



# Town of Duxbury Massachusetts Planning Board

Approved 07/12/10

TOWN CLERK  
10 OCT 25 AM 10:47  
DUXBURY, MASS.

## Minutes 05/24/10

The Planning Board met at Town Hall, Small Conference Room, on Monday, May 24, 2010 at 7:00 PM.

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

Absent: Harold Moody.

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

Ms. MacNab called the meeting to order at 7:02 PM.

### OPEN FORUM

There were no items brought forward for Open Forum.

### OTHER BUSINESS

Because it was not yet time for the scheduled public hearing, the Board addressed a portion of Other Business.

#### Engineering Invoices:

**MOTION:** Mr. Cutler made a motion, and Mr. Halligan provided a second, to pay the following Amory Engineers invoices:

- #13099A dated May 4, 2010 in the amount of \$195.00 for services related to Freeman Farms Modification
- #13099B dated May 4, 2010 in the amount of \$1,202.50 for services related to Complex Path
- #13099C dated May 4, 2010 in the amount of \$585.00 for services related to 30 Railroad Avenue.

**VOTE:** The motion carried unanimously, 6-0

**MOTION:** Mr. Cutler made a motion, and Mr. Halligan provided a second, to pay the Vine Associates invoice #1404-5 dated April 30, 2010 in the amount of \$1,222.50 for services related to 95 Tremont Street

**VOTE:** The motion carried unanimously, 6-0

#### Meeting Minutes:

**MOTION:** Mr. Cutler made a motion, and Mr. Bear provided a second, to approve meeting minutes of April 26, 2010 as written.

**VOTE:** The motion carried 5-0-1, with Mr. Halligan abstaining.

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**INITIAL PUBLIC HEARING: MACFARLANE FARMS DEFINITIVE SUBDIVISION,  
OFF HIGH STREET / OLDE KINGS LLC**

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Ms. MacNab opened the public hearing at 7:05 PM. Present for the discussion were the applicant, Mr. John Baldwin; his representative, Mr. Brad MacKenzie of MacKenzie Engineering; and the property owner, Mr. Ray MacFarlane. Also present was the town consulting engineer, Mr. Mark Nelson of Horsley Witten Group. Ms. Ladd Fiorini read the public hearing notice and correspondence list into the record:

- Application and materials with cover letter and plans dated 02/15/10 and submitted to the Planning office on 02/17/10
- Transmittal memo from D. Grant to M. Nelson dated 04/14/10 re: application materials
- Legal notice published in Duxbury Clipper on 04/28/10 and 05/05/10
- Development Review Team (DRT) minutes dated 04/16/10
- DRT minutes dated 04/27/10
- Email from M. Nelson and T. Wong of Horsley Witten Group dated 05/17/10 re: peer review.

Mr. MacKenzie made a presentation on behalf of the applicants. He stated that the property is located at 180 High Street on approximately four acres in the Residential Compatibility zoning district. The land is mostly open meadow although a single family dwelling, remnants of a stable, old chicken coops, and a windmill are on the property. Three lots are proposed, each containing the required 40,000 square feet of area and 200 feet frontage from a 150-foot cul-de-sac that is fourteen feet in width with a hammerhead turnaround.

Mr. MacKenzie stated that the roadway is different than required by Subdivision Rules and Regulations because it is superelevated to allow LID drainage with grass swales and a bioretention raingarden that will provide over ninety percent TSS removal. He distributed a handout on Best Management Practices and noted that the bioretention swale meets those requirements with an enhanced degree of treatment as depicted in a cross-section drawing on proposed plans.

Mr. MacKenzie stated that most of the site drains down toward High Street. An existing catch basin directs runoff to a catch basin across High Street. He said that Mr. Baldwin spoke to Mr. Peter Buttkus, Director of the Department of Public Works (DPW), who advised him that the DPW will be replacing the culvert this spring. The runoff rate will be less than pre-development, and there would be no impact on wetlands across the street.

A new hydrant is proposed and additional water services are proposed. Utilities will be placed underground as requested. A detention basin is proposed that will cover a 25-year storm event with one foot of freeboard. The drainage system was designed to work with current elevations.

Ms. MacNab requested that staff talk to the DPW regarding the drainage situation.

The roadway will remain private and a Homeowners' Association will be created to provide for maintenance requirements.

Mr. Broadrick noted that the applicants need to file with the Conservation Commission. The applicant should also obtain a letter from the Water Department regarding the water flow. The applicant's engineer should meet with the town consulting engineer regarding the drainage system.

Ms. MacNab asked for a report from the town consulting engineer, Mr. Mark Nelson of Horsley Witten Group. Mr. Nelson referenced his letter dated May 17, 2010 with thirteen issues outlined. He pointed out his main concern is that there is less than two feet to groundwater from the bottom of the drainage basin to the high water table. A layer of stone or gravel needs to be added to make sure the drainage is functional. He recommended that a separate lot be created for the drainage. Mr. Baldwin questioned why a separate lot should be required, and Mr. Broadrick responded that homeowners have been found to fill in drainage basins thinking

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it's their property. Mr. Halligan noted that he formerly resided three houses from this subdivision property, and confirmed that the water table is an important issue and stressed that it is crucial to keep water on the site.

Ms. MacNab asked if the existing barn would be removed, and Mr. Baldwin replied that they have not decided about the barn or the old existing farmhouse. He has spoken with the Historical Commission. Ms. MacNab recommended that he continue communications with the Historical Commission.

**MOTION:** Mr. Bear made a motion, and Ms. Ladd Fiorini provided a second, to continue the public hearing for MacFarlane Farms Definitive Subdivision off High Street / Olde Kings LLC until Monday, July 12, 2010 at 7:05 PM, with revised plans due on June 28, 2010 and an act-on date of August 31, 2010.

**VOTE:** The motion carried unanimously, 6-0.

### **ANR PLAN OF LAND, LOVERS LANE / BISHOP**

Present for the discussion were the applicant, Ms. Cherry Bishop of 30 Lovers Lane, and her sister, Ms. Clara Nickerson of 28 Lovers Lane. Also present was Ms. Bishop's attorney, Russell Canevazzi. Atty. Canevazzi explained that Ms. Bishop is attempting to straighten out boundary lines. An original ANR dated May 23, 1966 shows three parcels: A, B and C. The subject of the present ANR plan is Parcel B, an unbuildable parcel which is to be split in two with each resulting piece to be combined with abutting lots. No frontage is affected and the lots exceed the 40,000 square foot requirement for this zoning district. The proposed ANR plan shows new parcel D to be combined with existing Lot A (as shown on the old ANR) and new parcel E to be combined with existing Lot C (as shown on the old ANR).

Ms. MacNab asked why the applicant was filing the ANR plan, and Ms. Bishop responded that she and her sister wish to square off the lot line. Her sister is already maintaining the portion of land to be conveyed to her.

**MOTION:** Mr. Halligan made a motion, and Mr. Cutler provided a second, to endorse a Plan of Land entitled, "Plan of Land off Lovers Lane, Duxbury, Mass." dated March 30, 2010 and stamped and signed by Timothy R. Bennett, PLS – one sheet – as not requiring approval under Subdivision Control Law.

**VOTE:** The motion carried unanimously, 6-0.

Board members signed the mylar and two paper copies of the ANR plan, and the mylar was released to Atty. Canevazzi.

### **CONTINUED PUBLIC MEETING, ADMINISTRATIVE SITE PLAN REVIEW: 30 RAILROAD AVENUE / CLIFFORD**

Present for the discussion was the applicant, Ms. Kelly Clifford, and the Town Consulting Engineer, Mr. Walter Amory of Amory Engineers. Ms. Clifford stated that she had received approvals from the Zoning Board of Appeals and the Board of Selectmen, both pending Administrative Site Plan Review from the Planning Board.

Ms. MacNab asked what material will be used to provide the structures to prevent parking on Railroad Avenue, and Ms. Clifford responded that they are considering either ceramic planters or aluminum troughs connected by a rope or chain. Ms. MacNab noted that residents are used to parking in front of the building, so

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any planters need to be effective in discouraging it. Mr. Bear suggested "No Parking" signs. Mr. Broadrick offered to work with the applicants and Mr. Scott Lambiase, Director of Inspectional Services, to ensure that a sufficient barrier is provided.

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Mr. James MacNab of 269 Old Tobey Garden Street asked if outdoor seating would be provided, and Ms. Clifford responded that it would not be allowed, adding that the property owner, Mr. Goodrich, intends to add tables to a common area nearby on a different part of the property.

Mr. Amory pointed out that no parking stops are provided for the employee parking in the rear of the building; two spaces need to be available for employees. Ms. MacNab stated her preference for no parking stops because the employee parking is parallel parking and might be hazardous for vehicles to travel over accidentally.

Mr. Wadsworth asked about the handicap parking dimensions, and Mr. Amory confirmed that they meet regulations. However, the van accessible handicap sign and the paved aisle and ramp need to be shown on the site plan. Mr. Wadsworth asked if the handicap space must be paved and Mr. Broadrick responded that it is up to the Americans with Disabilities Act (ADA) Officer.

Mr. Amory noted that the access to the parking area needs to be controlled, providing a 24-foot access. Ms. MacNab directed staff to work with the applicant to ensure this is done.

Mr. Amory asked if utilities need to be shown on the site plan, and Mr. Broadrick noted that the existing overhead utilities will not change so do not need to be depicted; however, if any digging is to be done the applicants are required to contact Dig Safe to mark pipe location.

Ms. MacNab stated that it would be preferable to have as much information regarding the entire site as possible, and she expressed concern that Town Counsel had not been contacted regarding the loss of grandfathering when lots were combined to create one large parcel with multiple business structures. Ms. Jeanne Clark of 88 Surplus Street asked why the burden is not placed on the owner. Ms. Clifford noted that the owner, Mr. Ben Goodrich, was present at the last meeting and as applicants they have done everything asked of them. Ms. Ladd Fiorini noted that since it was a similar use the utilities should not be required to be shown on the plan until Mr. Goodrich proposes any future alterations on the site. Mr. Bear agreed that although it is an awkward site, no construction is proposed with the current application.

Ms. Kay Foster of 134 Surplus Street asked about the pervious vs. impervious requirements of the leased area, and Ms. MacNab noted that all grandfathering was lost when the lots were combined. Ms. Foster asked if the septic would be updated and Ms. Clifford responded that the existing septic was approved by the Board of Health.

Ms. Clifford stated that they hope to open for business this summer and requested that the Board conclude its Administrative Site Plan Review so the applicants can move forward.

Mr. Broadrick summarized items for follow up:

- Barrier structures to prevent parking on Railroad Avenue need to be finalized and depicted on plans, including a 24-foot wide access to the parking lot.
- Parking spaces 9 and 10 (for employees) do not require stops
- Pave next to handicap ramp with a grade of no more than six to seven inches
- Affix a handicap parking sign to the building in front of parking space #6
- Access to the parking area needs to be reduced from 35 feet to 24 feet, with Dig Safe to be contacted in the event of any digging required

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- No utilities need to be shown
- Lighting is to be shown on plans, considering reduction of glare on abutting properties

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**MOTION:** Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to endorse an Administrative Site Plan Review plan for 30 Railroad Avenue / Clifford entitled, "Proposed Parking Layout Plan" dated April 22, 2010, to be revised as amended tonight, to be stamped and signed by a representative of JC Engineering, Inc., 2854 Cranberry Highway, East Wareham, MA 02538, and also to authorize the Clerk to sign an Administrative Site Plan Review on behalf of the Planning Board to include terms outlined in tonight's meeting.

**VOTE:** The motion carried unanimously, 6-0.

**COMPLEX PATH DRAFT DECISION**

Board members reviewed a draft decision regarding the Complex Path Definitive Subdivision application.

**MOTION:** Mr. Bear made a motion, and Mr. Cutler provided a second, to request the Planning Board Clerk to endorse a decision as written for Complex Path Definitive Subdivision on 1053 Tremont Street/Dacey.

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

**DISCUSSION REGARDING VIEW EASEMENT AT CHRISTMAS TREE LANE / HERON WAY**

Mr. Broadrick explained the situation, noting that it relates to a view easement, Easement H as shown on approved Definitive Subdivision plans for Christmas Tree Way/Heron Way approved by the Board in 1989. Easement H is located on Lot 3 on the northeast side of the Heron Way cul-de-sac. The owner of Lot 3 has applied for a building permit to construct an eight-foot high privacy fence along the northerly boundary of Lot 3 within the Easement H which provides a "view easement" for the benefit of Lot 2 as shown on the plan. No structure can be located within that area shown as Easement H.

To complicate matters, Lot 2 was split in half in 1992 with the top half going to Lot 1 and bottom half going to Lot 3 but the easement on Lot 3 was never removed. The owner of Lot 1 (and top half of Lot 2) is not interested in the view easement and is willing to allow the fence to be erected. If this were a simple "civil" easement between the two parties, the Board would not even be involved. But because the subdivision was approved with the easements as noted, only the Board can modify or remove the easements. If the Board were so inclined to eliminate Easement H for practical reasons, the question then becomes is that elimination a minor (no public hearing) or major (notify abutters per public hearing) modification? Mr. Broadrick recommended that the Board consider approving it as a minor modification. He emphasized that the view easement is to no one's benefit at this point since the lot it was protecting has been divided among abutting properties.

**MOTION:** Mr. Halligan made a motion, and Ms. Ladd Fiorini provided a second, to approve a modification to remove "Easement H" from a Definitive Subdivision entitled, "Christmas Tree Way, Subdivision Plan of Land in Duxbury, Mass., Prepared for Christmas Tree Farm Realty Trust and Allen C. and Joanne I. Lahey," stamped and signed by R.C. Southwick, PE, PLS of RC Southwick

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Associates, 242 Smith Neck Road, Dartmouth, MA 02748 and originally endorsed by the Planning Board on January 4, 1989.

**VOTE:** The motion carried unanimously, 6-0.

### ZONING ENFORCEMENT

Board members reviewed materials prepared for them as a result of a meeting earlier that week where staff worked with Ms. MacNab and Mr. Bear to identify examples of building permits that have been issued that appear to be for a secondary dwelling. Mr. Bear noted that these examples appear to be for building permits that were issued in conflict with Zoning Bylaws. He stated that staff and Board members have been in discussion with town departments over the past several months. The Director of Inspectional Services has been invited to a Board meeting to discuss the issue and has declined to attend. The thirty-day appeal period for building permits offers a narrow window of time and the Board sees the list monthly which often does not allow for a timely appeal. After thirty days of the building permit issuance, the Board can choose to request zoning enforcement. In January 2010 it was agreed that no building permits would be issued for second dwellings on the same lot, including pool houses or guest houses. Despite this resolution a few have been permitted since then.

Ms. MacNab added that the long term effect is increased density on lots that were intended for one dwelling. She noted that at a Land Use summit two years ago hosted by the Board of Selectmen, residents' concerns over double density took up a majority of the discussion. She stated that the Board is attempting to help the town get a handle on the issue. She suggested that the examples that follow may be worthy of the Board's request for zoning enforcement.

*One Fairway Lane* – A permit was issued on December 31, 2009 for a detached garage, but the floor plan shows an exercise room, bedroom and bathroom upstairs with a separate entry and a three-stall garage on the first floor with a separate entry to the upstairs. Mr. Broadrick noted that the detached structure is closer to the primary dwelling than allowed by Zoning Bylaws considering the height of the accessory structure.

*98 Surplus Street* – This was a demolition permit to remove part of a dwelling and relocate an attached barn. Then a supplement to the demolition permit was issued to construct a 24' x 26' two-story addition with no plot plan. Since the barn is an historic structure, Mr. Broadrick questioned if it was proper to supplement a demolition permit with a building permit. Ms. MacNab agreed that this was a major concern, observing that the applicants bypassed the process. Mr. Broadrick stated that during his first tenure as Planning Director he reviewed all building permits and demolition permits. As of this month he is reviewing building permits and will request that demolition permits are also routed through him.

Ms. Jeanne Clark of 88 Surplus Street expressed concern that the Historical Commission should have been alerted regarding the old barn and stated that the project should have been issued through a special permit. Mr. Bear noted that the barn was not old enough to be considered historic.

*228 Surplus Street* – A building permit was issued on January 25, 2010 for a pool house with lavatory/powder room which the owner says is unheated. He also states it is constructed exactly per the permit. There is some disagreement about what is actually being constructed and as of January 1, 2010 there was agreement internally in town hall that no more pool house permits would be allowed. Instead, the applicants would be told there is no provision for a pool house but that an appeal of the denial for a pool house to the Zoning Board of Appeals (ZBA) or application for a variance to the ZBA would be the proper process. That apparently was not

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followed in the present case. Ms. MacNab suggested more information should be gathered regarding this permit.

*21 River Lane* – Board members reviewed a letter from Mr. Scott Lambiase, Zoning Enforcement Officer, to Ms. Nancy Landgren of 625 Washington Street in response to her request for zoning enforcement regarding construction of two dwellings on one lot. In his letter Mr. Lambiase advised Ms. Landgren that in his opinion, no violations exist.

Ms. MacNab noted that she has been working since last fall to stop the issuance of building permits for second dwellings on one lot. She noted that the Board has directed staff to resolve the issue internally and a resolution was offered as of January 1, 2010 but now it appears that building permits are still being issued for two dwellings. This clearly violates Zoning Bylaws, and Town Counsel and Town Manager agree. She advised Ms. Landgren, who was present, to request a referral to the Zoning Board of Appeals, and recommended that the Board seek zoning enforcement as well. Mr. Broadrick pointed out that the proper procedure would be to appeal the Building Inspector's building permit issuance.

Ms. Landgren noted that she also has issues with the height of the buildings in relation to the distance between them. She reported that the Building Inspector had advised her that there is no process in place to appeal the issuance of a building permit because no one has ever done it before. Ms. MacNab responded that a process does exist and offered that Mr. Broadrick could help guide her.

*644 Washington Street* – A building permit was issued when the property appears to be clearly within the Wetlands Protection Overlay District, which should trigger a special permit or variance, and clearly exceeds the maximum building coverage of fifteen percent. Ms. Sarah McCormick, chairman of the Design Review Board, stated that this permit should have been sent to the Zoning Board of Appeals due to building coverage. Ms. Clark noted that the owners purchase additional land in order to install the septic system. Ms. MacNab asked staff to research this permit.

Mr. Bear also asked staff to look into permits for 155 Surplus Street, where alongside construction for a new dwelling it appears that an existing horse barn is being converted to living space. Mr. Broadrick explained that a building permit was issued to convert the existing structure to temporary living space while the new dwelling is being built. Ms. MacNab noted that this is a practice that has resulted in several double density lots in town.

Mr. Bear noted that examples like these affect the density of population in the town. Mr. Halligan noted that increased density in turn affects town services and issues like utilities, fire, police, school, and traffic. Ms. Foster recommended that Zoning Bylaws be reviewed by members of the Zoning Board of Appeals and Planning Board. She stated that there should be a mechanism to let people know about the thirty-day appeal process. Ms. MacNab pointed out that is the reason the town has the special permit process, so abutters will be notified. She stated the issue is that the Board disagrees with the Zoning Enforcement Officer's interpretation of Zoning Bylaws. Mr. James Lampert of 148 Washington Street, former chair of the Zoning Board of Appeals, recommended that Zoning Bylaws could be clarified so as to leave no room for broad interpretation.

### **ESTABLISHMENT OF ZONING BYLAW STUDY SUBCOMMITTEE**

This study group is a result of discussions between the Town Manager, Mr. Richard MacDonald, and the Board chairman. Ms. MacNab concluded that the Zoning Bylaws could be reviewed and clarified so there is no room for multiple interpretations, especially regarding accessory structures. The Town Manager has appointed the Planning Director and Director of Inspectional Services as ex-officio members.

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Mr. Bear commented that the issue is really zoning enforcement, not interpretation of the Zoning Bylaws. Mr. Cutler pointed out that the Zoning Board of Appeals appears to have a different interpretation of accessory structure than the Planning Board. Ms. Ladd Fiorini suggested that the group could define "pool house." Mr. James MacNab of 269 Old Tobey Garden Street urged Board members to expedite the process in order to be ready for Annual Town Meeting 2011.

**MOTION:** Mr. Cutler made a motion, and Ms. Ladd Fiorini provided a second, to nominate Ms. MacNab to serve on the Zoning Bylaw Study Committee. Ms. MacNab agreed to serve.

**VOTE:** The motion carried unanimously, 6-0.

**MOTION:** Mr. Cutler made a motion, and Ms. Ladd Fiorini provided a second, to nominate Mr. Bear to serve on the Zoning Bylaw Study Committee. Mr. Bear declined to serve. There was no second, so the motion failed.

Board members agreed to continue the discussion at their next meeting.

**LOT COVERAGE / PARKING SUBCOMMITTEE SCHEDULE**

Board members agreed to meet on the second and fourth Wednesdays of the month at 8:00 AM. Members of the subcommittee from the Board will be Mr. Wadsworth, Ms. Ladd Fiorini and Mr. Bear. Ms. Sara Wilson will serve as a member at large, and one person will serve from the Zoning Board of Appeals. Mr. Scott Lambiase, Director of Inspectional Services, will be asked to serve, and Mr. Broadrick will serve, as ex-officio staff members.

**ADJOURNMENT**

The Planning Board meeting adjourned at 10:13 PM. The next meeting of the Planning Board will take place on Monday, June 14, 2010 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.

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