



Town of Duxbury Massachusetts Planning Board

Minutes 08/24/09

The Planning Board met in the Duxbury Town Hall, Lower Level, Small Conference Room on Monday, August 10, 2009 at 7:00 PM.

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

Absent: Harold Moody

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

Ms. MacNab called the meeting to order at 7:02 PM.

OPEN FORUM

Freeman Farms Subdivision, off Elm Street: Atty. Jay Norris and Mr. John Moon were present to represent the developer, Mr. Bradford Cushing of Elm Street Realty Trust, and five residents of the neighborhood were also present. Atty. Norris stated that the developer is requesting a proposed change to the subdivision to remove a requirement for sidewalks and to add ten to twelve streetlights. Atty. Norris stated that sidewalks are not appropriate for the character of this neighborhood, and streetlights are requested as a safety issue due to residents' concerns. He said that the neighbors would like to address the Board also.

Ms. MacNab noted that this same request has come up a number of times and this type of change is considered a modification of the subdivision plan, not a simple field change. She stated that she did not want to discuss the merits of the request other than to make it clear that these changes would require a subdivision modification filing.

Atty. Norris pointed out that sidewalks were removed at Rogers Way, another subdivision by the same developer. Ms. MacNab noted that the Rogers Way subdivision was settled under litigation. Mr. Broadrick added that the original Rogers Way approval did not include sidewalks, so it was a different situation.

Mr. Mike Schultz of 26 Icehouse Lane asked why these requests are not considered a field change, and Ms. MacNab explained the public hearing process for a subdivision modification, noting that the conditions of subdivision approval had been considered carefully by the Board.

Mr. David Kelly of 65 Cushing Drive asked who can apply for a subdivision modification, and Ms. MacNab responded that the subdivision applicant would apply for a modification.

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Mr. William Ellison of 55 Cushing Drive asked about a typical timeline for a subdivision modification, and Mr. Broadrick explained the process, noting that it may take approximately three months.

Mr. Moon of Elm Street Realty Trust asked if 17 sets of plans and a consulting engineer would be required for a subdivision modification and Mr. Broadrick responded that they would. Mr. Moon asked why a drainage project done by former Department of Public Works Director, Mr. Thomas Daley, did not require subdivision modification, and Mr. Broadrick responded that the drainage work was performed outside of the subdivision.

Mr. Kelly asked if there is any other way that the subdivision can be modified without the original applicant filing. Mr. Broadrick responded that once all the lots are developed, a homeowners' association could be developed and they could then apply for a modification. Currently, however, Mr. Cushing of Elm Street Realty Trust is in control. Ms. MacNab emphasized that the neighborhood needs to work with Mr. Cushing to accomplish the changes they want.

Mr. Schultz asked what the criteria are to determine what is a modification versus a field change, and Ms. MacNab responded that the basis is determined by the Board through Subdivision Rules & Regulations. She noted that the public hearing process is an important component of the subdivision modification because it allows input from a consulting engineer, project abutters and police and fire departments.

Mr. Kelly asked about the roadway acceptance process, and Ms. MacNab and Mr. Broadrick explained that process, noting that usually the entire subdivision is built before roadway acceptance by the Town.

Mr. Paul Zack of 20 Cushing Drive asked if there would be any recourse if Mr. Cushing will not make the changes the residents are requesting, and Mr. Broadrick suggested that the neighborhood might need to seek counsel.

ANR PLAN OF LAND: 0 & 692 UNION STREET / JOHNSON & VANCHERI

Mr. Broadrick requested that the Board consider this ANR application that had been submitted after the Board packets had gone out. Board members briefly reviewed the plans, noting that there had been a question on the property regarding excessive tree clearing. Mr. Broadrick agreed to look into the matter.

Board members agreed that more time is needed to review the plans, and they signed a mutual extension form that had already been signed by the applicant's representative. The ANR plan will be reviewed at a Board meeting of September 14, 2009 at 7:05 PM.

ZBA REFERRAL: 237 KING CAESAR ROAD / TARIOT

No one was present to represent this special permit application to construct a 3' 4" x 12' potting shed to a pre-existing nonconforming dwelling that violates setback requirements. Mr. Broadrick noted that the addition would not further impinge on setbacks.

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MOTION: Mr. Bear made a motion, and Mr. Cutler provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit application for 237 King Caesar Road / Tariot.

VOTE: The motion carried unanimously, 6-0.

WORK SESSION

Duxbury Comprehensive Plan Update: Mr. Broadrick noted that the summer intern, Ms. Julia Nissi, had provided an excellent report with her recommendations for the update. She had summarized that the layout does not need to be revised and the Executive Summary will require updating. At the next Board meeting Mr. Broadrick will submit his staff recommendations. He also proposed a timeline for review and adoption of the Comprehensive Plan, with a target date of December 7, 2009 for a public hearing and January 25, 2010 for Board approval.

Lot Coverage/Stormwater Best Management Practices: Mr. Broadrick noted the importance of all Town boards agreeing on a definition of site coverage. He noted that currently business districts allow fifty percent coverage, meaning fifty percent of the property can have nothing on it. According to recent EPA literature, pervious pavers are superior to impervious paving with drainage systems or swales. In light of this finding, he asked the Board to consider allowing pervious pavers in the open space portion of a lot in business districts. Ms. MacNab noted that this finding on pervious pavers represents a change in technology that flies in the face of everything she has been taught previously.

Mr. Wadsworth asked what happens with materials that flow into the pervious paved area. Mr. Broadrick responded that the water quality improves as it reaches groundwater.

Ms. Ladd-Fiorini noted that many current businesses already have greater than fifty percent site coverage, including some that got around the requirements by including gravel parking. Mr. Broadrick agreed that over time, these gravel areas eventually become packed down and become impervious.

Ms. MacNab noted that the concept of open space is highly valued by residents. She expressed concern that if pervious pavers are allowed on open space, the entire lot may be covered with no real open space. Mr. Wadsworth agreed, noting his issue with water quality and his concern that pervious pavers have no biological changes taking place. Mr. Bear also agreed, noting that this is the first time he has heard a report like this and would need more evidence to be convinced. Mr. Cutler agreed with concerns expressed by others, noting that he would consider a septic system to be part of open space because you cannot see it above ground. Mr. Cutler noted that the intent is to increase the amount of parking.

Mr. Broadrick noted that if open space is free of parking, it may put a constraint on local businesses. He asked if Board members would consider allowing Low Impact Design (LID) drainage on the open space portion of a lot. Mr. Halligan noted that it might encourage LID drainage. Ms. Ladd-Fiorini questioned whether this might be more restrictive to businesses, considering gravel parking would no longer be allowed to be considered part of open space.

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Mr. Cutler recommended implementing a two-tiered system of site coverage requirements based on lot size. Ms. MacNab recommended a sliding scale. Mr. Wadsworth expressed concerns with this type of approach, noting that a developer could get around requirements by developing a large lot in smaller sections. He suggested that a system similar to the inclusionary bylaw could be considered, where if an amount of land is developed over time, stricter lot coverage requirements would kick in.

Mr. Broadrick summarized that site coverage definition could be updated, not to increase building coverage but to allow LID improvements. The goal would be to protect the groundwater. He noted that many towns are gaining additional parking by relaxing current parking restrictions. Mr. Halligan noted that with the current economic downturn parking does not appear to be a critical issue. Mr. Broadrick noted that declining property values are also a consideration. Ms. MacNab noted that the current fifty percent site coverage maximum has made Duxbury the beautiful town it is and has helped to sustain high commercial property values.

Mr. Broadrick agreed to do research to find examples of lot coverage from other similar towns, to determine if stormwater bylaws are mandated, and to propose a draft definition of open space for a future Board meeting. Ms. MacNab expressed that it may be difficult to write a definition that would satisfy everyone.

OTHER BUSINESS

Duxbury Crossing Land Clearing: Ms. MacNab noted that after the last Board meeting, it was discovered that the land clearing settlement Board members reviewed had not been finalized. She recommended that the Board urge the Zoning Board of Appeals (ZBA) to place a lien on the property as allowed by a vote of Annual Town Meeting 2009.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, that the Board send a letter to the Zoning Board of Appeals chairman, with a copy to the Town Manager and Board of Selectmen, to urge the ZBA to act immediately to do everything that is necessary and appropriate to put an attachment on the Duxbury Crossing property for fines that have accrued over \$90,000 to date.

DISCUSSION: Mr. Bear questioned if this is a Board matter or a ZBA matter, and Mr. Wadsworth and Mr. Cutler suggested that it is a ZBA matter. Ms. MacNab noted that there would be no harm in sending a letter requesting that the ZBA take action.

VOTE: The motion carried unanimously, 6-0.

Pratt Circle Litigation: Ms. MacNab asked if a counterclaim can be amended, and Mr. Halligan confirmed that it can. Ms. MacNab requested that the Board meet with Town Counsel, Atty. Robert S. Troy, to provide him with information that she believes could be useful in augmenting the Town's counterclaim. Staff agreed to request that Ms. MacNab speak to Atty. Troy beforehand.

Meeting Minutes:

MOTION: Mr. Halligan made a motion, and Mr. Wadsworth provided a second, to approve meeting minutes of August 10, 2009 as amended.

VOTE: The motion carried, 4-0-2, with Mr. Bear and Ms. Ladd-Fiorini abstaining.

ADJOURNMENT

The Planning Board meeting adjourned at 9:47 PM. The next meeting of the Planning Board will take place on Monday, September 14, 2009 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.