



Town of Duxbury Massachusetts Planning Board

Minutes 09/28/09

The Planning Board met in the Duxbury Town Hall, Lower Level, Small Conference Room on Monday, September 28, 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 7:05 PM.

OPEN FORUM

Alternative Energy Committee: Mr. Cutler informed the Board that the Alternative Energy Committee is close to having a Wind Facilities Bylaw drafted and would like to work with the Board to work toward approval at Annual Town Meeting 2010. Ms. MacNab noted that, as Special Permit Granting Authority, the Zoning Board of Appeals should be involved as well.

Lot Coverage Bylaw Revision: Mr. Broadrick reported that Dr. Scott Oliver, resident and owner of 95 Tremont Street medical building, is interested in bringing the lot coverage bylaw back to Annual Town Meeting 2010. At last year's Town Meeting, the motion failed due to lack of consensus on the appropriate maximum site coverage.

Mr. Broadrick reported that he and Mr. Scott Lambiase, Director of Inspectional Services, had met with Dr. Oliver to question why work was performed without notifying the Zoning Board of Appeals, as required in their special permit. Dr. and Mrs. Oliver responded that they were not aware this was a condition of their special permit. Mr. Broadrick added that the work performed is similar to the requirements of the special permit, except that a liner was not installed underneath the new parking area, and gravel was used rather than pavers. Mr. Wadsworth suggested that Mr. Broadrick speak with Zoning Enforcement Office, Mr. Scott Lambiase, about this apparent violation of a special permit.

Mr. Broadrick reported that Dr. Oliver is interested in moving forward with a Lot Coverage bylaw that would allow up to 80 percent coverage in Neighborhood Business Districts, which would conform to the coverage for Dr. Oliver's medical building. Mr. Broadrick reported that Dr. Oliver would like to attend the Board's meeting of October 26, 2009 to discuss the Lot Coverage bylaw.

Ms. MacNab objected to the idea of an applicant violating a special permit because he wants to see a change to a Zoning Bylaw. She stated that, although the Board meetings are open to the public and

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.

anyone can attend, she is not interested in pursuing an amendment to the Lot Coverage bylaw at this time. She stated that a solid rationale will be required in order to put an amendment forward. Board members agreed that it was not appropriate to pursue an amendment to the Zoning Bylaws regarding lot coverage until further research can be gathered that would provide a reason for doing so. Staff was directed to respond to Dr. Oliver that he is welcome to attend the meeting under Open Forum.

WORK SESSION

Duxbury Comprehensive Plan Update: Board members reviewed a list of staff recommendations for updating the 1999 Comprehensive Plan. The Board held an extensive review and discussion of the 1999 Plan chapter by chapter based on recommendations outlined by the Planning Director in his memorandum dated September 23, 2009. It was agreed that there would be no substantial changes, only updates. After it is completed, the update will be reviewed by department heads at a future Development Review Team meeting.

ANR Reform Proposal: Mr. Broadrick noted that a statewide ZRWG (Zoning Reform Working Group) has been considering proposed changes to MGL c. 40A and c. 41 mainly to tie the amendment of zoning bylaws to comprehensive plans, as has already been accomplished by the Town of Duxbury. Part of the strategy is to reform the ANR provisions. Mr. Broadrick predicted that the Town is likely to see fewer and fewer definitive subdivision plans and more ANR and Minor Subdivisions, adding that this may be the direction the Commonwealth will follow as well.

Ms. MacNab asked if this reform would eliminate the Approval Not Required (ANR) process, and Mr. Broadrick responded that it would not eliminate the ANR process but would allow Minor Subdivisions as long as they met certain criteria. Ms. MacNab noted that abutters already complain about not receiving notifications regarding ANR applications, and to allow minor subdivisions through the ANR process would mean even fewer abutters would be notified.

Annual Town Meeting 2010 Potential Zoning Articles:

- *Lot Coverage:* Mr. Broadrick offered to pull As-Built plans for review of current commercial properties that have gone through the Administrative Site Plan Review process, but Board members agreed that As-Built plans may not be accurate due to changes made by business owners without modification of their permits. Ms. MacNab stated that she would be interested in finding out the position of other land use boards on this topic.
- *Wind Facilities Bylaw:* Mr. Cutler reported that the Alternative Energy Committee should have a proposed bylaw draft ready for review within the next few weeks.
- *Stormwater Bylaw:* Ms. MacNab reported that the Conservation Administrator, Mr. Joseph Grady, sees no urgency for the adoption of a stormwater bylaw at this point in time.
- *Bravender Way Extension Street Acceptance:* Mr. Broadrick reported that a citizen's petition is being sought by homeowners, and he has explained the process to them. It appears that the homeowners are reluctant to incur the costs of improving the roadway.
- *Administrative Site Plan Review:* Mr. Wadsworth noted that exempt uses need to be removed from this bylaw in light of a recent upholding of the Bay Farm Montessori v. Town of Duxbury decision that nonprofit and educational uses are exempt from Site Plan Review.

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.

Joint Meeting with Planning Board and Zoning Board of Appeals: Mr. Broadrick requested the Board's input regarding who to invite and what the topics would be. He asked if Mr. Richard MacDonald, Town Manager, and Mr. Scott Lambiase, Director of Inspectional Services and Zoning Enforcement Officer, should be invited. Potential topics include:

- Massing
- Upcoming Zoning Bylaw amendments
- ZBA decisions that do not match Planning Board recommendations.

It was agreed that both Mr. MacDonald and Mr. Lambiase should be invited. Mr. MacDonald could join just for the initial discussion.

It was also agreed that a separate meeting between Mr. Broadrick, Town Counsel, Atty. Robert Troy, and Mr. Lambiase could address enforcement issues regarding double density (two dwellings on one lot) and possible enforcement of a Site Plan Review violation. Ms. MacNab noted that the definition of "dwelling" may need to be reconsidered.

OTHER BUSINESS

Bay Farm Montessori Academy v Town of Duxbury: Mr. Broadrick noted that in light of the recent appeal which reaffirmed that exempt uses are not subject to Site Plan Review, it needs to be defined which types of exempt uses would be affected. He noted that daycare businesses would most likely be exempt from Site Plan Review, although the decision would be up to Mr. Scott Lambiase, Director of Inspectional Services. Ms. MacNab stated that the recent court decision will result in a loss for the Town because applicants may attempt to stretch the interpretation of "school" to include businesses such as horseback riding or residential day care as exempt.

White/Pratt Circle v Town of Duxbury: Mr. Broadrick noted that Town Counsel, Atty. Robert Troy, is aware of Atty. Robert Galvin's involvement in this case although a different counsel, Atty. Robert Marzelli, is now representing the plaintiff.

ADJOURNMENT

The Planning Board meeting adjourned at 10:35 PM. The next meeting of the Planning Board will take place on Wednesday, October 14, 2009 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.