



Town of Duxbury Massachusetts Planning Board

Minutes 07/13/09

The Planning Board met in the Duxbury Town Hall, Lower Level, Small Conference Room on Monday, July 13, 2009 at 7:00 PM.

Present: Amy MacNab, Chairman; John Bear, Vice-Chair; Josh Cutler, Cynthia Ladd Fiorini, and George Wadsworth

Absent: Brendan Halligan, Clerk; and Harold Moody

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

Ms. MacNab called the meeting to order at 7:03 PM.

OPEN FORUM

Open Forum was deferred until later in the meeting.

ZBA REFERRAL: 848 FRANKLIN STREET / BUTLER

No one was present to represent this special permit application to construct a 7' x 14' screened porch on the side of a dwelling, which would continue to violate the 25' front setback on a nonconforming lot. Mr. Broadrick noted that the existing dwelling already encroaches on the front setback, and there would be no further encroachment with the proposed porch. Mr. Wadsworth noted that the proposal would add to the nonconformity.

MOTION: Mr. Bear made a motion, and Mr. Wadsworth provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit application for 848 Franklin Street / Butler, noting that the 14.5-foot addition proposed in the application is in violation of the front setback, increasing the nonconformity.

VOTE: The motion carried unanimously, 5-0.

ANR PLAN OF LAND: 132, 130 & 128 KING CAESAR ROAD / MCCLAUGHLIN

Present for the discussion were the applicant, Mr. John McLaughlin, and his representatives: Mr. Freeman Boynton of Duxbury Construction and Mr. Kenneth Anderson of Anderson Surveys, Inc. The applicant is proposing to split in two the middle of three adjacent lots, all under the same ownership, through the ANR process. Each half of the middle lot would be conveyed to its adjacent parcel. One dwelling would be razed and another relocated so that the resulting two lots would each contain one single family dwelling. At a Board meeting of June 22, 2009 the applicant and Board signed a mutual extension form to continue the discussion to tonight's meeting. At issue was a

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question regarding whether the Board could endorse an ANR plan that has no frontage, and Town Counsel's opinion was needed.

Mr. Broadrick noted that Town Counsel, Atty. Robert S. Troy, had responded to the Board's question in a memorandum dated July 10, 2009. In that opinion, Atty. Troy confirmed that because "the lots on the ANR plan do not have the requisite frontage required by the Protective Bylaw, the plan is not entitled to approval under the provisions of G.L. c 41." Ms. MacNab noted that the Board must follow Town Counsel's opinion as a rule because the Board would lose litigation insurance coverage if a decision is appealed.

Mr. Anderson stated that he disagrees with Town Counsel, noting that the proposed plan provides improved access to the lots. Mr. McLaughlin added that fire and safety access also would be improved.

Mr. Boynton asked if a perimeter plan could be submitted to the Registry of Deeds since the lots are under common ownership. Mr. Bear noted that the lots are under similar but not identical names and this issue may need to be resolved. Ms. MacNab suggested that the applicant consider seeking legal counsel.

Board members discussed various ways of achieving the desired lot configuration, recommending that the applicant seek advice from the Director of Inspectional Services. Mr. Anderson advised his client, Mr. McLaughlin, to withdraw the ANR application and seek legal counsel on how to reconfigure the lots through conveyances or easements. Mr. McLaughlin agreed to withdraw his ANR application.

MOTION: Mr. Wadsworth made a motion, and Mr. Bear provided a second, to accept without prejudice the applicant's verbal withdrawal of an ANR plan entitled, "Approval Not Required Plan of Land, Duxbury, Massachusetts, prepared for John McLaughlin, 132 King Caesar Road, Duxbury, MA 02332, Deed Book 19273, page 188, Parcel 180.0-0095-0004" dated June 5, 2009, stamped by Kenneth B. Anderson (PLS) – 2 sheets.

VOTE: The motion carried unanimously, 5-0.

The applicant and Board signed a mutual agreement form for withdrawal of the ANR. Staff returned the original mylar to Mr. Anderson.

WORK SESSION

Comprehensive Plan Update: Mr. Broadrick advised the Board that he will be reporting on recommended changes soon. The Board could serve as the Local Comprehensive Plan (LCP) Committee to review the update. Public meetings would be scheduled for resident input before a public hearing on the draft plan. After the public hearing, the Planning Board would take the final vote to approve the Comprehensive Plan update.

Mr. Broadrick noted that the results of the Comprehensive Plan update could make evident which Zoning Bylaws need to be updated or amended. A timeline was discussed, with agreement that a public hearing could be scheduled after Annual Town Meeting 2010.

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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.

Administrative Site Plan Review (ASPR): Mr. Broadrick reported that he had spoken with Town Counsel regarding the appearance that this process may be used as more of a special permit than intended. Mr. Broadrick emphasized that the process is a review, not a permit. A special permit could be appealed, not an ASPR decision. He recommended that the Board consider codifying conditions in recent decisions as amendments to the Zoning Bylaws.

Ms. MacNab noted that there is an advantage to having the flexibility to add conditions to an ASPR decision rather than amending Zoning Bylaws. Mr. Bear agreed, stating that it would be impossible to reflect all conditions in the Zoning Bylaws because each project has unique requirements.

Mr. Cutler agreed with Mr. Broadrick, stating that applicants should know up front what they're getting into before they apply for ASPR. Mr. Bear noted that, as a member of the Economic Advisory Committee, he hears complaints from business owners that the ASPR process is too stringent. However, Mr. Bear reminded the Board that many recent projects were actually improved by the ASPR process, including the 104 Tremont medical building, Berrybrook School on Winter Street, and European Designs on Washington Street.

After further discussion, it was agreed that staff would provide future recommendations on possible amendments to the Zoning Bylaws and augmented ASPR Rules and Regulations.

Adams Court Preliminary Subdivision, off Washington Street: Mr. Broadrick reported that he had met with the applicants' legal counsel, Atty. Peter Freeman, regarding this project which received preliminary approval by the Board in February 2009. Because of an earlier Approval Not Required (ANR) plan which divided the property into five lots, any future subdivision would initiate the applicability of the Inclusionary Bylaw.

Instead of paying a fee in lieu of affordable housing, Mr. Broadrick reported that the applicants are interested in purchasing a property at a different location in town that could be used for affordable housing. Mr. Broadrick advised Atty. Freeman that his clients would be required to find an agent for affordable housing under this scenario. Generally the agent would be someone who is familiar with the Local Initiative Program process, and Mr. Broadrick recommended that the applicant follow the guidance of Atty. Freeman. Ms. MacNab agreed, commenting that if the applicants choose to go this route, it would help to accomplish the purpose of the Affordable Housing Bylaw.

OPEN FORUM

Affordable Housing Property Bylaw: Mr. Wadsworth reported that the Local Housing Partnership (LHP) is considering a new affordable housing property bylaw modeled after a similar one in the Town of Dennis, and they are looking for the Board to provide a draft bylaw. The special permit would be granted through the Planning Board, not the Zoning Board of Appeals. Review by other land use boards such as Board of Health and Conservation Commission, if required, would not be waived.

Mr. Wadsworth stated that the LHP is aware that the Planning Board does not support the Chapter 40B process, and offers this bylaw as a way to provide density on lots that currently do not meet zoning regulations. Multiple dwellings would be allowed for up to a total of four bedrooms per lot.

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Mr. Broadrick offered to schedule the Dennis Town Planner, Mr. Daniel Fortier, to attend a future Board meeting to discuss how the bylaw works. Ms. MacNab suggested that Mr. Broadrick speak to Mr. Fortier to find out more information.

Affordable Accessory Apartment Bylaw: Mr. Wadsworth reported that the Local Housing Partnership (LHP) has decided not to pursue this potential bylaw because they do not believe residents will support it due to the fact that the owner loses control over who would live in the accessory apartment. Ms. MacNab stated that accessory apartments should be by special permit, not by right.

South Shore Coalition: Mr. Cutler advised the Board that he will be attending his first meeting as Planning Board representative to the South Shore Coalition on Thursday, July 16, 2009, as will Mr. Broadrick as staff liaison.

OTHER BUSINESS

Meeting Minutes:

MOTION: Mr. Bear made a motion, and Mr. Wadsworth provided a second, to approve meeting minutes of June 8, 2009 as amended.

VOTE: The motion carried unanimously (4-0), as Mr. Bear was attending a portion of a Board of Selectmen meeting and was not present for the vote.

ADJOURNMENT

The Planning Board meeting adjourned at 9:15 PM. The next meeting of the Planning Board will take place on Monday, July 27, 2009 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.