



Town of Duxbury Massachusetts Planning Board

Approved 01/25/10

TOWN CLERK
10 FEB 25 PM 1:18
DUXBURY, MASS.

Minutes 11/23/09

The Planning Board met in the Duxbury Town Hall, Lower Level, Small Conference Room on Monday, November 23, 2009 at 7:00 PM.

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

Absent: Brendan Halligan, Clerk.

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

Ms. MacNab called the meeting to order at 7:08 PM.

OPEN FORUM

Freeman Farms: Mr. Mark Casey was present to represent Elm Street Realty Trust regarding a potential modification of Freeman Farms. Mr. Casey asked about the fee structure and review requirements for a modification to eliminate sidewalks and add streetlights to the subdivision. Mr. Casey explained that there would be no additional work done nor any proposed changes to lot lines.

Ms. MacNab noted that the fee for subdivision modification is \$100 per lot plus escrow account replenishment to \$3,000 for consulting engineer review. Mr. Casey responded that he felt that amount seems excessive for the limited scope of modification proposed. Ms. MacNab noted that the escrow account would only be used if needed and the unused portion is returned to the applicant with interest. Mr. Broadrick noted that the applicant needs approval from each mortgage holder in the subdivision in order to file a subdivision modification.

Other Open Forum items were deferred until later in the meeting.

ZBA REFERRAL: 21 CHESTNUT STREET / GRIFFIN

Mr. Casey remained at the meeting to represent the applicant, Mr. Griffin, and was joined by the applicant's attorney, Phillip Markella. Atty. Markella explained that the special permit would allow reconstruction of an existing garage in the rear of the lot that would be used for additional office space, storage and indoor parking.

Ms. MacNab noted that Zoning Bylaws do not reference accessory structures in Neighborhood Business Districts. She added that Town Counsel has made it clear in the past that if an accessory use is not expressly allowed, then it is prohibited. Atty. Markella objected that it was an accepted use for the zone, and Ms. MacNab clarified that while the primary use is allowed, the proposed special permit appears to be for an accessory use. Atty. Markella noted that the accessory use is directly related to the primary use.

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Mr. Broadrick referenced Zoning Bylaws Section 302 (Definitions) for accessory structure, defined as "a structure such as a detached garage, shed, swimming pool, tennis court, pier, or greenhouse, located on the same lot with and accommodating a use accessory to the principal structure or use of the lot..." He noted that the proposed accessory use includes office space, which does not appear to be an accepted accessory use. Mr. Broadrick also noted ZBL Section 421.3 (Uses and Structures That May Be Permitted Subject to a Special Permit and Site Plan Requirement), noting that the only dwelling arrangement allowed is in a business structure above the ground floor.

Atty. Markella noted that there is no living space proposed, and Mr. Bear responded that architectural drawings depicting three bedrooms and two full baths indicate a dwelling. He noted that although the wording on the architectural drawings had been revised to "office space" rather than "bedroom," it still appears to be an apartment. Atty. Markella noted that as a publishing business there are frequent deadlines, and a comfortable space is needed to accommodate those long hours for employees. The proposed space is not intended to be used for rental income.

Ms. MacNab asked about additional traffic or parking requirements and if the proposal would undergo Site Plan Review as well. Atty. Markella noted that no new employees are anticipated.

Mr. Broadrick noted that according to the original Site Plan Review approval Condition #27, "Future modification of the existing garage to another use other than storage may require additional parking spaces and/or require a new filing..." Additionally, Condition #28 states that "Any proposal to either reconfigure or add additional parking spaces...shall require the property owner to return to the Planning Board for consultation...a new submission under the Administrative Site Plan review process may be required." Mr. Wadsworth noted that with 300 square feet of additional office space proposed, four parking spaces would be required according to ZBL Section 603 (Parking).

Ms. Ladd-Fiorini asked if a new building is proposed on the site of the existing detached garage, and Mr. Casey responded that the existing garage will be razed. Atty. Markella indicated that it was his understanding that a small portion of the existing structure will remain. Ms. MacNab objected that nowhere in the special permit application is it indicated that the existing detached structure would be razed. Mr. Bear agreed, noting that the application should clearly state what is intended and therefore the application is inadequate.

Ms. MacNab advised Atty. Markella to obtain a special permit for the use first before filing a new Administrative Site Plan Review with the Planning Board. She stated that she does not see where Zoning Bylaws allow razing an accessory structure to build a new office/apartment.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to recommend denial of this request for amendment to a special permit for 21 Chestnut Street (Griffin), noting the following issues:

- The application appears to be flawed, with no reference or notation on proposed plans to a complete teardown of the existing detached structure. During discussions the Board was given conflicting information from the applicant's representatives regarding whether the structure will be partially or completely razed. If the existing garage is to be razed, then any new accessory structure must comply with current Zoning Bylaws.

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- Architectural drawings appear to depict a second story living space with three bedrooms and two full bathrooms. According to ZBL Section 302, "accessory structure" is defined as "a structure, such as a detached garage, shed, swimming pool, tennis court, pier or greenhouse," not a dwelling unit. Even if the space is used as office space as described by the applicant's attorney, it is also questionable if this type of use is allowed according to Zoning Bylaws.

DISCUSSION: Mr. Cutler asked Atty. Markella if he had any further comment, and Atty. Markella declined to comment. Further discussion ensued regarding the triggering of Administrative Site Plan Review.

VOTE: The motion carried 5-1, with Mr. Moody voting against.

Ms. MacNab suggested that Atty. Markella advise his client to amend his special permit application to address Planning Board concerns.

ANR PLAN OF LAND: 160 WASHINGTON STREET / HINKLEY

Mr. Bear recused himself from the discussion. The owners, Mr. Clark Hinkley and Mrs. Jane Hinkley, were present for this discussion, along with their representatives, Atty. Peter Freeman and Mr. Brendan Sullivan of Cavanaro Consulting. Atty. Freeman noted that in February 2009 the Planning Board approved a Preliminary Subdivision for this same land to include a cul de sac. His clients have now chosen to go forward with an Approval Not Required (ANR) plan that would require less pavement. The subdivision of this land would trigger a special permit for inclusionary housing according to Zoning Bylaws Section 530.

Atty. Freeman noted that time is of the essence as his client is under agreement to purchase an offsite location to meet the requirements of the inclusionary housing special permit. He requested an informal reaction from the Board regarding the offsite property.

Mr. Sullivan presented the ANR plan, noting that each lot has 200 feet of frontage on Washington Street, and adequate upland exists on both lots. Ms. Ladd-Fiorini noted that the Assessor's property card shows a total frontage of 377.48 feet, not 400 feet. Ms. MacNab noted that the stamped surveyed plan shows 400 feet and Mr. Sullivan confirmed that markers are still in place from the preliminary subdivision.

Mr. Broadrick asked if a Land Court filing is anticipated since part of the land is under Land Court, and Atty. Freeman confirmed that it would be submitted to an engineer at Land Court. Mr. Broadrick advised Atty. Freeman that the Land Court may require a separate ANR filing with the Planning Board with appropriate Land Court language.

Mr. James Lampert of 148 Washington Street noted that his driveway is at the edge of the property line with 160 Washington Street.

Ms. MacNab noted that the two-lot ANR triggers the filing of an inclusionary housing special permit because it represents the sixth lot to be created from the original parcel of land. Since the special permit has not been filed as of yet, she asked Atty. Freeman if his client is willing to extend the ANR discussion.

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Atty. Freeman stated that he would need to check with his client, and indicated their general intention to cooperate.

Mr. Clark Hinkley addressed the Board, noting that they are attempting to satisfy the inclusionary bylaw special permit requirements by purchasing an offsite dwelling property to apply to the town's affordable housing inventory. He stated that he had contacted the Duxbury Housing Authority which is awaiting state approval of the proposed property. The ANR application is another piece of the process. Mr. Hinkley asked for the Board's guidance on how to proceed.

Ms. MacNab noted that although the ANR is straightforward, it is the "cart before the horse." She suggested that the Board could either hold off on approval or else approve the ANR subject to a notation on the ANR plan. Atty. Freeman objected to a notation on the ANR plan.

Mr. Moody asked about the offsite housing as an alternative to a fee in lieu of affordable housing, questioning if value is a consideration. Mr. Hinkley responded that he prefers to add housing rather than putting money in an affordable housing account. Mr. Wadsworth asked if this housing would be provided to the Duxbury Housing Authority, and discussion ensued regarding the ownership of the property and if value is a consideration. It was agreed to continue the special permit discussion at a public hearing scheduled for December 14, 2009, and to continue the ANR discussion until January 4, 2010.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to continue discussion of an ANR Plan of Land at 160 Washington Street to January 4, 2010, with a decision deadline of January 5, 2010.

VOTE: The motion carried 5-0-1, with Mr. Bear abstaining.

Mr. and Mrs. Hinkley signed an ANR extension form to be stamped with Town Clerk the following business day.

SPECIAL PERMIT FOR INCLUSIONARY HOUSING

Board members reviewed and approved a proposed "Special Permit for Inclusionary Housing" application form, suggesting minor improvements.

ANNUAL TOWN MEETING 2010 WARRANT ARTICLES

Board members reviewed a list of warrant articles for Annual Town Meeting 2010, including:

- Proposed Wind Facilities Bylaw
- Green Communities amendment to list of uses for Zoning Bylaws (ZBL) Section 421.3
- Proposed amendments to ZBL Section 615 (Administrative Site Plan Review) removing educational and religious uses
- Adoption of revised Flood Rate Insurance Maps (FIRM) published by FEMA
- Affordable Housing Trust Allocation Plan
- GIS Revolving Account.

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Proposed Wind Facilities Bylaw: Mr. Cutler, who serves as Board liaison to the Alternative Energy Committee, which is sponsoring the article, noted that the Publicly Owned Overlay District (POLO) fits the needs for proposed wind facilities sites. He also noted that the Zoning Board of Appeals (ZBA), which would oversee wind facilities special permits, has recommended revisions.

Mr. Bear asked if the municipality would be the applicant and owner, and Mr. Cutler responded that the applicant could be a nonprofit that wants to fund a wind facility. Mr. Bear asked if meteorological towers had been removed from the proposed bylaw, and Mr. Cutler stated that they should be included.

Mr. Bear asked who would pay the special permit fees. Mr. Halligan noted that a fund may need to be set aside in case if the facility becomes abandoned, for example. Mr. Bear also commented that an expert that is not a proponent should review the proposed bylaw to provide objective feedback. Board members generally gave thanks for their work so far in producing a wind facilities bylaw.

Proposed Amendments to ZBL Section 615 (Administrative Site Plan Review): Mr. Bear noted that municipal owners should not be exempt from Site Plan Review.

Adoption of Revised Flood Rate Insurance Maps (FIRM) published by FEMA: Mr. Broadrick noted that the map data has not changed, simply the format.

OTHER BUSINESS

Meeting Minutes:

MOTION: Mr. Moody made a motion, and Mr. Cutler provided a second, to approve meeting minutes of November 9, 2009 as written.

VOTE: The motion carried unanimously, 6-0.

Multiple Dwellings on One Lot: Ms. MacNab and Mr. Broadrick reported on a meeting they attended on November 16, 2009 with Town Counsel Atty. Robert S. Troy; Mr. Scott Lambiase, Director of Inspectional Services and Zoning Enforcement Officer; and Mr. Dennis Murphy, chair of the Zoning Board of Appeals. Ms. MacNab reported that Atty. Troy made it clear that only one dwelling is allowed per lot. Every other structure on a property would be accessory. According to Zoning Bylaws, the definition of accessory is very narrow, including structures such as sheds or garages. Ms. MacNab reported that Atty. Troy stated that accessory dwellings are not allowed. No change in Zoning Bylaws is necessary; only enforcement can remedy the current issues with two dwelling structures on one lot.

Mr. Broadrick noted that Atty. Troy stated that enforcement can occur up to six years after the structure is built. He and Mr. Lambiase plan to discuss the issues further with Town Manager, Mr. Richard MacDonald, who was a former Director of Inspectional Services.

Other Zoning Enforcement Issues: Mr. Broadrick brought up a recent Board complaint regarding garages with greater than three stalls, which are not allowed by current Zoning Bylaws. Mr. Bear added that a recent sign complaint was not followed up by the Zoning Enforcement Officer. Ms. MacNab encouraged staff to work in-house to resolve these issues.

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ADJOURNMENT

The Planning Board meeting adjourned at 10:32 PM. The next meeting of the Planning Board will take place on Monday, December 14, 2009 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.

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