



# Town of Duxbury Massachusetts Planning Board

Approved 05/24/10

TOWN CLERK  
10 JUN -3 AM 10:20  
DUXBURY, MASS.

## Minutes 04/26/10

The Planning Board met at Town Hall, Small Conference Room, on Monday, April 26, 2010 at 7:00 PM.

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

Absent: Harold Moody and Brendan Halligan.

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

Ms. MacNab called the meeting to order at 7:04 PM.

### OPEN FORUM

Open Space Committee: Ms. Ladd Fiorini reported that the committee hosted a clean-up of an old mill area near Temple and Union Streets on land acquired at Annual Town Meeting from Camp Wing.

### CONTINUED PUBLIC HEARING: CUSHING'S RETREAT DEFINITIVE SUBDIVISION (OFF OLDE PASTURE ROAD) / ELM STREET REALTY TRUST

Ms. MacNab opened the continued public hearing at 7:05 PM. Present for the discussion was Mr. Mark Casey of South Shore Survey. Ms. Ladd Fiorini read the correspondence list into the public record:

- Mutual extension form to continue public hearing to 04/26//10, signed by PB and applicant on 03/08/10
- Driveway Profile dated 01/06/10 submitted by South Shore Survey on 04/20/10
- Sketch of existing water main submitted by South Shore Survey on 04/20/10
- Email from D. Glenn to T. Broadrick dated 04/21/10 re: review of plans.

Ms. MacNab asked if a full report had been received from Fay, Spofford and Thorndike, the consulting engineer. Mr. Broadrick responded that because the plans were submitted late by the applicant, Mr. Glenn of FST had not had time to provide a full report.

Mr. Casey explained that he has now complied with all changes discussed at previous Board meetings. After speaking with Mr. Peter Mackin, the Town Water Superintendent, it appears that the water main may telescope down to two inches in diameter. Mr. Casey confirmed that the applicants agree to replace any water pipes to a six-inch diameter to comply with fire flow requirements. Mr. Broadrick reported that there is no way to confirm the water main diameter without opening it up on site. Mr. Wadsworth stated that he believes that the minimum requirement in the Town of Duxbury is eight inches. He expressed concern that it is a fairly low water pressure area and noted that Stantec has developed a model for fire flow requirements. Mr. Broadrick agreed to speak with Mr. Mackin and also the Fire Chief.

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Mr. Broadrick noted that the existing dwelling must meet Title 5 requirements by May 26, 2010, according to the Board of Health.

Ms. MacNab asked if the existing pigeon coop and block buildings will be demolished, and Mr. Casey responded that they would.

Ms. Ladd Fiorini questioned wording on the "Profile Driveway" plan dated January 6, 2010 and submitted April 20, 2010 that requires weed and pest control. She expressed concern that the Planning Board would appear to be mandating use of toxic chemicals. Mr. Casey agreed to remove the words "weed and pest control" from the plan.

Mr. Broadrick noted that bounds will be required as part of the subdivision approval, and Mr. Casey questioned whether that is a requirement of Subdivision Rules and Regulations.

Mr. Broadrick noted that future ownership will be bound by either a Homeowner's Association or a covenant to be placed on the title. Mr. Casey agreed to produce a draft covenant using language to be provided by Planning staff.

**MOTION:** Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to continue the public hearing for Cushing's Retreat Definitive Subdivision until June 14, 2010 at 7:10 PM, with revised plans due on May 25, 2010 and a decision deadline of June 30, 2010.

**VOTE:** The motion carried unanimously, 5-0.

Mr. Casey signed the extension form.

### **ZBA REFERRAL: DUXBURY CROSSING AMENDMENT TO COMPREHENSIVE PERMIT, CARESWELL & ENTERPRISE STREETS**

Mr. Broadrick noted that the transmittal cover sheet incorrectly identifies the application as a special permit. He advised Board members to consider the application as an amendment to a comprehensive permit. According to application materials, Mr. Michael Juliano indicates that he has a purchase and sales agreement to purchase the property for a project formerly known as Duxbury Crossing, with a proposed new name of The Reserve at Duxbury.

Ms. MacNab noted that the economic feasibility of the project needs to be reviewed in terms of current costs. The original comprehensive permit was issued in 2007. She also pointed out that the Board does not have enough information to provide a recommendation to the Zoning Board of Appeals.

Mr. Broadrick noted that the conceptual plan submitted does not provide dimensions, site distance, or roadway width. Mr. Wadsworth noted that the conceptual plan shows that two structures appear to be within the Wetlands Protection Overlay District.

Mr. Bear summarized Planning Board initial issues in absence of a full set of plans and based on the materials submitted:

- The design and shape of the structures, the road layout, and proposed parking have changed substantially from the approved comprehensive permit site plan.

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- Structures now appear to be located within the Wetlands Protection Overlay District, which is a violation of Zoning Bylaws.
- Visitor parking spaces appear to have been eliminated, which would force visitors to park on the narrow roadway and impede traffic flow.
- "Exclusive Right of Use" lines depicted on the concept plan should be eliminated.
- Plans erroneously refer to a "subdivision."
- A Purchase & Sales agreement should be provided.

Mr. Wadsworth noted that the Planning Board should be included in any discussion of Site Alteration fines that have been accruing for this project since May 2004. Mr. Broadrick requested to include in the Board's memo a comment that it is unacceptable to be provided with a special permit application form for a comprehensive permit, and Board members agreed.

### **ZBA REFERRAL: 21 CHESTNUT STREET / GRIFFIN**

Present to represent the application was Atty. Phillip Markella. The special permit proposes a change in use for an accessory structure, specifically razing an existing garage and constructing a new two-story structure with storage on the first floor and office space on the second floor.

Ms. MacNab asked what is happening in the upstairs of the main office building, and Atty. Markella responded that there are offices on both floors. Atty. Markella stated that he intends to file for Administrative Site Plan Review because of the additional parking required due to an increase in office space.

Atty. Markella stated that salespeople from out of town would use the second floor space as overnight quarters. Mr. Broadrick noted that apartments above commercial spaces are allowed but the apartment is usually a separate entity from the business. In this case the proposed use is for an accessory structure, not the primary structure. Generally, uses in an accessory structure are incidental to the business use. Zoning Bylaws don't allow apartments on second floors of accessory structures. For this reason, Mr. Broadrick suggested that the application should be for a variance, not a special permit.

Atty. Markella noted that according to Zoning Bylaws (ZBL) Section 421.3.11 (Neighborhood Business District 1: Uses and Structures that May Be Permitted Subject to Special Permit and Site Plan Requirement), it is allowed to have a "dwelling in a business structure above the ground floor." He stated that he is trying to be honest about the use, but could re-label the plans to show offices instead of "temporary employee lodging."

Mr. Wadsworth questioned if offices or dwelling spaces are allowed on the second floor of an accessory structure. Mr. Broadrick noted that ZBL Section 421.1 (Neighborhood Business District 1: Permitted Uses and Structures) references Section 410.1.4 (Residential Compatibility District: Permitted Uses and Structures) which allows "accessory use and accessory structures on the same lot which are customarily incidental to a single-family residence." Mr. Broadrick expressed doubts that the proposed accessory use is incidental to the primary business. Atty. Markella stated that the proposed use would not be for a two-bedroom apartment; it would be for business use only.

Ms. MacNab noted that the proposal would add to the intensity of use on the property. She stated that the Board is sensitive to neighbors of the business district.

**MOTION:** Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to recommend DENIAL of a special permit for 21 Chestnut Street / Griffin for a proposed use of an accessory structure because temporary lodging is not allowed in Zoning Bylaws as an allowable use in accessory structures.

**DISCUSSION:** Ms. MacNab recommended that a reference be made to noncompliance with a "customarily incidental" use. Under the Administrative Site Plan for the original project, the second building was for a garage and storage, which was a customarily incidental use. The current application does not appear to be customarily incidental. Mr. Bear stated that the applicant should be filing a variance for business use in an accessory structure. Mr. Wadsworth commented that accessory structures should have uses that are incidental to the structure. This application does not appear to comply.

**AMENDMENT:** Ms. MacNab made a motion to use language that the application does not comply with a customarily incidental use. Because there was no second, the amendment failed.

**VOTE:** The original motion passed unanimously, 5-0.

Ms. MacNab noted that the ZBA public hearing is scheduled for Thursday, April 29, 2010. She encouraged Board members to attend as a routine practice to follow Planning Board projects that have applications with other boards.

#### **ZBA REFERRAL: 30 RAILROAD AVENUE / CLIFFORD**

Ms. MacNab noted that during a comprehensive permit application for this property three years ago, the owner removed interior lot lines, combining six lots into one through an 81X plan for the purpose of septic approval. She recalled warning the owner's representative at that time that combining the lots would result in waiving any grandfathering of rights on the lot.

The current special permit proposes to change the use of a structure to a take-out food establishment. A former fish market vacated the property in 2007. Mr. Broadrick noted that the applicants were given conflicting advice on whether or not they were required to file for a special permit, and were ultimately advised to file with the Zoning Board of Appeals (ZBA) for a special permit for the use and with the Planning Board for Administrative Site Plan Review (ASPR). The ASPR application is scheduled for the Board's meeting of May 10, 2010. The applicants, Ms. Kelly Laviolette and Mr. Norm Laviolette, have been advised to submit a site plan that shows lease lines for their rental property. Mr. Broadrick noted the issue is how to treat multiple structures on one lot that is now nonconforming due to the combination of lots into one.

Mr. Wadsworth noted that the current application proposes a new business use on a lot where businesses currently exist in other structures, although the structure in the application is not a new one. Mr. Broadrick noted that the ZBA will need to make a determination, suggesting that an easement area could be secured through the ASPR process before the ZBA issues a special permit.

Ms. Ladd Fiorini asked about a property line depicted on a landscape plan submitted by the applicant, and Mr. Broadrick responded that it is inaccurately labeled.

Ms. MacNab noted that the applicants may have been misinformed by the owners that a business would be allowed when the grandfathered use was lost when the 81X plan was recorded at the Registry of Deeds. Mr. Broadrick noted that the 81X plan was filed with the Registry on May 25, 2007.

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Mr. Bear noted that four structures currently exist on the property, none of them accessory structures. He stated that it is a retail environment similar to Hall's Corner on Standish Street. Ms. MacNab noted that the businesses on Standish Street predated zoning.

Mr. William Zachmann of 160 Standish Street questioned the ownership of the property, and Mr. Bear responded that the owner is listed as S&G Associates, with Mr. Benjamin Goodrich as the contact.

Mr. Broadrick recommended seeking an opinion from Town Counsel regarding whether multiple businesses are allowed on a single lot and whether businesses are required to establish lease lines for pre-existing structures that have been combined into one lot. Board members agreed that Town Counsel should be consulted, and the Board will continue the ZBA referral discussion at its next meeting. Ms. Grant noted that the applicant's ASPR application is scheduled for that same meeting.

### OTHER BUSINESS

70 Bow Street: Present for the discussion regarding a potential subdivision application were the owners, Dr. Emil Reinhalter and Ms. Marianne Reinhalter, and Mr. Paul Brogna of Seacoast Engineering. Mr. Broadrick introduced the question of whether the applicants could file a definitive subdivision plan due to an error on the GIS map regarding the Wetlands Protection Overlay District (WPOD). Mr. Broadrick noted that there appears to be an error on the GIS map that depicts the property as being located within the WPOD. According to the official Wetlands map dated March 4, 1971 the property is not located within the WPOD. The official map is the source of reference according to Zoning Bylaws, and the GIS map is simply a representation.

Mr. Broadrick explained that the Reinhalter intend to file for a six or seven-lot subdivision. Mr. Broadrick has discussed the matter with the Conservation Administrator, Mr. Joseph Grady, and the Department of Public Works Director, Mr. Peter Buttkus, and all agree that the property is not located within the WPOD. Board members also agreed that the Wetlands map of 1971 is the official map for determining the WPOD.

Mr. Brogna stated that he intends to file a Notice of Resource Area Delineation (NRAD) for the wetlands line with the Conservation Commission this week.

Zoning Enforcement Issues: Mr. Cutler asked if the Director of Inspectional Services, Mr. Scott Lambiase, had been invited to a future Board meeting as discussed at the last Board meeting. Mr. Broadrick responded that Mr. Lambiase will not be able to attend. Ms. MacNab reported that a building permit for a property with two dwellings is being appealed by an abutter.

#### Release of Escrow Account Funds:

**MOTION**: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to release remaining funds in a Planning Board escrow account for Duxbury Bay Maritime School.

**VOTE**: The motion carried unanimously, 5-0.

#### Engineering Invoices:

**MOTION**: Ms. Ladd Fiorini made a motion, and Mr. Wadsworth provided a second, to pay Vine Associates invoice #1404-4 dated March 31, 2010 in the amount of \$250.00 for services related to 95 Tremont Street / Oliver.

**VOTE**: The motion carried unanimously, 5-0.

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Meeting Minutes:

**MOTION:** Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to approve the following meeting minutes:

- March 29, 2010
- April 5, 2010
- April 12, 2010.

**VOTE:** The motion carried unanimously, 5-0.

Fee Hearing: Mr. Broadrick alerted the Board that a public hearing needs to be scheduled for Planning Board special permit fees.

Parking / Lot Coverage: Mr. Bear urged the Board to move ahead on reviewing potential amendments to the Zoning Bylaws regarding lot coverage and parking. He said that he has a list of items that were agreed upon. Ms. MacNab suggested forming a working group to include members of the Zoning Board of Appeals, Economic Advisory Committee, property owners who run a business, and a potential opponent such as Ms. Sara Wilson, who publicly opposed lot coverage amendments at previous Town Meetings. She recommended that the working group should be balanced in opinion. Mr. Cutler recommended that Ms. Wilson be contacted, and Mr. Bear agreed to follow up.

**ADJOURNMENT**

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

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