



Town of Duxbury Massachusetts Planning Board

Approved 09/13/10

TOWN CLERK
10 OCT 25 AM 10:49
DUXBURY, MASS.

Minutes 07/12/10

The Planning Board met at Town Hall, Small Conference Room, on Monday, July 12, 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 7:05PM.

OPEN FORUM

Zoning Board of Appeals (ZBA) Schedule: Mr. Broadrick reported that the ZBA is scheduled to discuss Island Creek on July 14, 2010 and the Planning Board appeal of a building permit for 52 Sunset Road on July 22, 2010.

CONTINUED PUBLIC HEARING, DEFINITIVE SUBDIVISION: MAC FARLANE FARMS, 180 HIGH STREET / OLDE KINGS LLC

Ms. MacNab opened the public hearing at 7:06 PM. Present for the discussion were the applicant, Mr. John Baldwin of Olde Kings LLC and his representative, Mr. Brad MacKenzie of MacKenzie Engineering. Also present was the town consulting engineer, Mr. Mark Nelson of Horsley Witten Group. Ms. Ladd Fiorini read the correspondence list into the public record:

- Mutual Extension form signed at 5/24/10 PB meeting to continue public hearing until 7/12/10
- Revised plans dated 06/23/10 with cover letter from McKenzie Engineering Group dated 06/24/10
- Revised Drainage Calculations and Stormwater Management Plan dated 06/25/10
- Email with attachment from B. McKenzie dated 06/25/10 re: MacFarlane Farms Water System Analysis
- Letter from Horsley Witten Group dated 07/01/10 re: Review of plans dated 06/23/10 and other materials as listed above submitted by applicant
- Transmittal note from T. Broadrick to T. Mayo, Health Agent, dated 07/08/10 re: Question raised by Horsley Witten review letter of 07/01/10
- Conservation Commission notice of public hearing scheduled for 07/20/10 re: Notice of Intent at 180 High Street.

Mr. McKenzie presented revised plans dated June 23, 2010, noting that design changes have been made in response to Horsley Witten's review letter dated July 1, 2010, including drainage model changes, infiltration rates, and revision of peak volumes and rates. A one-foot freeboard has been added to the retention basin to prepare for a 25-year storm, and waivers will be required. In addition, the bioretention infiltration system has been revised to include a cross-section in order to comply with the Department of Environmental Protection (DEP) handbook.

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PLANNING BOARD MINUTES

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The applicants intend to revise plans to include a planting plan for rain gardens and flow for the bioretention area. There is a two-foot separation from seasonal high groundwater.

"Parcel D" has been added to the plan as a separate drainage parcel. An area has been delineated for a Cape Cod berm to direct rainwater on the super-elevated roadway, which is now shown as 18-feet wide. A hydrogen flow test has been performed in conjunction with the Water Department, showing 1,200 gpm and 53 psi. The requirements are 2,100 gpm/day at 20 psi. A new erosion control plan is being developed and will be submitted within the next few days.

Mr. Bear asked if a homeowners' association will be created, and Mr. McKenzie responded that it will.

Ms. MacNab asked if elevation changes would be required in order to get the desired separation to ensure there would be no runoff to adjacent properties. Mr. McKenzie responded that the current plans almost fully comply with DEP stormwater regulations; the Town of Duxbury Subdivision Rules & Regulations require drainage to be built to withstand a 25-year storm event. The applicants are improving existing conditions.

Mr. Mark Nelson of Horsley Witten made a brief presentation in response to plans dated June 23, 2010, noting that the following items need to be addressed:

- Bioretention facility close to road needs to be revised. This is important because it drains to wetlands across High Street.
- Planting plan required
- Cross section of test pit required to document that the proposed systems will work. Mr. Nelson is concerned that proposed elevations may not meet Board of Health regulations.

Mr. Baldwin responded that perc tests were performed prior to filing the subdivision application.

Ms. MacNab asked about the existing barn and farmhouse, and Mr. Baldwin responded that both Mr. Terry Vose of the Historical Commission and Mr. Scott Lambiase, Director of Inspectional Services, have inspected the buildings. The house is full of mold, so after he owns the property he intends to conduct a title search and obtain a permit to raze the farmhouse. The plan is to re-use materials if possible.

Mr. Broadrick pointed out that the existing barn would be a zoning violation on current plans because it sits on a lot line. The Planning Board cannot approve the subdivision plans as currently shown.

Mr. Wadsworth noted that hydrant thrusting is not shown on current plans, and Mr. McKenzie agreed to add it to revised plans.

Mr. Wadsworth expressed remaining concern over the flow test results. Ms. MacNab asked Mr. Nelson if he is satisfied that the proposed plans impose no additional runoff onto High Street, nor will they have any adverse impact, and Mr. Nelson responded that he does not see anything of concern. He stated that it was important to reduce volume and that has been achieved.

Ms. MacNab directed staff to draft conditions for approval for the next public hearing. Mr. Broadrick reminded the applicants that before the subdivision plans will be endorsed the applicants need to produce a Homeowners' Association and raze the barn.

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MOTION: Mr. Bear made a motion, and Ms. Ladd Fiorini provided a second, to continue the public hearing for MacFarlane Farms Definitive Subdivision / Olde Kings LLC to July 26, 2010 at 7:05 PM, with revised plans and materials due by July 14, 2010 and a decision deadline of July 30, 2010.

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DUXBURY, MASS.

VOTE: The motion carried unanimously, 6-0.

Mr. Baldwin and Board members signed a mutual extension form.

**CONTINUED PUBLIC HEARING, MODIFICATION OF DEFINITIVE SUBDIVISION:
FREEMAN FARMS, OFF ELM STREET / ELM STREET REALTY TRUST**

Ms. MacNab opened the public hearing at 7:49 PM. Representing the application were Mr. Mark Casey of South Shore Survey and Mr. John Moon. Several residents were present also. Ms. Ladd Fiorini read the correspondence list into the public record:

- Sign-in sheet from 06/14/10 public hearing
- Mutual Extension Form signed by applicant and PB on 06/14/10 to continue public hearing to 07/12/10
- Letter from J. Moon of Elm Street Realty Trust to P. Buttkus, DPW Director, dated 06/23/10 re: Request to remove sidewalk on Elm Street.

Mr. Broadrick explained that the applicants have revised their original request and are now requesting to remove approved sidewalks on Elm Street. Mr. Moon showed Board members photographs and noted that there are no other sidewalks on Elm Street from Tremont Street to Tobey Garden Street. Ms. MacNab responded that it would be ideal if there was a sidewalk down the length of the road because currently there is no place to safely walk down Elm Street.

Ms. MacNab also noted that Mr. Broadrick's research has determined that bituminous sidewalks are allowed in the subdivision as negotiated during litigation.

Ms. Ladd Fiorini asked if there is any potential for constructing the sidewalk without taking trees, and Mr. Wadsworth responded that it would not be possible due to the slope and sidewalk easement limitations. Ms. MacNab noted that the applicants could choose to meander the sidewalk to avoid trees and stay within the easement, adding that it is up to the applicants to work with the DPW Director to design the sidewalk.

Mr. Paul Szachta of 70 Cushing Drive asked for clarification regarding the new request. Mr. Wadsworth asked Mr. Szachta if street lights at the entrance to Cushing Drive would be of benefit to him. Mr. Szachta responded that although the teenage drinking goes on further into the subdivision, it would be an asset to have lighting at both subdivision entrances. Ms. MacNab noted that streetlights at both intersections are part of the original subdivision approval and these streetlights need to be installed prior to street acceptance.

MOTION: Mr. Cutler made a motion, and Mr. Halligan provided a second, to approve a Modification to Freeman Farms Definitive Subdivision off Elm Street / Elm Street Realty Trust to remove a requirement to eliminate sidewalks for Lots 10 and 11.

AMENDMENT TO MOTION: Mr. Wadsworth proposed to amend the requirements for sidewalks on Elm Street to be laid out to minimize tree clearing. Ms. Ladd Fiorini provided a second to the amendment. Mr. Cutler did not accept the amendment, so the amendment failed.

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DISCUSSION: Ms. Ladd Fiorini noted that it may be useful to have the meandering of sidewalks on the table. Ms. MacNab responded that it is better to provide separate motions for each action in order to judge each issue on its own merit. Mr. Cutler objected to the appearance of "horse trading."

VOTE: The motion carried 5-1, with Mr. Wadsworth voting against.

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to require that the sidewalk on Lot 7 of Freeman Farms Subdivision be designed to meander throughout the 20-foot layout so as to avoid the cutting of trees, and further that the sidewalk be extended on Elm Street to incorporate Assessor's Parcel 150A-013-001.

DISCUSSION: Ms. MacNab reiterated that it is better to provide separate motions for each action in order to judge each issue on its own merit. Mr. Bear recommended that the Board consider only the request before the Board and not add new conditions. Ms. Ladd Fiorini noted that she had visited the site to look at Lots 10 and 11 but has no knowledge of the current proposal to vote either for or against.

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

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to require that the sidewalk on Lot 7 of Freeman Farms Subdivision be designed to meander throughout the 20-foot layout so as to avoid the cutting of trees

DISCUSSION: Mr. Broadrick reminded the Board that the public hearing had not yet been closed.

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

WITHDRAWAL OF ORIGINAL MOTION: Mr. Cutler withdrew his motion and Mr. Halligan withdrew his second, thus voiding the original vote.

Mr. Moon asked for clarification regarding Mr. Wadsworth's motion and Mr. Wadsworth responded that the intent is to minimize tree cutting; however, if it does not save any trees the sidewalks do not have to meander.

MOTION: Mr. Cutler made a motion, and Mr. Halligan provided a second, to close the public hearing regarding a Modification to the Freeman Farms Definitive Subdivision off Elm Street / Elm Street Realty Trust.

VOTE: The motion carried unanimously, 6-0

MOTION: Mr. Cutler made a motion, and Ms. Ladd Fiorini provided a second, to approve a Modification to Freeman Farms Definitive Subdivision off Elm Street / Elm Street Realty Trust to remove a requirement to eliminate sidewalks for Lots 10 and 11.

VOTE: The motion carried 5-1, with Mr. Wadsworth voting against.

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MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to allow the sidewalk on Lot 7 of Freeman Farms Subdivision to be designed to meander within the 20-foot layout so as to avoid significant cutting of trees.

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DISCUSSION: Ms. Bear cautioned the Board not to tamper with the issues outside of the specific modification request. The applicant should consult with the DPW instead. Ms. MacNab responded that the applicants had introduced the issues of sidewalks with the modification request.

VOTE: The motion carried 4-2, with Mr. Bear and Mr. Cutler voting against.

Mr. Broadrick advised Mr. Casey that subdivision plans do not need to be further amended. A one-page modification decision will be submitted to Town Clerk.

CONTINUED PUBLIC HEARING, DEFINITIVE SUBDIVISION: CUSHING'S RETREAT, OFF OLDE PASTURE LANE / ELM STREET REALTY TRUST

Ms. MacNab opened the continued public hearing at 8:30 PM. Representing the application were Mr. Mark Casey of South Shore Survey and Mr. John Moon. Ms. Ladd Fiorini read the correspondence list into the public record:

- Email from P. Mackin, Water Superintendent, to T. Broadrick dated 06/14/10 re: Water main size
- Soil Evaluator Form submitted by applicant at 6/14/10 PB meeting
- Letter from J. Whittemore of Board of Health to Elm Street Realty Trust dated 06/07/10 and submitted at PB meeting of 06/14/10 PB meeting re: One year extension for septic approval at 287 Summer Street
- Email from T. Broadrick to D. Glenn of Fay, Spofford & Thorndike dated 06/15/10 re: Update on PB meeting of 06/14/10
- Transmittal email from D. Grant to D. Glenn dated 07/06 10 re: Copies of documents listed above for consulting engineer review.

Mr. Broadrick reported that town consulting engineer, Mr. David Glenn of Fay, Spofford & Thorndike was asked not to attend since the application is nearing completion. Mr. Casey stated that the Definitive Subdivision plan sheets have been renumbered. Reference to required pest control has been removed from the plans. A detail of a swale has been added to plans also, using a design from the DEP stormwater management. A draft Homeowners' Association was submitted to the Planning office today.

Mr. Casey stated that he talked to Mr. Broadrick today regarding a possible flow test and the Fire Chief will perform a flow test only for multi-family or commercial projects. Ms. MacNab noted that a letter from the Fire Chief is needed that confirms that the fire flow is adequate. A fire flow test is still required.

Mr. Ben LaFrance of 34 Olde Pasture Road reminded the Board that the plans should be revised to include a landscape sheet for the entrance to the new building lot off of Old Pasture Lane.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Cutler provided a second, to continue the public hearing for a Definitive Subdivision application for Cushing's Retreat, off Olde Pasture Lane / Elm Street Realty Trust, until August 23, 2010 at 7:05 PM, with revised plans and materials due by August 16, 2010 and a decision deadline of August 30, 2010.

VOTE: The motion carried unanimously, 6-0.

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ZBA REFERRAL: 11 WASHINGTON STREET / WASHINGTON DUXBURY LLC

Board members reviewed materials submitted for this application for a special permit to change the existing mixed use of professional office, retail and two residential apartments due to a change in ownership. In 2008 the original applicants, the Triebels, received approval to open a retail landscape accessory store through an Administrative Site Plan Review with the Board and a special permit through the Zoning Board of Appeals (ZBA). At this time the property has a new owner who is requesting a change in use to office only space on the first floor, with no retail.

MOTION: Mr. Cutler made a motion, and Ms. Ladd Fiorini provided a second, to defer judgment to the Zoning Board of Appeals regarding this special permit application, and to advise the ZBA that if the applicants eliminate the retail use and limit the new use of office only and no additional parking is required, then no further Administrative Site Plan Review is required as the proposed use is less intense and the property has already been approved for a more intense use under Administrative Site Plan Review.

VOTE: The motion carried unanimously, 6-0.

ZONING BYLAW STUDY GROUP

Mr. Broadrick confirmed that Mr. James Lampert has agreed to serve on this working group. He reported that Dr. Scott Oliver, owner of a medical building at 95 Tremont Street, had sent an email requesting to be a part of the Zoning Bylaw Study Group. Mr. Broadrick reported that he responded to Dr. Oliver that two separate working groups are being formed: Zoning Bylaw Study and Lot Coverage/Parking, and both groups have already been established. It would be up to the Board to add more members.

Mr. Cutler stated that he feels that one at-large member is enough on the Zoning Bylaw Study Group. Ms. MacNab noted that the purpose is to tighten up the Zoning Bylaws in order to clarify them and eliminate differing interpretations. Whoever serves on the working group should be very familiar with the Zoning Bylaws. Mr. Lampert will provide a counterpoint to the Planning Board members on the group, and she feels a small group would be the most effective. Mr. Wadsworth noted that if recommendations are made to amend the Zoning Bylaws, a public hearing will take place to allow input from any resident who wishes to attend.

Mr. Scott Casagrande of 500 Washington Street questioned why more residents are not invited to serve on these groups as at-large members. Ms. MacNab explained how the Zoning Bylaw Study Group was formed, noting that she and the Town Manager, Mr. Richard MacDonald, chose the working group with the intent not to necessarily make policy changes but to tighten up current bylaws to avoid misinterpretation.

LOT COVERAGE / PARKING WORKING GROUP

Mr. Bear reported that he would be inviting residents such as Mr. Jackson R. Kent and Mr. Morgan LaMarche to the initial meeting of this group as interested residents. He is hesitant to invite Dr. Oliver because he has a parking lot project still undergoing Administrative Site Plan Review and therefore may have a conflict of interest. However, anyone is welcome to attend the public meeting or the public hearing if recommendations are made to revise the Zoning Bylaws. Mr. Bear stated his preference to keep the working group small.

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OTHER BUSINESS

52 Sunset Road: Board members reviewed a Zoning Board of Appeals (ZBA) public hearing notice for July 22, 2010 for a Planning Board appeal of a building permit for an accessory structure at this property. Mr. Broadrick noted that the Board can choose to withdraw its appeal.

Mr. Bear noted issues with the plan that was approved, noting that it does not show the 100-foot buffer from wetlands and does not show a structure on an abutting property. Ms. MacNab added that the plan is not stamped by a registered land surveyor. Mr. Bear noted that what was built appears to be closer to an accessory structure than what was submitted originally. Ms. MacNab noted that the violation is in the process more than the permit application. She pointed out that the public hearing notice still contains incorrect information. She expressed sympathy for the homeowners, noting that the appeal is due to no fault of theirs. Mr. Cutler recommended that the Board concentrate on the most egregious cases.

MOTION: Mr. Bear made a motion, and Mr. Cutler provided a second, for the Planning Board to withdraw an appeal of a building permit at 52 Sunset Road.

DISCUSSION: Ms. MacNab asked if a reason for the withdrawal should be provided. Ms. Ladd Fiorini noted that the Board's decision to appeal was valid although Board members were away at the time that the structure had already been built according to the Zoning Bylaws. Mr. Hallan agreed that the facts that were presented have now changed. Ms. Ladd Fiorini expressed concern with the inaccuracies of public hearing notices.

VOTE: The motion carried unanimously, 6-0.

21 River Lane: Ms. MacNab noted that after the Zoning Enforcement Office receives the Planning Board request for enforcement on the issuance of a building permit, a response is required within fourteen days. If the Zoning Enforcement Officer does not agree with the request for zoning enforcement, then the Board can file an appeal with the Zoning Board of Appeals.

Other Potential Zoning Enforcement Issues: Ms. MacNab reported that she and Mr. Wadsworth have met with Mr. Broadrick to review other zoning issues:

- Sprague Farm Lane – This subdivision was approved with a condition that a second dwelling on the property would be abandoned; however it appears that it is being used as a dwelling and is undergoing renovations. Staff agreed to do further research on the history of zoning enforcement.
- Duxbury Estates – Mr. Bear noted that a porch addition has been constructed on one of the units, recalling that the planned development project was built with a condition for no further expansion is allowed beyond the footprint. Staff agreed to look into the issue.

Release of Escrow Funds:

MOTION: Mr. Cutler made a motion, and Mr. Wadsworth provided a second, to release any remaining escrow funds for Administrative Site Plan Review of Bonggi's, 414 Kingstown Way / Bonggi Realty Trust, based on a letter from the applicant, Mr. Thomas Pierce, dated June 30, 2010 stating that the applicants have decided not to go forward with construction.

VOTE: The motion carried unanimously, 5-0.

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Design Review Board:

MOTION: Mr. Cutler made a motion to appoint Mr. Moody to the Design Review Board as a designee of the Planning Board.

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DUXBURY, MASS.

MOTION FAILED: There was no second, so the motion failed.

Open Meeting Law: Board members reviewed a memo from Town Clerk's office highlighting changes to the law that went into effect on July 1, 2010. Ms. Ladd Fiorini asked for clarification on the "complaints" section and staff agreed to seek clarification from the Town Clerk. Mr. Halligan noted that the intent of the changes is to improve public access.

Zoning Reform Legislation: Board members reviewed a press release dated June 22, 2010. Mr. Broadrick reported that a group called CLURPA is trying to improve the permitting process. Mr. Wadsworth asked if Approval Not Required (ANR) plans are to be eliminated and Mr. Broadrick confirmed, noting that the town can create an alternate process.

Engineering Invoices:

MOTION: Mr. Cutler made a motion, and Ms. Ladd Fiorini provided a second, to pay the following Amory Engineers invoices:

- #13132B dated June 2, 2010 in the amount of \$842.50 for services related to Complex Path Definitive Subdivision
- #13163B dated July 6, 2010 in the amount of \$260.00 for services related to Freeman Farms Definitive Subdivision Modification.

VOTE: The motion carried unanimously, 6-0.

MOTION: Mr. Cutler made a motion, and Mr. Bear provided a second, to pay Horsley Witten Group invoice #28287 dated May 31, 2010 in the amount of \$1,793.75 for services related to MacFarlane Farms Definitive Subdivision.

VOTE: The motion carried unanimously, 6-0.

Meeting Minutes: Board members agreed to defer approval of meeting minutes dated May 10, 2010 and June 14, 2010 to allow further time for Board members to review.

MOTION: Mr. Cutler made a motion, and Mr. Wadsworth provided a second, to approve minutes of May 24, 2010 as amended.

VOTE: The motion carried unanimously, 6-0.

ADJOURNMENT

The Planning Board meeting adjourned at 9:50 PM. The next meeting of the Planning Board will take place on Monday, July 26, 2010 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.