



Town of Duxbury Massachusetts Planning Board

Approved 02/22/10

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

Minutes 01/04/10

The Planning Board met in the Duxbury Town Hall, Lower Level, Small Conference Room on Monday, January 4, 2010 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 and Thomas Broadrick, Planning Director.

Staff: 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.

ANR PLAN OF LAND: 38 STANDISH STREET / BAGNALL

Present to represent the application was the applicant's attorney, Robert E. Galvin. Ms. MacNab stated that the ANR plan is being filed under MGL Chapter 41, Section 81L, noting that it is an antiquated, flawed law. Under Chapter 81L, an ANR plan may be used to divide a lot into two or more lots each with a structure on it that predates acceptance of the Subdivision Control Law in a community.

Atty. Galvin presented the application, showing the Board copies of an Assessor's map from 1944 (before the Subdivision Control Law was adopted in the Town of Duxbury, August 15, 1950) showing two structures on the lot, and estimated that the buildings were constructed between 1898 and 1902. Atty. Galvin noted that he understands that Board endorsement of the ANR does not certify zoning compliance.

Mr. Bear asked about the implication of a second building on a second lot, and Ms. MacNab noted that no building permit can be issued for either structure as a result of the ANR. She noted that if a building permit were issued for either structure, she would recommend that the Board appeal.

MOTION: Mr. Halligan made a motion, and Mr. Bear provided a second, to approve a plan of land entitled, "Plan of Land in Duxbury, MA Showing the Division of Parcel 200-038-000, 38 Standish Street, Owner of Record: Kerry Bagnall, 38 Standish Street, Duxbury, MA" dated November 11, 2009, stamped and signed by William Joseph McGovern, PLS – one sheet, as not requiring approval under Subdivision Control Law, and to direct staff to send a memo to the Zoning Enforcement Officer noting that compliance with the Zoning (Protective) Bylaw is not certified, indicated nor inferred.

VOTE: The motion carried unanimously, 5-0.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

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Board members signed the ANR plan and Atty. Galvin was instructed to pick up the signed plan at the Planning office the following day.

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ZBA REFERRAL: 34 FRIENDSHIP LANE / HERNDON

Mr. Kevin Leary was present to represent a referral for this special permit to raze an existing two-story dwelling and construct a new dwelling on a nonconforming lot. Board members had reviewed a special permit for this property in March 2009 but it was eventually withdrawn. The current application shows revised architectural plans.

Mr. Leary noted that the earlier special permit proposed to join three adjacent lots with common ownership; however, the current application will keep the existing lot lines, with the dwelling on one lot and the septic on an adjacent lot inland in order to minimize impact on the wetlands buffer zone. The Board of Health has approved the septic plan.

Mr. Leary showed the Board the new plans, stating that the proposed dwelling will be 124 square feet larger than the original one that is to be razed. Ms. MacNab noted that with the entire structure being razed it is optimal to bring the new structure into compliance with Zoning Bylaws.

Mr. Wadsworth asked about the amount of impervious coverage, and Mr. Leary responded that it will change from 12.2 percent to 12.9 percent. Mr. Bear asked if a proposed deck will be covered, and Mr. Leary responded that it will not.

Ms. MacNab suggested that the applicant consider bringing the side setback into compliance. Mr. Leary responded that it would be difficult because it would restrict the driveway turning radius.

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 for 34 Friendship Lane / Herndon, noting that the applicants should be encouraged to amend their plans in order to come closer to conforming with Zoning Bylaws especially in setback requirements. Also, proposed decks are not covered and therefore are not considered in lot coverage calculations. The Planning Board recommends that the ZBA consider a condition that would preclude covering the deck in the future.

VOTE: The motion carried unanimously, 6-0.

SPECIAL PERMIT FOR INCLUSIONARY HOUSING: WASHINGTON STREET / HINKLEY

Ms. MacNab opened the continued public hearing at 7:40 PM. Mr. Bear recused himself from the discussion. Mr. Halligan read the correspondence list into the public record:

- Estimate of housing costs submitted by Atty. Freeman at PB meeting of 12/14/09
- MLS listing for proposed property at 361 Chandler Street submitted by applicant at 12/14/09 PB meeting
- Mutual Extension Form signed by applicants and Board members at 12/14/09 PB meeting
- Affidavit of Service signed by Planning Board member Brendan Halligan on 12/18/09 to allow participation in future special permit public hearings

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- Faxes between D. Grant and Atty. Vogler dated 12/31/09 re: materials pertaining to PB meeting of 01/04/10
- Purchase & Sale Agreement and Home Inspection Report for 361 Chandler Street submitted by applicant to Planning office on 01/04/10
- Sample documents submitted by applicant to Planning office on 01/14/10 (provided to applicant by previous legal counsel upon transfer of legal representation):
 - Local Initiative Program Affordable Housing Deed Rider
 - Local Initiative Program Guidelines
 - Affirmative Fair Housing Marketing Plan.

Atty. Alice Vogler introduced herself as new legal counsel for the applicants, Mr. Clark Hinkley and Mrs. Jane Hinkley, who were also present for the discussion.

Board members reviewed the MLS listing for the proposed property to be provided at 361 Chandler Street. Mr. Cutler divulged that he lives in the general neighborhood, and the applicants expressed no objection to Mr. Cutler participating in further discussion.

Atty. Vogler stated that a special permit checklist is not yet available. Ms. MacNab asked if the applicants had a certifying agent and Atty. Vogler responded that the Duxbury resident who works as Plymouth agent who the Board recommended at the previous meeting would have a conflict of interest since she serves on the Affordable Housing Trust in Duxbury. Mr. Wadsworth recommended that the applicants consider Habitat for Humanity, and Mr. Hinkley responded that he had contacted them and they do not purchase homes, they build them. They are also not set up to do lotteries.

Mr. Cutler asked if ownership versus rental is still open for discussion, and Mr. Hinkley responded that he would prefer ownership but will follow the Board's preference. Mr. Cutler and Ms. MacNab stated their preference for ownership since it would count toward affordable housing units for the state's Subsidized Housing Inventory.

Atty. Vogler stated that the applicants are in a time constraint. They have a closing date of January 29, 2010 and have a contingency because the Hinkleys would not be interested in purchasing the dwelling if it cannot be used for affordable housing. Ms. MacNab noted that the Board needs something to react to.

Ms. MacNab asked about the condition of the roof and Mr. Hinkley responded that it should last another ten years. The dwelling is approximately 1,700 square feet in size and has a two-car attached garage, air conditioning and other attractive features.

Ms. MacNab noted that while the Board is generally favorable, they need more information before moving forward with both the special permit and the ANR plan that are before the Board. She asked if a certifying agent could attend the next Board meeting, and Mr. Hinkley responded that they do not have a certifying agent yet but expect to soon.

MOTION: Mr. Cutler made a motion, and Mr. Wadsworth provided a second, to continue the public hearing for an inclusionary housing special permit for Washington Street / Hinkley to January 11, 2010 at 7:05 PM.

VOTE: The motion carried unanimously, 5-0.

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ANR PLAN OF LAND: WASHINGTON STREET / HINKLEY

Mr. Bear continued to recuse himself from the discussion.

MOTION: Mr. Cutler made a motion, and Mr. Wadsworth provided a second, to continue the discussion for an ANR Plan of Land on Washington Street / Hinkley to January 11, 2010 at 7:05 PM.

VOTE: The motion carried unanimously, 5-0.

Board members and the applicants signed mutual extension forms for the special permit and the ANR.

ZBA REFERRAL: 40 ALDEN STREET / HOLMES

No one was present to represent this special permit application to replace a sunroom with an addition on a pre-existing nonconforming lot. Ms. MacNab noted that the owner name on the Assessor's property card is "The Eloists, Inc.," and is coded as an exempt status. She reported that she had confirmed this status with Mr. Richard Finnegan, Deputy Assessor. She questioned to the Board whether the building is used for charitable purposes or for a dwelling.

Board members reviewed the plans, noting they are not stamped by a Massachusetts Land Surveyor. They also noted that a side setback nonconformity is not addressed with the current application. Ms. MacNab noted that conflicting figures are provided regarding the existing square footage of the structure.

MOTION: Mr. Bear made a motion, and Mr. Halligan provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit application for 40 Alden Street / Holmes (The Eloists), noting the following:

- The plan submitted is not stamped by a Massachusetts Land Surveyor
- The existing lot coverage is nonconforming and the proposed lot coverage increases the nonconformity
- A side setback nonconformity is not addressed
- The plan submitted appears to provide conflicting figures regarding existing square footage.

VOTE: The motion carried unanimously, 6-0.

OTHER BUSINESS

Proposed ATM Citizen Petition regarding Lot Coverage: Ms. MacNab noted that the Moderator has decided to allow the citizens' petition to move forward despite the fact that the motion failed at Annual Town Meeting 2009 and the Planning Board did not sponsor the proposed revisions. Board members discussed how to handle next week's public hearing.

Proposed Wind Facilities Bylaw for ATM 2010: Mr. Cutler reported that the Board of Selectmen voted 2-1 to recommend this bylaw to Annual Town Meeting. Selectman Witten voted against the recommendation, with the opinion that utilizing the Publicly Owned Land District was a form of spot zoning. The Board of Selectmen unanimously recommended the "Green Communities" proposed Zoning Bylaw amendment.

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Zoning Enforcement Issues: Ms. MacNab reported that she and Mr. Broadrick had met with Town Manager Mr. Richard MacDonald earlier that day to provide background on zoning enforcement issues such as guest houses, multiple dwellings, and garages in excess of three bays. After that meeting, a separate meeting was held with Mr. Broadrick, Mr. MacDonald, Town Counsel Robert S. Troy, and Zoning Enforcement Officer Mr. Scott Lambiase. At that meeting it was agreed that as of January 1, 2010 no building permits would be issued for multiple dwellings or secondary pool houses or guest houses on a lot. A follow-up meeting is scheduled for January 11, 2010 with Ms. MacNab, Mr. Broadrick, Mr. MacDonald, Mr. Lambiase, along with Deputy Assessor Mr. Richard Finnegan, and Mr. Dennis Murphy, Chairman of the Zoning Board of Appeals, to discuss a course of action regarding those permits that have been allowed erroneously. Ms. MacNab noted that zoning enforcement was a major topic of the Land Use Summit hosted by the Board of Selectmen in 2008.

ADJOURNMENT

The Planning Board meeting adjourned at 9:15 PM. The next meeting of the Planning Board will take place on Monday, January 11, 2010 at 7:00 PM at the Duxbury Senior Center (Ellison Room), 10 Mayflower Street.

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