



Town of Duxbury Massachusetts Planning Board

Minutes 01/11/10

The Planning Board met in the Ellison Room of the Duxbury Senior Center, 10 Mayflower Street, on Monday, January 11, 2010 at 7:00 PM.

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

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

Ms. MacNab called the meeting to order at 7:07 PM.

OPEN FORUM

No items were brought forward for Open Forum.

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

Ms. MacNab opened the continued public hearing at 7:08 PM. Mr. Bear recused himself from the discussion. Mr. Halligan read the correspondence list into the public record:

- Mutual Extension Form signed by applicants and Board members at 01/04/10 PB meeting
- Affidavit of Service signed by Planning Board member Harold Moody on 01/11/10 to allow participation in future special permit public hearings
- Draft special permit.

Mr. Clark Hinkley was present for the discussion, along with Mr. John Hixson of South Shore Housing. The applicant's legal counsel, Atty. Alice Vogler, was not present.

Mr. Broadrick noted this is the first special permit for inclusionary housing in the Town of Duxbury. He also noted that the lottery agent cannot serve as the monitoring agent. In addition, the Planning Department may not be able to serve as a monitoring agent. Mr. Hixson from South Shore Housing introduced himself as the certifying agent contacted by Mr. Hinkley.

Mr. Wadsworth arrived at the meeting at 7:10 PM, and Mr. Broadrick requested that the record show that no public testimony had been taken yet, to allow Mr. Wadsworth to participate in tonight's public hearing and vote.

Mr. Hixson introduced his organization, South Shore Housing, as experienced in serving as lottery agent and monitoring agent. He stated that his task is outreach and marketing for affordable housing, both within and outside the Town of Duxbury. His firm would determine applicants' eligibility based on income and assets. First-time homebuyer courses are offered to educate potential lottery applicants.

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From a lottery of eligible candidates, one is selected randomly. The monitoring agent would oversee the work of the lottery agent and would also oversee future transactions on the property.

Ms. MacNab noted the urgency of obtaining a monitoring agent since it is involved with every step of the process, including the lottery. Mr. Hixson stated that he has several names to offer for Mr. Hinkley's consideration. Mr. Hinkley noted that he would prefer to have his attorney work with the monitoring agent. Mr. Broadrick requested that he remain in the loop also. Mr. Hixson departed the meeting at 7:15 PM.

Mr. Broadrick explained the process after the sale of the property, noting that the proceeds of the sale go to the developer, not to the Affordable Housing Trust as was erroneously reported at a previous meeting.

Ms. MacNab opened the floor to public comment.

Ms. Mary Lampert of 148 Washington Street stated that if the goal is to provide affordable housing, equivalent value should be included in the decision. She commented that the value of the Washington Street parcels exceeds the value of the proposed offsite location. She noted that the Board could have gotten more for the town. Ms. MacNab agreed that this was the Board's intent; however, the question was posed to Town Counsel and it was concluded that value cannot be a consideration.

There was no further public comment, and no further comment from Board members.

MOTION: Mr. Cutler made a motion, and Mr. Wadsworth provided a second, to close the public hearing for a special permit for inclusionary housing for Washington Street / Hinkley.

VOTE: The motion carried unanimously, 6-0.

Board members reviewed a draft decision and suggested revisions to the wording.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to approve a special permit decision for inclusionary housing for Washington Street / Hinkley as amended.

DISCUSSION: Mr. Moody questioned whether equivalency of value was addressed by Town Counsel's opinion, and Ms. MacNab confirmed it was. She agreed that it would have been in the town's best interest if equivalency could have been considered.

VOTE: The motion carried unanimously, 6-0.

Staff was directed to produce a final draft of the decision for Board members to sign.

ANR PLAN OF LAND: WASHINGTON STREET / HINKLEY

Board members reviewed an ANR plan of land that triggered the special permit approved previously. Mr. Bear again recused himself from the discussion. Ms. MacNab noted a typographical error on the plan.

MOTION: Mr. Moody made a motion, and Mr. Cutler provided a second, to endorse a plan of land entitled, "Plan of Land, 160 Washington Street in Duxbury, MA" dated November 12, 2009, stamped and signed by Brendan P. Sullivan, RPLS on November 12, 2009, pending a correction to a typographical error on Note 8 of the plan.

VOTE: The motion carried unanimously, 6-0.

Board members and the applicants signed the mylar and two paper copies of the plan.

PUBLIC HEARING: ATM 2010 ZONING ARTICLES

Ms. MacNab opened the public hearing at 8:03 PM. Mr. Halligan read the public notice into the record.

ADOPTION OF REVISED FLOOD INSURANCE RATE MAPS AS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Mr. Halligan read the correspondence list into the public record.

- Article submitted to Board of Selectmen on 12/07/09
- Letter from B. Ripley to PB dated 12/14/09 requesting public hearing
- Public hearing notice submitted to Town Clerk on 12/17/09 and published in the *Duxbury Clipper* on 12/23/09, 12/30/09 and 01/06/10.

Mr. Broadrick explained that there are no substantive changes to the FEMA map; only the format has changed to show all of Plymouth County rather than just the Town of Duxbury. He stated that FEMA has not yet provided a final effective date to be included in the warrant article. If FEMA does not provide a date, the article will need to be indefinitely postponed.

Mr. Wadsworth asked if any flood lines are changing, and Mr. Broadrick responded that the basis of elevation is changing from NGVD to NVAD. Velocity zones have been renamed; no layers have been changed for now.

Ms. MacNab opened the floor to public comment, and there was none.

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd-Fiorini provided a second, to close the public hearing for a proposed adoption of revised Flood Insurance Rate Maps as prepared by the Federal Emergency Management Agency (FEMA).

VOTE: The motion carried unanimously, 7-0.

MOTION: Mr. Bear made a motion, and Ms. Ladd-Fiorini provided a second, for the Planning Board to recommend approval at Annual Town Meeting of a proposed adoption of revised Flood Insurance Rate Maps as prepared by the Federal Emergency Management Agency (FEMA).

VOTE: The motion carried unanimously, 7-0.

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PROPOSED REVISION TO ZONING BYLAWS SECTION 615.1 “ADMINISTRATIVE SITE PLAN REVIEW: PURPOSE” IN ORDER TO EXCLUDE EXEMPT ORGANIZATIONS

Mr. Halligan read the correspondence list into the public record:

- Article submitted to Board of Selectmen on 12/07/09
- Letter from B. Ripley to PB dated 12/14/09 requesting public hearing
- Public hearing notice submitted to Town Clerk on 12/17/09 and published in the *Duxbury Clipper* on 12/23/09, 12/30/09 and 01/06/10.

Mr. Broadrick introduced the article, noting that it came about as a result of a legal case by Bay Farm Montessori Academy against the Town of Duxbury. The court ruled that exempt uses under MGL Chapter 40A, Section 3 are not subject to Administrative Site Plan Review (ASPR). The bylaw has been revised to remove religious and educational uses.

Ms. MacNab noted that she regretted having to remove exempt organizations from Administrative Site Plan Review because Board review has improved projects approved to date. She opened the floor to public comment.

Mr. Ned Lawson of 34 Sunset Road noted that he disagreed when the Comprehensive Plan/Zoning Bylaw Implementation Committee (CPZBIC) recommended to include schools and religious organizations in the ASPR Zoning Bylaw. He filed an ASPR application on behalf of the Duxbury Bay Maritime School although he did not believe it was necessary and spent \$15,000 on engineering fees that he feels were not needed.

Mr. Lawson suggested adding a line to the end of the first paragraph stating that religious and educational facilities shall be exempt from the provisions of the ASPR bylaw, in order to clarify the exemptions. After some discussion, it was agreed that the Board could make an amendment from Town Meeting floor.

MOTION: Mr. Bear made a motion, and Mr. Wadsworth provided a second, to close the public hearing for a proposed revision to Zoning Bylaws Section 615.1 “Administrative Site Plan Review: Purpose” in order to exclude exempt organizations.

VOTE: The motion carried unanimously, 7-0.

MOTION: Mr. Halligan made a motion, and Mr. Cutler provided a second, that the Planning Board recommend approval at Annual Town Meeting of a proposed revision to Zoning Bylaws Section 615.1 “Administrative Site Plan Review: Purpose” in order to exclude exempt organizations, as amended to add as the last sentence of the first paragraph of Section 615.1: “Religious and educational facilities shall be exempt from the provisions of this section of the bylaw.”

VOTE: The motion carried unanimously, 7-0.

PROPOSED NEW ZONING BYLAW SECTION 'WIND FACILITIES DEVELOPMENT REGULATIONS' RELATIVE TO THE ZONING OF WIND TURBINES

Approximately ten members of the sponsoring committee, the Alternative Energy Committee, were present. Mr. Halligan read the correspondence list into the public record:

- Draft bylaw and cover letter submitted by Alternative Energy Committee to PB on 09/30/09
- Emails between F. Duggan and T. Broadrick dated 11/17/09 re: revised draft of bylaw
- Draft bylaw and cover letter seeking PB comments submitted by Alternative Energy Committee on 11/18/09
- Draft PB minutes of 11/23/09
- Article submitted by the Alternative Energy Committee to Board of Selectmen on 12/03/09
- Letter from B. Ripley to PB dated 12/14/09 requesting public hearing
- Public hearing notice submitted to Town Clerk on 12/17/09 and published in the *Duxbury Clipper* on 12/23/09, 12/30/09 and 01/06/10.

Mr. Frank Duggan of the Alternative Energy Committee provided some background on the proposed bylaw, noting that the committee has been working for the past two to three years toward developing a bylaw that will meet the town's needs and save the town money. A proposed bylaw for Annual Town Meeting 2009 was indefinitely postponed for refinement and format revision.

Ms. MacNab opened the floor to public comment.

Mr. Wayne Luscko of 2 Boxwood Lane asked about the formula for determining setback, and Mr. Duggan noted that it is 1.1 times the height from a property line and 2.0 times the height from the nearest structure, generally accepted formulas. Mr. Luscko noted that there is an issue with ice shear on wind turbines at the Cape Cod National Seashore. Ice builds up and then gets thrown when the turbines are operating. The propellers turn at approximately 100 miles per hour. Mr. John Murdock of the Alternative Energy Committee responded that in the Town of Duxbury the wind turbines will be equipped with an alarm system that would remotely shut down the propellers in the event of icing conditions.

Mr. Luscko asked if any wildlife studies had been performed and Mr. Murdock responded that they were done as part of a feasibility study. Construction of the proposed monopole structure will have little or no impact on wildlife.

Mr. Luscko recommended the Alternative Energy Committee consider reducing the maximum decibel levels to comply with state regulations. Mr. Andre Martecchini of the Alternative Energy Committee noted that no state regulations exist currently, and the committee decided to adopt decibel levels that were not too restrictive.

Mr. Luscko expressed concern with the potential size of a wind turbine in the Town of Duxbury, and Mr. Duggan assured him that the proposed wind facilities in Duxbury are much smaller than those on the Cape Cod National Seashore. He stated that they are similar in scale to a wind facility located at Massachusetts Maritime Academy. Mr. Luscko concluded that although he generally is a proponent of wind facilities, he wants to make sure that the proponents are up to date with this technology that is rapidly evolving.

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Ms. Georgia Cosgrove of 67 Duck Hill Road noted that Vinalhaven, Maine recently constructed wind facilities and there were unintended consequences:

- Significant level of noise due to being set on granite, which caused vibration. More insulation would have helped
- Reduction of egg production on abutting properties with chickens, which is thought to be due to the noise level
- Remote control facilities being located too far away causing loss of local control.

She noted that she, too, is a proponent of wind turbines but is offering friendly advice.

Ms. Donna Theodossiou of the Alternative Energy Committee noted that the solid bedrock issue would not be a problem in the Town of Duxbury. Mr. Martecchini added that the Zoning Board of Appeals will oversee permit applications through a public hearing process and the hope is to site the wind turbines as far away from property lines as possible.

Mr. Wadsworth asked about feedback from wind turbine facilities that have recently been constructed in the Town of Hull. Mr. Cutler noted that Mr. John Murdock, a member of the Alternative Energy Committee, is a manager of that facility. Mr. Murdock noted that wind facilities were installed in order to address energy needs in the Town of Hull. There have been no noise or vibration complaints. The biggest issue is flicker, which is a strobe light effect. The nearest residence is 500 feet from the wind turbine.

Mr. Luscko asked if potential sites had been identified in the Town of Duxbury, and Mr. Duggan responded that the Alternative Energy Committee is recommending land from Mayflower Street following Tremont Street north toward the North Hill public golf course and town-owned conservation land. Two possible locations for turbines would be near the Department of Public Works building and near the driving range at North Hill.

Mr. Jeff Wilkinson of the Alternative Energy Committee noted that the wind turbine facility at Massachusetts Maritime Academy is laid in a foundation of sand, similar to conditions in Duxbury. Although the facility is located less than 500 feet from student housing there has been no adverse effect on students. The wind facility has saved the school over \$300,000 in energy costs.

Mr. Bear asked if the Alternative Energy Committee had considered regulating height through a study versus a single allowable height through the Zoning Bylaws. Mr. Murdock responded that for a municipal use height would not need to be maximized as it would for a commercial use.

MOTION: Mr. Bear made a motion, and Ms. Ladd-Fiorini provided a second, to close the public hearing for a proposed new Zoning Bylaws Section “Wind Facilities Development Regulations” relative to the zoning of wind turbines.

VOTE: The motion carried unanimously, 7-0.

MOTION: Mr. Cutler made a motion, and Mr. Bear provided a second, that the Planning Board recommend approval at Annual Town Meeting of a proposed new Zoning Bylaws Section “Wind Facilities Development Regulations” relative to the zoning of wind turbines.

VOTE: The motion carried unanimously, 7-0.

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**PROPOSED REVISION TO ZONING BYLAWS SECTION 302 AND 421.3 TO ADD
“RENEWABLE AND ALTERNATIVE ENERGY RESEARCH AND DEVELOPMENT” TO A
LIST OF BUSINESS USES**

Mr. Halligan read the correspondence list into the public record:

- Draft bylaw and cover letter seeking PB comments submitted by Alternative Energy Committee on 10/01/09
- Article submitted by the Alternative Energy Committee to Board of Selectmen on 12/03/09
- Letter from B. Ripley to PB dated 12/14/09 requesting public hearing
- Public hearing notice submitted to Town Clerk on 12/17/09 and published in the *Duxbury Clipper* on 12/23/09, 12/30/09 and 01/06/10.

Mr. Frank Duggan of the Alternative Energy Committee stated that the proposed wording would bring the Town of Duxbury into compliance with the Green Communities Act, which is a gateway for grant funding for renewable energy projects.

Mr. Cutler stated that his first task even before election as a Planning Board member was to attend a Green Communities Workshop on how to qualify as a “Green Community.” Adding this language is a first step in the process.

Mr. Bear recommended that the reference should be clarified as Zoning Bylaws Section 421.3.7 to help residents locate the proposed revision.

MOTION: Mr. Cutler made a motion, and Mr. Wadsworth provided a second, to close the public hearing for a proposed revision to Zoning Bylaws Sections 302 and 421.3 to add “renewable and alternative energy research and development” to a list of business uses.

VOTE: The motion carried unanimously, 7-0.

MOTION: Mr. Cutler made a motion, and Ms. Ladd-Fiorini provided a second, that the Planning Board recommend approval at Annual Town Meeting of a proposed revision to Zoning Bylaws Sections 302 and 421.3 to add “renewable and alternative energy research and development” to a list of business uses, with the additional notation of Zoning Bylaws Section 421.3.7.

VOTE: The motion carried unanimously, 7-0.

Board members directed staff to notify the Board of Selectmen’s office regarding the clarified reference.

PROPOSED CITIZENS' PETITION TO REVISE ZONING BYLAWS SECTIONS 302 AND 425.1 RELATIVE TO OPEN SPACE AND SITE COVERAGE REQUIREMENTS WITHIN A NEIGHBORHOOD BUSINESS ZONE

Mr. Halligan read the correspondence list into the public record:

- PB minutes of 08/24/09
- PB minutes of 09/28/09
- Citizens' petition submitted to Board of Selectmen on 12/08/09
- Letter from B. Ripley to PB dated 12/14/09 requesting public hearing
- Public hearing notice submitted to Town Clerk on 12/17/09 and published in the *Duxbury Clipper* on 12/23/09, 12/30/09 and 01/06/10.

Present for the discussion was Dr. Scott Oliver, the article's proponent.

Ms. MacNab read from Massachusetts General Law (MGL) Chapter 40A Section 5, noting that following a failed warrant article, the Planning Board must agree that any subsequent article provides a substantial change in order to revisit a failed zoning article. A similar article failed at last year's Annual Town Meeting. Although the Board could choose to close the public hearing for this reason, she agreed to allow a presentation by the proponent as well as any further public input.

Dr. Scott Oliver presented a slideshow and stated that the current Zoning Bylaw is not supportive of commercial enterprises and is one of the most restrictive in the state. He termed the proposed revision as "similar but different," with a graduated scale of allowed lot coverage based on lot size:

- For lots under three acres, 80% lot coverage would be allowed
- For lots three to five acres, 65% lot coverage would be allowed
- For lots greater than five acres, lot coverage would remain at 50%.

After the presentation Ms. MacNab opened the floor to public comment.

Mr. Jackson Kent of 1351 Tremont Street noted that he had contacted the Town Moderator regarding whether the proposed petition could go forward, and the Moderator and Town Counsel agreed that it should. Ms. MacNab noted that the Board had posed the same question to Town Counsel and he was silent on the matter. She also noted that the Planning Director posed the question to other Town Planners who unanimously agreed that the article should not go forward without Planning Board support.

Ms. Sara Wilson of 120 Bay Road stated that the proposed revision to lot coverage is the antithesis of going green because it increases the amount of pavement and impedes groundwater discharge. It would also increase carbon dioxide emissions, produce more heat, and increase "dirty runoff" instead of recharging. No studies have been done to substantiate any proposed revisions. Even the state is recommending site coverage not exceeding fifty percent.

Ms. Wilson noted that several existing businesses are laid out on multiple parcels of land, which would allow greater density under the proposed revision. She suggested that if the article goes forward, this loophole would need to be closed. She cautioned that more land will be rezoned to commercial over time. Especially in the Aquifer Protection Overlay District, business areas such as Cox's Corner should be further restricted regarding lot coverage.

Ms. Lorrie Hall of 175 Abram's Hill Road stated that treatment of runoff is a crucial issue. She is concerned that a large business could be built on multiple lots such as Bongi's, which may put local merchants out of business. Mr. Wadsworth agreed that nothing in the proposed bylaw sets any standards for treating runoff. He stated that increased paving leads to increased parking, which in turn leads to increased traffic.

Mr. Bear stated that although coverage limits need to be updated, more research is required in order to substantiate changes. A proposed formula should be tested against existing commercial properties. Untested numbers could produce unintended consequences. In addition, parking and lot coverage should be updated at the same time. Massachusetts General Law prohibits reconsidering a proposal that has failed at a prior Town Meeting. He recommended bringing a well-researched proposal to a future Town Meeting.

Ms. MacNab agreed, emphasizing that any proposed change to a Zoning Bylaw needs a firm, rational basis. She noted that the article's proponent, Dr. Oliver, has a current violation on his commercial property regarding construction of a parking lot. Zoning should never be for the benefit of one applicant. Because last year's article failed, she suggested that this article should not move forward.

Dr. Oliver responded that his special permit was issued on October 23, 2009, so he has until October 23, 2011 to complete it. The project is currently half-complete. When he constructed the new parking lot under this special permit, he used gravel rather pervious pavers with a liner installed underneath, as was depicted in approved plans.

MOTION: Mr. Moody made a motion, and Mr. Wadsworth provided a second, to close the public hearing for a proposed citizens' petition to revise Zoning Bylaws Sections 302 and 425.1 relative to open space and site coverage requirements within a Neighborhood Business zone.

VOTE: The motion carried unanimously, 7-0.

MOTION: Mr. Halligan made a motion, and Mr. Bear provided a second, that the Planning Board NOT recommend to the Annual Town Meeting of 2010 the adoption of the proposed bylaw as submitted in the citizen's petition to the Board of Selectmen seeking to amend Sections 302 and 425 addressing Open Space and Site Coverage in NB-1 and NB-2 Zoning districts, citing specifically Mass General Law c. 40A, section 5, paragraph 5 finding that the proposed citizen's petition is not substantially different from the same proposal unfavorably acted upon at the 2009 Annual Town Meeting, and therefore ineligible for consideration at the 2010 Annual Town Meeting.

DISCUSSION: Ms. MacNab noted the result would be an unfavorable report to the Moderator and Town Clerk.

VOTE: The motion carried unanimously, 7-0.

ADJOURNMENT

The Planning Board meeting adjourned at 10:03 PM. The next meeting of the Planning Board will take place on Monday, January 25, 2010 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.

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