



Town of Duxbury Massachusetts Planning Board

TOWN CLERK
10 FEB 24 AM 10:59
DUXBURY, MASS.

Minutes 12/14/09

The Planning Board met in the Duxbury Town Hall, Lower Level, Small Conference Room on Monday, December 14, 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 7:07 PM.

OPEN FORUM

No Open Forum items were introduced.

ZBA REFERRAL: 31 OCEAN ROAD / FREER

Because it was not yet time for the scheduled public hearings, the Board addressed a Zoning Board of Appeals (ZBA) referral regarding the proposed construction of a second-floor addition and deck to a pre-existing nonconforming dwelling that is located within the Velocity Zone on FEMA maps dated 2008. Mr. Broadrick noted that Conservation Commission Rules and Regulations currently prohibit construction within the Velocity Zone.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit application for 31 Ocean Road North (Freer) and to recommend that the ZBA consider first the Conservation Commission Wetlands Protection Bylaw Chapter 9 Rules and Regulations specifically prohibiting additions to existing structures in the V-zone as shown on the most recent FEMA maps.

In addition, the Board notes that while Section 402.3 of the Zoning Bylaw allows improvements to existing structures in the Flood Hazard Areas Overlay District, special note should be made to the reference of the prohibition of buildings in the Wetlands Protection Overlay District per ZBL Section 404.5.4 which references ZBL Section 404.9c., second bullet, "The site is not subject to inundation in a 100-year flood," which is clearly the case in a V-zone.

VOTE: The motion carried unanimously, 5-0.

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

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PUBLIC HEARING: DEFINITIVE SUBDIVISION APPLICATION: CUSHING'S RETREAT, 287 SUMMER STREET (ACCESS OFF OLDE PASTURE ROAD)

Ms. MacNab opened the public hearing at 7:16 PM. Present for the discussion was Mr. Mark Casey representing the applicant, Elm Street Realty Trust. Mr. David Glenn of Fay, Spofford and Thorndike was also present as the Town consulting engineer. Mr. Wadsworth read the correspondence list into the public record:

- Definitive subdivision application and plans submitted on 11/12/09
- Transmittal memo from D. Grant to D. Glenn dated 11/17/09 re: consulting engineer review material
- Public hearing notice published in the *Duxbury Clipper* on 11/25/09, 12/02/09 and 12/09/09
- Letter from F. Orłowski dated 11/28/09 re: abutter's suggested change in access
- Fax from D. Grant to D. Glenn dated 11/30/09 re: copy of abutter's letter
- Fax from D. Grant to M. Casey dated 11/30/09 re: copy of abutter's letter
- Development Review Team minutes of 11/30/09
- Letter from D. Glenn dated 12/09/09 re: consulting engineer's review
- Memo from T. Broadrick to Planning Board dated 12/09/09 re: staff review.

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Ms. MacNab disclosed that her husband, James MacNab, has a business relationship with the owner, Mr. Bradford Cushing of Elm Street Realty Trust. She asked if the applicant had any issue with her participation in the subdivision application, and Mr. Casey responded that he had no problem with her participation.

Mr. Casey presented the application as 3.39 acres of land with frontage on Summer Street that is located within the Residential Compatibility and Aquifer Protection Overlay District (APOD). The APOD requires 60,000 square feet of upland for each lot. Olde Pasture Lane abuts the lot and access is proposed off of Olde Pasture Lane in order to minimize roadway surface required. The applicants propose to maintain the current dwelling lot and divide the back portion as a new buildable lot.

Mr. Wadsworth asked if water service could be accessed from Olde Pasture Road, and Mr. Casey responded that they do not have that information yet, but if it is not available they would loop with Summer Street or construct a well.

Mr. Broadrick noted that the Development Review Team (DRT) recommended that a hydrant be installed at the end of the Old Pasture Road cul-de-sac. Mr. Frank Orłowski of 37 Olde Pasture Road informed the Board that the water main is located 175 feet from the end of the cul-de-sac.

Mr. Bear noted that a waiver would be required for frontage, and Mr. Casey responded that the frontage would be obtained from a new cul-de-sac that would be shown on the plan but not constructed in order to decrease impervious coverage for this one single family lot.

Ms. MacNab noted that she had asked Planning staff to determine if any covenants had been place on the original Olde Pasture Road subdivision approval that would prohibit further construction and no such covenant exists.

Mr. David Glenn, town consulting engineer from Fay, Spofford & Thorndike, noted that no preliminary plan had been submitted. He pointed out a discrepancy between the total area depicted on the plan (2.92 acres) and on the Town's GIS map (3.35 acres). Mr. Casey noted that the area depicted on the plan does not include the "paper street" from which the new lot would obtain frontage.

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Mr. Glenn questioned the idea of obtaining frontage from a paper street, noting this is an issue for the Planning Board to determine if appropriate. Access to the new dwelling would be obtained from a 14-foot wide driveway to be constructed. He noted that the application meets area requirements for both lots, including the 60,000 square foot requirements for lots within the APOD.

An existing cesspool and water connection are not shown on current plans. Mr. Wadsworth asked what the well service was for, and Mr. Casey responded that he assumed it was for irrigation purposes, since the property was once used for light agricultural farming. Mr. Glenn stated that he had inspected the site to confirm that outbuildings depicted on the plan were as stated, such as a coop, a barn, etc.

Ms. MacNab noted that Lot A which contains an existing dwelling shows a cesspool and asked if an upgrade would be required as part of the subdivision approval. Mr. Wadsworth noted that the dwelling had been conveyed in 2006, questioning why the septic had not been updated at that time. Staff agreed to look into the matter.

Referencing his engineering review letter of December 8, 2009, Mr. Glenn stated that control of stormwater runoff from the proposed project site needs to be addressed by the applicant. Mr. Casey noted that a profile for runoff can be provided on a revised plan. Ms. MacNab suggested that the Board could consider a condition for approval of vegetation along the proposed driveway in order to treat stormwater runoff. Mr. Wadsworth suggested a low-intensity design (LID). Mr. Glenn noted that roof runoff could be diverted to a drywell, or the driveway could be composed of pervious material. Mr. Casey agreed to the roof runoff to drywell option. Mr. Wadsworth noted that due to the sensitivity of land near the aquifer, nitrogen loading mitigation would be helpful.

Ms. MacNab noted that the applicants had requested a waiver from an Environmental Impact Report. She stated that conditions could be included in the decision that would address stormwater runoff treatment.

Mr. Glenn stated that because a portion of the proposed 14-foot wide paved driveway is located within the existing Olde Pasture Road right-of-way, he recommends that the applicants consult with the Department of Public Works (DPW) prior to construction. Mr. Casey agreed, noting that they intend to provide an Operations and Maintenance Plan as well. Mr. Wadsworth advised the applicant to consult with the DPW before subdivision approval.

Ms. MacNab stated that Subdivision Rules and Regulations do not allow subdivision extensions beyond 1,000 feet in length, noting that the proposed roadway is well under that limit. Mr. Broadrick noted that Olde Pasture Road is approximately 650 feet in length.

Ms. MacNab opened the floor to public comment.

Mr. Frank Orłowski of 37 Olde Pasture Road noted that he had submitted a letter to the Planning Board dated November 28, 2009 suggesting that the driveway be relocated to access off of Summer Street rather than Olde Pasture Road, in order to preserve this cul-de-sac as it has been for the past forty years. Ms. MacNab noted that the Board can only react to plans presented, not design plans. Mr. Casey noted that access off of Summer Street would require a road layout of approximately 50 feet plus a radius. Access off the road of 110 feet wide would be required. The plan as proposed would require much less pavement.

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Mr. Roger Meine of 25 Eli's Lane was given guidance on how the square footage of the proposed lots was calculated. He also asked if there is a limit to the size of the new structure to be built. Ms. MacNab noted that the new structure cannot exceed 15 percent lot coverage. Mr. Meine asked about the amount of discharge allowed considering the area has a high water table, and Ms. MacNab responded that the Board of Health would address that issue.

Mr. Meine expressed concern that a Title 5 inspection was not done when the existing dwelling was purchased. Staff agreed to look into the matter.

Mr. Michael Powers of 8 Olde Pasture Road asked about the water service to the new lot and Ms. MacNab explained the process.

Mr. Bennett LaFrance of 34 Bay Road asked if the Fire Department had reviewed the application, and Ms. MacNab explained that a Development Review Team (DRT) meeting was held to include all departments, including the Fire Department. The outcome of the DRT was that a fire hydrant is recommended, to be installed by the applicant.

Mr. Donald Moreau of 24 Olde Pasture Road objected that the existing cul-de-sac would change with this proposal, and Mr. Wadsworth explained that the cul-de-sac shown on the subdivision plan will not be built, only a driveway.

MOTION: Mr. Bear made a motion, and Mr. Cutler provided a second, to continue the public hearing for the Cushing's Retreat subdivision until February 8, 2010 at 7:05 PM.

VOTE: The motion carried unanimously, 6-0.

Mr. Casey and Board members signed a mutual extension form.

INITIAL PUBLIC HEARING: SPECIAL PERMIT FOR INCLUSIONARY HOUSING, WASHINGTON STREET / HINKLEY

Ms. MacNab opened the public hearing at 8:25 PM. Mr. Bear recused himself from the discussion. Mr. Wadsworth read the public hearing notice and correspondence list:

- Special permit application and cover letter from P. Freeman submitted on 11/24/09
- Emails between Freeman Law Group and T. Broadrick dated 11/13/09 to 11/18/09
- Email between A. MacNab and T. Broadrick dated 11/19/09 to 11/20/09
- Fax from D. Grant to D. Glenn dated 11/30/09 re: materials for consulting engineer review
- Fax from D. Grant to M. Casey dated 11/30/09 re: abutter's letter of 11/30/09
- Public hearing notice published in the Patriot Ledger on 11/30/09 and 12/07/09 and in the Duxbury Clipper on 12/09/09
- Memo from T. Broadrick to R.S. Troy dated 12/11/09 re: PB question on special permit
- Memo from R.S. Troy to T. Broadrick dated 12/14/09 re: response to PB question.

Present for the discussion were the applicants, Mr. Clark and Mrs. Jane Hinkley, and their attorney, Peter Freeman. Ms. MacNab noted that a memorandum from Town Counsel was received that day which responded to the Board's question regarding the value equity of the offsite parcel. She noted that Atty. Troy could find no reference within the Zoning Bylaws as to how the offsite unit should be valued; therefore value does not play into the proposal.

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Mr. James Lampert of 148 Washington Street, an abutter to the special permit address, questioned why the value would not be considered. Mr. Hinkley explained that according to Zoning Bylaws Section 560.8, an applicant may develop, construct or otherwise provide an offsite property. Ms. MacNab agreed that the bylaw is confusing but the result is that the value will not be considered, only the number of lots. Atty. Freeman noted that the special permit application is tied to an Approval Not Required Plan of Land on Washington Street which will be considered separately from the special permit.

Mr. Hinkley advised the Board that the Duxbury Housing Authority had issues with the age of the originally proposed offsite property, so just today he had made another offer on a different property. He distributed the MLS listing for the newly proposed offsite property. He stated that the new offsite property is in very good condition, although painting and landscaping could use updating. He plans to contact the Duxbury Housing Authority tomorrow.

Mr. Cutler disclosed that although he is not a direct abutter to the new offsite property, he does live in the neighborhood. Atty. Freeman stated that the applicant had no issue with Mr. Cutler continuing to participate in the public hearing process.

Mr. Hinkley noted that he would continue to own this offsite property would go into a rental pool of affordable housing applicants. Mr. Broadrick noted that the applicants need to provide a certifying agent that is acceptable to the Board. Mr. Hinkley stated that Duxbury Housing Authority can serve as the certified agent and can help create a deed rider that is required as part of the special permit.

Ms. MacNab stated that it is up to the Board to determine whether rental or ownership would be preferred, noting that she believes ownership would be her preference. Ms. Ladd-Fiorini asked who could administer the ownership process. Mr. Moody offered that the Affordable Housing Trust is working toward offering grants to first time homebuyers, noting that a recent state law does not allow current residents priority because it is discriminatory.

Mr. Hinkley requested at least conditional approval of the special permit, agreeing to use whatever agency the Board recommends. He stated that in fairness to the seller, he needs to proceed with closing on the offsite property. Ms. Ladd-Fiorini noted that two issues were at hand: whether the Board approves of the offsite location, and whether the Board approves the certifying agent. Atty. Freeman offered to draft a letter of agreement as to the applicant's terms of agreement. Ms. MacNab noted that the Board does not appear to have any issue with the proposed offsite location. What she is looking for is a letter from a certifying agent stating that the offsite location meets guidelines for affordable housing.

Mr. Broadrick pointed out that it is up to the applicant to provide a certifying agent, offering to help with the process. Mr. Moody recommended that Mr. Hinkley consider contacting a member of the Affordable Housing Trust who works for a housing agency in Plymouth.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to continue the public hearing for an inclusionary housing special permit for Washington Street / Hinkley to January 4, 2010 at 7:05 PM.

VOTE: The motion carried unanimously, 5-0.

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ZBA REFERRAL: 848 FRANKLIN STREET /

Board members reviewed this special permit application to install windows on a porch that is located on a pre-existing nonconforming lot. The Board had reviewed a previous special permit in July 2009 to construct the porch, which was to be screened at the time. Mr. Bear commented that the damage was done to allow additional living space once the porch was constructed. Ms. MacNab expressed disappointment that the end result would be an increase in intensity on a nonconforming lot.

MOTION: Mr. Moody made a motion, and Mr. Cutler provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit application for 848 Franklin Street / Butler, noting that there are no planning issues.

AMENDMENT: Ms. MacNab proposed an amendment, and Mr. Wadsworth provided a second, to note to the Zoning Board of Appeals that the application adds to the nonconformity of the lot.

VOTE ON AMENDMENT: The motion failed, 2-4, with Ms. MacNab and Mr. Wadsworth voting for and Mr. Bear, Mr. Cutler, Ms. Ladd-Fiorini and Mr. Moody voting against.

VOTE ON ORIGINAL MOTION: The original motion passed unanimously, 6-0.

OTHER BUSINESS

Engineering Invoice:

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to approve payment of Geod Consulting invoice #29102850 dated November 11, 2009 in the amount of \$1,015.00 for services related to Bayside Marine As-Built approval.

VOTE: The motion carried unanimously, 6-0.

95 Tremont Street / Oliver: Board members reviewed a letter from the Director of Inspectional Services to the applicant reminding him that construction according to approved site plans needs to be completed by April 16, 2010, two years after the special permit decision date.

Citizens' Petition Regarding Lot Coverage: Ms. MacNab noted that Dr. Oliver and others have decided to go forward with a proposed revision to lot coverage requirements as a citizen's petition at Annual Town Meeting 2010. Although MGL Chapter 40A, Section 5 clearly states that only the Planning Board can bring back a failed article, the Town Moderator claims that the changes proposed allow the petition.

Mr. Bear noted that the Board did not do its homework on getting actual lot coverage figures from existing commercial businesses. Mr. Wadsworth agreed, noting that the Board could have proposed a stormwater bylaw. Ms. MacNab noted that the Board also needs to review the Parking bylaw for a future Town Meeting.

ADJOURNMENT

The Planning Board meeting adjourned at 10:05 PM. The next meeting of the Planning Board will take place on Monday, January 4, 2010 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.

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