern regarding potential soil contamination due to prior materials dumping. Mr. Broadrick responded that a 21-E report could be requested through an affidavit. Ms. Sharpe explained that in previous years tires had been brought in that may have been used for fill. She noted that she had shared this information verbally with the Conservation Commission. Mr. George Williams, property owner, denied that tires were buried on his property. Atty. Angley noted that no hazardous materials had been represented as existing on the site by the owner. Mr. Cody assured the Board that Industrial Tower would file a 21-E report if there is any suspicion that it is warranted.

Ms. Sharpe also advised the Board that the emergency access road cannot be used unless it is cleared. Ms. MacNab responded that the Fire Department has bush breakers that can cut through thick brush. Mr. Champ reported that the emergency access road has been cleared of brush.

Ms. Marion O'Connor of 452 Franklin Street noted that her concern remains from the last Conservation Commission meeting she attended. Her property is flooding because of the culvert on the Williams' property. She stated that the culvert was built without a permit and this issue has never been addressed. She asked what could be done. Ms. MacNab noted that this issue is not under Planning Board jurisdiction. Ms. O'Connor stated that the Zoning Enforcement Officer had noted the violation, and she questioned why the project is being considered while current litigation issues are being resolved. Atty. Angley noted that as a result of the litigation, a Notice of Intent had been filed with the Conservation Commission. Mr. Wadsworth noted that all issues are related to the Conservation Commission, and there is an appeal process through the State for any dissatisfied parties.

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Board members directed staff to draft a decision to include at least the following conditions:

- Reference to Zoning Board of Appeals (ZBA) and Conservation Commission decisions
- Restoration of culvert within time frame
- Access road width
- Tower versus monopine.

Atty. Angley noted that Industrial Tower is contractually required to withdraw their lease if permits are not approved by May 15, 2009. The ZBA decision is dependent on Planning Board approval. Atty. Angley requested that the Board approve the Administrative Site Plan Review subject to finalization of conditions at the next Board meeting.

MOTION: Mr. Moody made a motion, and Mr. Bear provided a second, to approve Administrative Site Plan Review for 454 Franklin Street, Industrial Tower, subject to approval of conditions to be reviewed by the Planning Board on June 8, 2009. There was no discussion regarding the motion.

VOTE: The motion carried unanimously, 5-0.

ZBA REFERRAL: 2 KING CAESAR ROAD / MC CARTHY

Board members reviewed this special permit application for demolition of an existing pier and construction of a new pier. Ms. MacNab noted that the proposed pier is located near another dock on 52 Powder Point Avenue.

MOTION: Mr. Moody made a motion, and Mr. Wadsworth provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit for 2 King Caesar Road / McCarthy, noting that the Planning Board encourages shared piers wherever possible.

VOTE: The motion carried unanimously, 5-0.

OTHER BUSINESS

Engineering Invoice:

MOTION: Mr. Wadsworth made a motion, and Mr. Bear provided a second, to approve Amory Engineers invoice # 12669 in the amount of \$492.50 for services related to 454 Franklin Street.

VOTE: The motion carried unanimously, 5-0.

Meeting Minutes:

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd-Fiorini provided a second, to accept meeting minutes of March 30, 2009 as written.

VOTE: The motion carried unanimously, 5-0.

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Town Meeting Follow-Up: It was agreed to defer discussion until the next Board meeting because Mr. Broadrick had to leave to attend a portion of the Board of Selectmen's meeting.

Local Housing Partnership (LHP) Mission: Board members reviewed the Town General Bylaws describing the purpose of the LHP, noting that its mission is focused on affordable housing, not diversified housing.

Adams Court Proposed Subdivision, off Washington Street: Board members reviewed a letter from Atty. Peter Freeman dated May 1, 2009 regarding the Adams Court preliminary subdivision that was approved by the Board on February 2, 2009. Atty. Freeman is seeking direction from the Board regarding the applicants' options regarding the Inclusionary Bylaw. Board members agreed that the applicant should be directed to speak with the Planning Director regarding this topic.

Summer Intern: Mr. Broadrick, who returned from the Board of Selectmen meeting, noted that the Planning office will have a summer intern, Ms. Julia Nissi, a Duxbury resident who is studying Urban and Regional Studies at Cornell University. He is expecting that Ms. Nissi will help work on the updating of the Comprehensive Plan.

Historic District Study Committee: Mr. Broadrick announced that the Board of Selectmen has formed a Local Historic District Study Committee, and he will serve as staff to this committee.

ADJOURNMENT

The Planning Board meeting adjourned at 8:45 PM. The next meeting of the Planning Board will take place on Monday, June 8, 2009 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.