



Town of Duxbury Massachusetts Planning Board

Approved 09/13/10

TOWN CLERK
10 OCT 25 AM 10:45
DUXBURY, MASS.

Minutes 05/10/10

The Planning Board met at Town Hall, Small Conference Room, on Monday, May 10, 2010 at 7:00 PM.

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

Absent: Josh Cutler and Brendan Halligan.

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

Ms. MacNab called the meeting to order at 7:05 PM.

OPEN FORUM

Design Review Board: Ms. Grant reported that Mr. Broadrick had discovered that, according to Zoning Bylaws, the Planning Board may be represented on the Design Review Board. Board members expressed interest in recommending a representative. Staff agreed to find out the Design Review Board's meeting schedule for further discussion at the next Board meeting.

INITIAL PUBLIC HEARING: COMPLEX PATH DEFINITIVE SUBDIVISION, 1053 TREMONT STREET / DACEY

Ms. MacNab opened the public hearing at 7:10 PM. Present for the discussion were the applicant, Ms. Paula Dacey, and her representatives, Atty. Robert W. Galvin and Mr. Rick Grady of Grady Consulting. Also present was the town consulting engineer, Mr. Walter Amory of Amory Engineers. Ms. Ladd Fiorini read the correspondence list into the public record:

- Memo from T. Broadrick to D. Murphy dated 04/23/09 re: Planning Board review of ZBA referral for special permit
- Application and materials with cover letter and plans dated 01/14/10 and submitted to the Planning office on 01/25/10
- PB minutes of 03/08/10
- Letter from R.W. Galvin to D. Murphy dated 03/09/10 re: Special permit and WPOD issues
- Memo from T. Broadrick to S. Lambiase dated 03/10/10 re: WPOD issues
- Letter from R.W. Galvin to D. Murphy dated 03/11/10 re: WPOD issues
- ZBA decision dated 03/25/10
- Memo from D. Grant to T. Kelso dated 04/05/10 re: request for Town Historian comments
- Conservation Commission denial of Notice of Intent dated 04/07/10
- Letter from T. Kelso to Planning Board dated 04/11/10 re: Town Historian comments
- Public hearing notice submitted to Town Clerk on 04/12/10
- Development Review Team meeting notice dated 04/16/10
- Legal notice published in Duxbury Clipper on 04/21/10 and 04/28/10
- Email from D. Grant to R. Grady dated 04/27/10 re: public hearing date
- Development Review Team minutes dated 04/27/10
- Letter from W. Amory of Amory Engineers to Planning Board dated 05/04/10
- Transmittal note from D. Grant to W. Amory dated 05/05/10 re: public hearing materials

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Mr. Grady presented the application, noting that the existing property contains 5.67 acres with an existing dwelling. The property is zoned Residential Compatibility and lies within the Wetlands Protection Overlay District (WPOD) to the rear of the property and the Aquifer Protection Overlay District toward the front. The proposed subdivision would provide 70,000 square feet of area for the lot with the existing dwelling and more than 40,000 square feet for the two new lots, marked Lot A and Lot B on the subdivision plan and two non-buildable lots.

According to 2005 Subdivision Rules & Regulations, a fourteen foot wide pavement access is required with two Cape Cod berms. Topographically the highest slopes in the property are near Tremont Street, where the property would obtain its access. Mr. Grady proposed to relocate the access further south from current plans which would increase the slope to ten percent grade for a short distance, but would minimize grading and clearing. The area of the ten percent grade would be located at the reverse point of curvature before flattening out.

The soils are primarily sand, and an abbreviated Notification of Resource Area Delineation (NRAD) was filed with the Conservation Commission. The property borders vegetated wetlands and a small perennial stream is located near the property. A pond is located on the golf course abutting the property. The applicant retained Mr. Peter Fletcher, a soils specialist, who performed a hydrological study and determined that the property is Group A. A perc test has also been performed on the property. The subdivision would connect to town water.

Mr. Grady noted that since filing the application, the applicants have decided to propose a Low-Impact Design (LID) drainage system similar to ones he has designed at Duxbury Estates off Summer Street and Song Sparrow Estates off North Street. He distributed a letter dated May 10, 2010 with photographs of existing LID systems. Ms. MacNab asked Mr. Amory if he was aware of this letter or proposal, and Mr. Amory responded that he was unaware of it until now. Mr. Grady stated that by using a bioretention swale there would be no increase in runoff and he could meet stormwater requirements. Sandy soils on the property provide a perfect application for an LID system.

Mr. Grady responded to comments in Mr. Amory's engineering review letter of May 4, 2010:

- The 300-foot sight distance shown on Sheet 4 of subdivision plans is in compliance with Subdivision Rules and Regulations
- The applicants do not object to relocating a water main
- With a negative grade off of Tremont Street, stormwater runoff will bleed to the side of Tremont Street, similar to existing conditions
- A proposed ten percent grade is the exact vertical curvature as at an existing approved subdivision, Hillside Lane
- The existing pool house will be relocated to an area depicted on Sheet 2 of plans.
- The existing septic system will be relocated in order to accommodate a proposed roadway.
- He would be happy to discuss the newly proposed bioretention system with Mr. Amory
- The applicants have no opposition to alternative names recommended by the Town Historian, Mr. Tony Kelso.
- In response to Development Review Team comments regarding drainage on to Tremont Street, reducing the grade from ten percent to six percent would result in more grading and cut and fill.
- The owner would prefer to utilize the existing driveway rather than construct a new roadway.

Ms. MacNab invited questions from Board members. Mr. Bear asked if building permits exist for all structures on the lot, including an existing pool house and sports court. Mr. Grady responded that the pool house was constructed approximately eight years ago, and Atty. Galvin responded that he is not sure that the sports court required a building permit. Mr. Grady advised the Board that the sports court will be removed.

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Mr. Bear asked about the pool house, and Mr. Grady responded that it is a one-story structure with a walkout basement. The walkout provides storage for yard and pool equipment, and the upstairs provides access to the existing pool. Mr. Moody noted that plans show that the existing pool house would be relocated to within five feet of the proposed roadway and it appears it would be located within a 25-foot buffer zone. Mr. Grady noted that the pool house would be located twenty feet from the proposed roadway, and stated that the pool house would be located beyond the 25 foot buffer zone. He agreed to add the setback line on revised plans. He also agreed to confirm the setback of the proposed deck. Mr. Wadsworth suggested a site visit by the Planning Board.

Ms. MacNab expressed doubt that the sight distance meets requirements. She stated that it must be difficult for current residents to get in and out of the property. Mr. Amory reported that he checked sight distance from measuring plans, not from walking the site. Mr. Grady explained how he calculated the sight distance, noting that the proposed access is on an outside curve, with different lines of sight than the Alden Street intersection nearby on Tremont Street. He stated that the speed limit is 30 miles per hour in both directions.

Mr. Moody asked if Mr. Amory was satisfied that changing the grade would reduce discharge onto Tremont Street, and Mr. Amory noted that changing the grade from the ten percent proposed to six percent recommended would require grading. He suggested that a compromise of eight percent may resolve the issue, although with a steep grade water will come down fast and may not reach groundwater treatment. He pointed out that a swale is not shown on current plans. Mr. Broadrick emphasized that town staff does not want any discharge onto a public way and having no catch basins is a concern. Mr. Grady agreed to work with Mr. Amory to find a solution.

Mr. Wadsworth noted that septic is not allowed within the Wetlands Protection Overlay District (WPOD). Atty. Galvin responded that it is a finite legal issue that will be decided by an appeal of a special permit through the Zoning Board of Appeals. Mr. Broadrick noted that the subdivision plan must comply with zoning, including the definition of lot area, which excludes the WPOD. Ms. MacNab noted that this issue makes it difficult to apply conditions. Ms. Ladd Fiorini questioned why the discussion should continue if the lots do not meet zoning requirements. Atty. Galvin suggested that the Board request an opinion from Town Counsel, and Ms. MacNab responded that it is the Planning Board's job to apply the Zoning Bylaws in subdivision deliberations.

Mr. Moody suggested waiting for the Land Court decision on the appeal of the Zoning Board of Appeals special permit denial before moving ahead with discussion of other issues related to Definitive Subdivision approval. Atty. Galvin suggested that the Planning Board could consider approving the subdivision with a condition that it must meet Zoning Bylaws. Ms. MacNab rejected the suggestion, stating that the Planning Board has never done such a thing before. She offered that the applicants could consider withdrawing. Mr. Moody noted that there are clearly differing opinions regarding the lot area, noting that it would not make sense to continue the discussion when there is an outstanding issue to be determined by Land Court. Atty. Galvin noted that the applicant has undertaken efforts since 2008 to build this subdivision. He stated that the WPOD appears to be mis-mapped in error, noting that the applicant wishes to proceed with the Definitive Subdivision approval.

Mr. Broadrick stated that town staff does not believe the map is wrong, noting that it appears to comply with the official 1971 Wetlands and Watershed Protection District map. He invited the applicants to make their case by requesting a change in WPOD line at a future Town Meeting.

Mr. Bear stated that the Board should not approve a plan that does not comply with zoning, noting that the application is improperly before the Board. Mr. Broadrick advised the Board that they can choose to deny the

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application, approve it, or approve it with conditions. Board members discussed how to proceed. Ms. Ladd Fiorini suggested postponing the application pending the Land Court decision. Ms. MacNab and Mr. Wadsworth stated additional issues with the subdivision as proposed, including sight line and the adjacent driveway that provides access for an abutter.

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Board members revisited the drainage issue. Mr. Grady explained the proposed drainage plan, noting that they need to add detail to plans depicting a cross-section of the LID swale.

Ms. MacNab confirmed with Mr. Grady that a neighbor at 1043 Tremont Street shares a driveway with 1053 Tremont Street, noting that a right-of-way line shown on plans is not a roadway itself. Using the subdivision plans, Mr. Grady showed Board members how the neighbor accesses their property.

Mr. Wadsworth asked about the exact square footage of upland and wetland, noting that those numbers are not shown for each lot on current plans.

Ms. Ladd Fiorini asked what material would be used for the driveway, and Mr. Grady responded that it will be constructed out of asphalt. Mr. Wadsworth asked how far below Tremont Street the driveway would be graded, and Mr. Grady responded it would be three inches lower than Tremont Street.

Ms. MacNab asked if the roadway will be within the Wetland Protection Overlay District (WPOD), noting that building lots require upland and cannot be located within the WPOD. Atty. Galvin responded that they can be located within the WPOD by special permit, noting that he believes the Residential Compatibility and WPOD zoning bylaws contradict one another.

Mr. Broadrick reviewed Zoning Bylaw Section 404.9 (Wetlands Protection Overlay District -- Special Permit for Use and Construction) and Section 410.4 (Residential Compatibility District Intensity, Dimensional and Coverage Regulations) for the definition of Lot Area which states that "...land within the Wetlands Protection Overlay District...shall not be included in the...lot area required for zoning compliance." Mr. Wadsworth concluded that it is clear that lot area excludes the WPOD. Mr. Grady noted that although the property lies within the WPOD there is also upland, and therefore the lot area definition does not apply.

Mr. Broadrick noted that the Board does not allow a roadway or right of way within the WPOD. He noted the definition of Right of Way from the 2005 Subdivision Rules and Regulations as "the area of land designated for the construction of a way or street." Atty. Galvin responded that by implication of ZBL Section 404.9c, the intent is to allow building of residential structures and therefore the access to those structures is allowed. Ms. MacNab invited public comment.

Mr. Charles Weyerhaeuser, director of the Art Complex Museum, an abutter to the property, asked how close the proposed roadway would be to the Art Complex, and if there would be any buffer between the properties. Mr. Broadrick noted that the existing trees that now serve as a buffer would be removed. Ms. MacNab expressed her displeasure, noting that the Board tries to be sensitive to neighbors.

Board members and Mr. Amory returned to the issue of drainage, reviewing their issues. Mr. Wadsworth asked if a homeowners' association would be created, and Atty. Galvin responded that there would be a small one. Mr. Wadsworth expressed the importance of maintenance of the proposed rain garden.

Ms. MacNab asked if the applicants wished to move forward despite major "show stopping" issues, and Atty. Galvin responded that they do. Mr. Bear expressed frustration with moving forward despite no resolution from Land Court regarding the special permit. Ms. MacNab stated that she was ready to go forward.

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MOTION: Mr. Bear made a motion, and Ms. Ladd Fiorini provided a second, to deny the application for the Complex Path Definitive Subdivision application solely on the basis that lot area is not included in definition of Lot Area according to Zoning Bylaws Section 410.4 (Residential Compatibility District Intensity, Dimensional and Coverage Regulations), which states that the Wetlands Protection Overlay District is not included in lot area.

DISCUSSION: Ms. MacNab asked if the public hearing should be closed first.

WITHDRAWAL OF MOTION: Mr. Bear withdrew his motion, and Ms. Ladd Fiorini withdrew her second.

MOTION: Mr. Bear made a motion, and Ms. Ladd Fiorini provided a second, to close the public hearing regarding the Complex Path Definitive Subdivision application.

DISCUSSION: Mr. Broadrick advised the Board that they could close the public hearing and wait for the Land Court decision regarding the special permit with the Zoning Board of Appeals. The court would remand the case or require the applicants to file a new subdivision plan.

VOTE: The motion to close the public hearing passed unanimously, 5-0.

MOTION: Mr. Bear made a motion, and Ms. Ladd Fiorini provided a second, to deny the Definitive Subdivision application for Complex Path solely based on the fact that the plans do not reflect lots outside the Wetlands Protection Overlay District that are large enough for buildable lots; referencing Zoning Bylaws 410.4 (Residential Compatibility District Intensity, Dimensional and Coverage Regulations) and 404.9 (Wetlands Protection Overlay District -- Special Permit for Use and Construction), such that the application does not meet current zoning requirements and therefore does not comply with *The Town of Duxbury Massachusetts Rules and Regulations Governing the Subdivision of Land* dated March 2005 under Section 1.0 **AUTHORITY AND PURPOSE:** powers of the Board shall be exercised to ensure compliance with the Protective (Zoning) Bylaw; and Section 3.2 **GENERAL:** the Board will not approve a subdivision unless the plan is in compliance with all applicable zoning.

VOTE: The motion carried unanimously, 5-0.

INITIAL PUBLIC MEETING, ADMINISTRATIVE SITE PLAN REVIEW: 30 RAILROAD AVENUE / CLIFFORD

Present for the discussion were the applicants, Ms. Kelly Clifford and Mr. Norm Laviolette; and Mr. Ben Goodrich representing the property owners, S&G Associates. Also present was the Town Consulting Engineer, Mr. Walter Amory of Amory Engineers.

Ms. MacNab noted that the parcel on which the existing structure lies has changed because the property owners removed interior lot lines and now the parcel exists as one large lot with several structures, which is not allowed by current Zoning Bylaws. She stated that she is struggling with how to proceed.

Mr. Laviolette explained that they are leasing the building that was previously operated as Back River Fish Market in order to open a burrito and taco shop as primarily a take-out establishment. Ms. Clifford stated that there would be two to three managers and five to six staff, with a maximum of five employees on the premises at one time.

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Mr. Wadsworth noted that parking is required for employees and customers. Mr. Laviolette responded that along with common parking areas that currently exist, they can revise plans to block off the required number of parking spaces. He stated that employee parking would be in the back of the building near a loading dock and back entry. Mr. Laviolette stated that parking will not be allowed in front of the building, and planters will be placed in front of the building to discourage parking. Mr. Wadsworth calculated that the business would require ten parking spaces, and stops should be installed to delineate parking in the gravel lot. Ms. Ladd Fiorini advised the applicants that these should be shown on the plan as well. Mr. Moody asked about the condition of the parking lot and Mr. Amory responded that it is fairly level.

Ms. MacNab asked about the hours of operation, and Mr. Laviolette responded it would be open for lunch and dinner.

Ms. MacNab noted that this is the first business to open since the lots were combined. She noted that the leased area needs to be shown on plans to verify that the parking area is sufficient to accommodate customers and employees. She noted that the Board is also interested in traffic flow, pedestrian access and egress, and the no-parking zone in front of the business. Mr. Amory added that handicap parking must be provided with signage. Mr. Broadrick advised the Board that the handicap area should be paved and a ramp should provide handicap grade access to the business entrance.

Mr. Will Zachmann of 160 Standish Street asked if use can be permitted for a part of the lot now that it is one combined lot. Ms. MacNab noted that the 81X plan that combined the lots created a zoning nonconformity. Mr. Wadsworth noted that this is an issue for the Zoning Board of Appeals to determine. Mr. Moody emphasized the need for designated lease line on the site plan, and Mr. Laviolette noted that the owners are willing to define the lease area.

Board members summarized their recommendations:

- Grade parking area if needed
- Delineate parking stops on plans
- Show planters on plans that will prevent parking in front of the building and on southerly access corner
- Provide for a 24-foot wide access to the parking
- Ten parking spaces are required
- Show the loading dock in the rear of the building on plans
- Exit/Enter signs to direct parking from the south
- Signage for handicap parking
- Paved path or wood ramp to provide handicap access to front door (Mr. Broadrick will check with the Director of Inspectional Services regarding the preferred material).

Mr. Laviolette agreed to comply with these recommendations and promised that plans would be available within one week.

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to continue the public meeting for Administrative Site Plan Review of 30 Railroad Avenue until June 14, 2010.

VOTE: The motion carried unanimously, 5-0.

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ZBA REFERRAL: 30 RAILROAD AVENUE / CLIFFORD

Board members reviewed materials from the Zoning Board of Appeals regarding a special permit for use of the business proposed at 30 Railroad Avenue.

MOTION: Mr. Wadsworth made a motion, and Mr. Bear provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit application for use at 30 Railroad Avenue, noting that the application is undergoing Administrative Site Plan Review with the Planning Board.

VOTE: The motion carried unanimously, 5-0.

OTHER BUSINESS

Land Use Summit: Mr. Zachmann reported that at tonight's Board of Selectmen meeting an upcoming Land Use Summit was cancelled due to lack of response from the Planning Board and Zoning Board of Appeals. Board members expressed puzzlement at the Board of Selectmen's interpretation since the Planning Board is very interested in discussing land use issues.

Zoning Board of Appeals: Ms. MacNab reported that the Planning Board and Zoning Board of Appeals had a productive meeting on May 3, 2010. Topics included zoning enforcement, a joint Request for Qualifications for engineering review services, and Zoning Bylaw "clean-up." Mr. Bear noted that the Zoning Bylaws will be reviewed by Mr. Wadsworth and Ms. Judith Barrett of the Zoning Board of Appeals. Potential topics to be reviewed include piers, administration of fees in lieu of affordable housing for Planned Developments, garden homes for Planned Developments, and variance requirements for a change in use.

Zoning Enforcement: Mr. Bear reported that he had attended an informal meeting of residents who are concerned with zoning enforcement. He stated that two former Zoning Board of Appeals members stated at that meeting that they believe it does not contradict Zoning Bylaws to live in an original dwelling while building a second dwelling on the same lot, as long as the stove in the original dwelling is removed before occupying the new dwelling. Residents discussed examples of several cases where it appears that two dwellings exist on one lot.

Ms. MacNab stated that the Planning Director, Mr. Broadrick, has worked with town staff to resolve these zoning enforcement issues. In fact, she reported that Mr. Broadrick had met with Town Manager, Town Counsel, and the Director of Inspectional Services earlier that day. Mr. Broadrick advised Board members that he will be reviewing all building permits from now on. A proper appeal system will be created. Currently a building permit can be appealed directly to the ZBA within thirty days of its issuance. After thirty days, zoning enforcement can be requested of the Zoning Enforcement Officer (ZEO) who must respond within fourteen days. If a resident is unhappy with the response from the ZEO, they can appeal the decision which brings the issue to the Zoning Board of Appeals. Throughout this process, construction can continue at the owner's risk.

Ms. MacNab stated that at a previous meeting she attended at Town Hall, Town Counsel Atty. Robert Troy was clear that two dwellings are not allowed on one lot. This is a practice that she was told was going to stop. She suggested that a study group perform an audit of double-density properties and request that the Zoning Enforcement Officer send a letter to property owners in violation. Mr. Broadrick advised the Board that after the statute of limitations passes nothing can be done.

Ms. Ladd Fiorini expressed concern over building permits issued at River Lane for construction of a dwelling and a guest house. She reported that an abutter was told that a cease and desist order had been issued on construction but later found out that it had not been issued.

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Ms. MacNab recalled a building permit that had been issued for a second dwelling on Bumblebee Lane. Mr. Dennis Murphy of 290 High Street, who serves as chairman of the Zoning Board of Appeals (ZBA), stated that the ZBA agrees that an accessory structure cannot be larger than the principal structure. He commented that the town needs better rules and possibly a hard line on dimensions. Mr. Bear stated that the problem is with zoning enforcement, not the Zoning Bylaws. Ms. MacNab agreed to review building permits to review double density projects and how they were permitted.

52 Sunset Road: Ms. MacNab noted that despite a promise not to permit double density, she found an example of a permit issued at 52 Sunset Road on the April 2010 construction list from the Building Department for a 16' x 32' "utility building" with a screened porch. She noted that the town won a case (*Duxbury v. Merry*) in previous years for a similar situation. She noted that the Planning Board has the right to appeal just as a resident could.

Mr. Dennis Murphy of 290 High Street, who serves as chairman of the Zoning Board of Appeals (ZBA), commented on the application for 52 Sunset Road, noting that on April 5, 2010 the ZBA reviewed the building permit application and unanimously agreed that it was not a building that met the definition of Accessory Structure, only to find out a week later that a building permit had been issued. Mr. Murphy showed Board members a set of elevation plans and floor plans that depicted a chimney and large screened porch with mahogany floors. He noted that the ZBA has no mechanism for oversight of the Building Department. Mr. Broadrick informed the Board that when he reviewed the building permit for 52 Sunset Road he was not provided elevation plans or floor plans, and the plans he reviewed showed a different porch than is depicted on the plans Mr. Murphy has. He suggested that the Board could consider appealing a building permit within thirty days of its issuance and the project cannot be built until the ZBA reviews the appeal. Mr. Wadsworth recommended that the Board appeal the building permit for 52 Sunset Road. Discussion followed regarding how to respond.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Wadsworth provided a second, for the Planning Board to appeal the issuance of building permit #BP-2010-0078 for 52 Sunset Road.

VOTE: The motion passed unanimously, 5-0.

Board members expressed regret that the situation had escalated to this extent. Mr. Broadrick offered to draft a letter appealing the building permit on behalf of the Board.

Parking/Lot Coverage Bylaw Study Group: Mr. Bear reported that Ms. Sara Wilson, a former member of the Zoning Board of Appeals, has agreed to serve on this group. Board members discussed which member of the Economic Advisory Committee to invite and after some deliberation it was agreed to continue the discussion at a future Board meeting.

Engineering Invoices: Due to the late hour, Board members agreed to review invoices at their next meeting.

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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