



Town of Duxbury Massachusetts Planning Board

Minutes 06/08/09

The Planning Board met in the Duxbury Town Hall, Lower Level, Small Conference Room on Monday, June 8, 2009 at 7:00 PM.

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

Absent: No one was absent.

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

Because Ms. MacNab had not yet arrived and a quorum was present, Mr. Bear called the meeting to order at 7:00 PM.

OPEN FORUM

Summer Intern: Mr. Broadrick introduced Ms. Julia Nissi, a Cornell University student majoring in Economics with a minor in Urban Planning, who will be helping the Planning Department begin work on the Comprehensive Plan update.

APPOINTMENT WITH KATHE ROWAN (87 BRAVENDER ROAD) RE: REQUEST FOR STREET ACCEPTANCE OF BRAVENDER WAY

Ms. Kathe Rowan was present to request Planning Board support for accepting the Bravender Way extension as a public way. Other neighbors joined her during the discussion. The first part of this road off Summer Street is a public way. In 1985 an extension was approved as a private way. Ms. Rowan had approached the Board previously in 2001 with the same request and was advised that in order for Bravender Way extension to be accepted as a public way it would need to meet current construction standards.

Ms. Rowan noted that at the time she purchased her home on Bravender Road it was listed as a public road on the Multiple Listing Services book. There is reference to a private way on a covenant that was recorded at the Registry of Deeds in 1985, five years before any homes were built. The covenant also mentioned a "private way" sign that has still not been built. The Fire Chief has her residence listed as Bravender Road. Snow plows stop at the end of the first cul-de-sac, and salting, sanding and plowing beyond that point are the responsibility of the homeowners who live on the extension. She stated that she can find no document that shows that she owns the road. Six homes are affected.

Ms. Rowan stated that her main concern is the plowing, salt and sanding that should be included as taxpayer services. She stated that the neighbors are willing to make changes that would make the road in compliance with Subdivision Rules and Regulations so that the road could be accepted at Annual

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Town Meeting. Mr. Cutler asked what has changed since Ms. Rowan came before the Board in 2001, and Ms. Rowan replied that the concern has grown since then. The neighbors did not take the proposal to Annual Town Meeting in 2001 due to lack of support from the Planning Board.

Mr. Broadrick explained that a covenant was created between the developer and the town due to waivers on the road construction. Mr. Broadrick noted that the neighbors can apply for a subdivision modification to bring the road to current standards, or they can choose to file a citizen's petition for road acceptance at Annual Town Meeting 2010. Ms. Rowan confirmed with Board members that the Board would not accept the road in its current condition.

Ms. MacNab noted that if the residents are willing to make roadway improvements through a subdivision modification, the Board can provide guidance but the residents would need to hire an engineer. Board members noted various issues with the existing roadway, including width, curbing, drainage and slope.

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

Ms. MacNab opened the public meeting at 7:50 PM. Present for the public meeting representing the applicants, Industrial Tower, were Mr. Donald Cody and Mr. John Champ. Mr. Halligan read the correspondence list into the public record:

- Mutual Extension form to continue public meeting to 06/08/09
- Draft decision dated 06/08/09.

Ms. MacNab noted that the main issue remaining is that a Certificate of Compliance has not been issued through the Conservation Commission for an outstanding enforcement order. Mr. Champ explained that the property owners, the Williams, did not understand that they needed to submit a written request for a Certificate of Compliance. Mr. Cody noted that the applicants, Industrial Tower, will not purchase the property without the Certificate of Compliance, and he believes the owner has performed all the necessary work.

Board members reviewed a draft decision and made revisions. Ms. MacNab confirmed with the applicants that they had reviewed the draft decision and did not have any concerns.

MOTION: Mr. Wadsworth made a motion, and Mr. Bear provided a second, to close the public meeting for Administrative Site Plan Review of 454 Franklin Street, Industrial Tower and Wireless.

VOTE: The motion carried unanimously, 7-0.

MOTION: Mr. Mr. Wadsworth made a motion, and Mr. Bear provided a second, to accept conditions as amended for Administrative Site Plan Review of 454 Franklin Street, Industrial Tower and Wireless.

VOTE: The motion carried, 6-0-1 with Mr. Halligan abstaining.

Staff was directed to make the proposed amendments to the decision to prepare for the Clerk to sign.

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ZBA REFERRAL: 71 OCEAN ROAD NORTH, 213 & 219 GURNET ROAD / HUMMOCK LLC

No one was present to represent the application. Board members reviewed the special permit application and plans. Mr. Broadrick noted that a previous 81-L plan had split the lots into individual parcels, each one with a structure on it. That plan does not provide any zoning protections, and variances are required for lot area and frontage. The current application appears to appeal the requirement for variances.

Ms. MacNab noted that applicants have been trying to reconfigure the lots for several years, but in order to obtain a variance from the Zoning Board of Appeals (ZBA) it would have required continuous occupancy in the dwelling structures for two years. She noted that the land is under water most of the time.

Board members reviewed the applications and plans, concluding that they are deficient of the required information needed to make a decision and should be withdrawn by the petitioner and resubmitted. If not withdrawn, Board members agreed that the ZBA should deny the petition for inadequate and incomplete information, and for misrepresentation of existing lot lines. It appeared to Board members that the request has no merit and should be denied by the ZBA. Board members suggested that recommendations from the staff memo regarding this application should be included within its recommendation to the ZBA.

MOTION: Mr. Wadsworth made a motion, and Mr. Bear provided a second, to recommend **denial** to the Zoning Board of Appeals regarding these special permit applications, noting that the submitted plans and applications are fatally deficient of required information and clarity is needed to make a decision.

The Planning Board notes the following points in support of its recommendation:

- The applications before the Zoning Board of Appeals seek special permits to raze existing non-conforming structures and reconstruct new single family dwellings pursuant to ZBL Articles 400 and 900.
- Two individual applications have been submitted signed by Daniel C. Orwig. Nothing in the application packet states that the owners have authorized Mr. Orwig to act on their behalf.
- The site plan submitted with the application titled, "Sheet #2 'Proposed Site Plan, Gurnet Road, Duxbury, MA' dated October 17, 2008 stamped by Daniel C. Orwig (RLA) and Michael W.C. Emerson (PE)," is not in proper review standards since the proposed setbacks are not validated by a registered land surveyor (RLS) as to the designated property lines. The plans submitted should not be accepted for review by the Zoning Board of Appeals in that even combined they do not accurately show the existing and/or proposed conditions, and the site plan is not stamped with the proper licenses required by the Commonwealth of Massachusetts Board of Registration. The plan dated 10/17/08 misrepresents current lot lines, and is neither an approved plan by the Planning Board nor endorsed by the Planning Board, and has not been recorded at the Registry of Deeds.

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- The property received Approval Not Required (ANR) endorsement via the MGL Chapter 41 Section 81L exemption (structures existing prior to adoption of the Subdivision Control Law) for five individual non-conforming lots. The initial endorsement creating the five lots resulted from the original owner (Huff) appealing to Land Court a Planning Board denial of an ANR under the 81L provision and succeeding (1991). In a subsequent ANR approval in 2006, the new property owner, Hummock LLC, was allowed to then “reconfigure” the prior 81L endorsement but maintained the five individual lots. The property owner has not demonstrated if this latest ANR plan was ever recorded.
- As previously mentioned, an ANR endorsement from the Planning Board dated 1991 created five individual lots as a result of an exemption pursuant to MGL Chap. 41 Section 81L for pre-existing structures. The 81L ANR endorsement provided no standing as to the “buildability” and/or “compliance with zoning” for the lots created. The Planning Board recommends that the Zoning Board of Appeals review case law for *Norton v. Town of Duxbury*.
- Since the lots have remained in common ownership and were created as nonstandard lots as a result of the 81L exemption, the protection afforded under MGL Chap 40A Section 6 for the pre-existing single lot exemptions appears to be not eligible due to the common ownership issue. Ms. Huff conveyed the five lots within one deed in 2002 to Groseclosure who later would convey to Hummock.
- The Planning Board would also suggest there is no valid support for a variance due to any topographic hardships because the lots were created by the Huffs and did not pre-exist zoning even though the structures may have pre-existed the adoption of the Subdivision Control Law.
- Any construction of the proposed dwellings will have to comply with the current building code as to elevating above the base flood elevation for the applicable zones based on the most current FIRM maps of 2005.
- Pursuant to the ZBL Section 401.2, # 4 a) (1), a change to a dwelling may be allowed as long as such change “does not intensify any existing non-conformities...” the Planning Board would suggest these petitions will intensify the non-conformities. This comment is based on three factors: the additional square footage of the proposed structures’ footprints; the increased height of the structures to comply with flood proofing requirements; and the final factor is the change in use from a seasonal cottage to a year-round residence. The Planning Board recommends that the Zoning Board of Appeals review case law for *Bjorklund v. Town of Norwell*.
- Although ZBL Section 401.2 #4 permits reconstruction with a finding by the Zoning Board of Appeals, the Planning Board questions if the intent of this section of the Zoning Bylaw was reconstruction on another portion of a lot or within the general proximity of the existing footprints; the bylaw is silent on addressing this specifically. The Zoning Board of Appeals has routinely seen reconstruction within

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the same footprint; this application proposes to create a new precedent on the reconstruction issue.

- The Planning Board would also note this land is registered land and is subject to Land Court review. The only plan on record is the 81L plan dated 1991.
- The Planning Board notes the following for the Zoning Board of Appeals to consider:
 - Hummock LLC is listed in the Secretary of State, Corporation Division with a Certificate of Amendment dated 2004 showing the following members and their respective interests: Daniel C. Orwig (25%) , Michael W.C. Emerson (25%), Benjamin F. Goodrich, Jr. (25%), and Jerry Roberts (25%). The Board notes that the Certificate of Amendment states “*two signatures are required to execute any documents...to be recorded at the registry of deeds or Land Court.*” This application, if approved, will require a decision be filed at the Registry of Deeds. The Board questions the validity of the agent’s authorization to make the application and notes that the ZBA should require other signatures per the Certificate of Amendment.
 - Pursuant to MGL Chap. 41 only the Planning Board can approve a plan that shows a division of land. The applicant has not submitted for endorsement of an Approval Not Required plan (ANR) pursuant to MGL Chap 41 Section 81L & 81-P. The lots shown are not the lots of record at the Registry of Deeds nor on the Town’s Assessors’ maps.

VOTE: The motion carried unanimously, 7-0.

WORK SESSION

Lot Coverage ATM 09 Article: Mr. Broadrick advised the Board that he has the information needed to present a recommendation to the Board at a future meeting. Mr. Wadsworth noted that best management practices are changing and should be considered as well. Ms. MacNab noted that Ms. Sara Wilson’s argument at Town Meeting, that a basis for change is needed, resonated with residents and that is why the proposed lot coverage revisions were not approved. Ms. MacNab stated that updating the stormwater action plan will provide revealing information that will help in formulating lot coverage percentages.

Ms. Ladd-Fiorini raised a concern that one area that had not been addressed by the Lot Coverage working group was septic or any underground structures on lots and how they would be considered in calculating lot coverage and open space.

Parking ATM 09 Article: Mr. Broadrick noted that the Parking revisions should be accepted at a future Town Meeting once the Lot Coverage article is passed. Mr. Cutler expressed a concern with applicability of the proposed changes to the parking bylaw.

Stormwater Action Plan: Mr. Broadrick noted that Conservation Agent, Mr. Joseph Grady, has recommended that each board adopt model stormwater regulations as part of their rules and

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regulations. Then a stormwater drainage check off would be included in future building permits to be circulated among town departments to sign off approval.

Mr. Wadsworth reported that he had attended a stormwater workshop with Mr. Grady and the former Planning Director, and enforceability was an area of concern. The federal government is promoting the creation of a utility in each town that would be responsible for stormwater drainage. There was further discussion regarding whether one town department should be responsible or if each department should adopt regulations.

Mr. Bear noted that the Board already has the Administrative Site Plan Review process in place as a first defense of the bay on any commercial projects. He asked what would be the benefit of adopting stormwater regulations, and Ms. MacNab replied that not only would they protect the bay, but also adopting them would result in a favorable consideration for state and federal grants and bond ratings. Mr. Broadrick agreed to find out if stormwater regulations are mandated as part of the Commonwealth Capital rating system.

Comprehensive Plan Update: Mr. Broadrick requested the Board's direction in updating the Comprehensive Plan, noting that the Board would serve as its steering committee. Ms. MacNab recommended that it should be easily updatable. Mr. Wadsworth noted that some will want build-out to be revisited, especially in light of the Affordable Housing bylaw and nonconforming lot program that the Local Housing Partnership is aggressively pursuing.

Administrative Site Plan Review (ASPR): Mr. Broadrick noted that current ASPR regulations do not appear to be in line with current Zoning Bylaws and do not reflect current practices. He recommended that the Board consider revising the rules and regulations. Board members agreed to continue the discussion at a future Board meeting.

OTHER BUSINESS

Meeting Minutes:

MOTION: Mr. Halligan made a motion, and Mr. Bear provided a second, to accept meeting minutes of April 13, 2009 as amended.

VOTE: The motion carried 6-0-1, with Mr. Moody abstaining.

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd-Fiorini provided a second, to accept meeting minutes of May 11, 2009 as amended.

VOTE: The motion carried 6-0-1, with Mr. Halligan abstaining.

Planning Board Meeting Schedule: Board members agreed to a proposed meeting schedule for two meetings per month through September 2009.

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StormSmart Coasts Meeting: Board members reviewed materials submitted by Mr. Cutler, who attended a meeting with surrounding towns in May 2009. Mr. Cutler reported that towns were urged to be proactive in mitigation to avoid potential law suits. It was also recommended that town departments base their decisions on public safety issues.

Special Permit Application, 1053 Tremont Street / Dacey: Board members reviewed a referral letter from the Conservation Commission to the ZBA dated April 22, 2009 recommending denial of a special permit application. Ms. MacNab noted that despite this recommendation, the ZBA voted to continue the public hearing to July 9, 2009.

Planning Director 90-Day Review: Board members agreed to appoint Ms. MacNab and Mr. Bear to discuss this review with the Town Manager.

ADJOURNMENT

The Planning Board meeting adjourned at 9:57 PM. The next meeting of the Planning Board will take place on Monday, June 22, 2009 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.