



Town of Duxbury Massachusetts Planning Board

Approved 10/25/10

TOWN CLERK
10 NOV 23 AM 11:37
DUXBURY, MASS.

Minutes 08/23/10

The Planning Board met at Town Hall, Small Conference Room, on Monday, August 23, 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 7:01PM.

OPEN FORUM

Resignation of Harold Moody: Ms. MacNab noted that Mr. Moody had submitted his resignation today due to increased demands at work. She stated her appreciation for his work on the Board. Board members and staff discussed the process for appointing a replacement to serve until Town Elections.

Lot Coverage/Parking Working Group: Mr. Bear noted that the group is finishing up its work with only one or two meetings remaining.

DISCUSSION WITH DR. PETER WIEMEYER REGARDING POTENTIAL MODIFICATION OF ADMINISTRATIVE SITE PLAN REVIEW FOR 104 TREMONT STREET RE: PARKING

Mr. Wadsworth recused himself from the discussion because Dr. Wiemeyer is his dentist. Mr. Broadrick explained that Dr. Wiemeyer is allowing staff from the medical building at 95 Tremont Street to park in the lot at 104 Tremont Street. Parking requirements for both sites should be considered.

Dr. Wiemeyer stated that the size of the lot is 54,000 square feet. The impervious site coverage is currently 47 percent and the allowable percentage is fifty percent. The remaining three percent would equal approximately 1,600 square feet. Eight parking spaces would take up 1,368 square feet and still keep the coverage rate under fifty percent. He stated that the reason for his request is that he has potential renters that would require additional parking and he does not want clients to have to park on the lawn illegally.

Ms. MacNab asked if the proposed renters would have a use consistent with his special permit, and Dr. Wiemeyer responded that it is a medical use with quite a few patients.

Ms. MacNab noted that Dr. Wiemeyer would need to apply for a modification of the original Administrative Site Plan Review (ASPR) and most likely would need to amend his special permit with the Zoning Board of

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Appeals. Dr. Wiemeyer expressed concern that hiring an engineer would require an unnecessary expense for adding some parking spaces since it is more of a common sense issue than an engineering one.

Mr. Bear confirmed with Mr. Broadrick that land zoned Wetlands Protection Overlay District (WPOD) does not count toward lot coverage calculation.

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

Ms. MacNab opened the continued public hearing at 7:12 PM. Representing the applicants were Mr. John Baldwin, Mr. Raymond MacFarlane, Atty. James T. Pye and Mr. Jeff Haslett of McKenzie Engineering. Ms. Ladd Fiorini read the correspondence list into the public record:

- Mutual Extension form signed at 07/12/10 PB meeting to continue public hearing until 7/26/10
- Revised plans dated 07/13/10 with cover letter from McKenzie Engineering Group dated 07/15/10, including Construction Phase Inspection Schedule and Evaluation Checklist; and Calculation Sheets to determine compliance with Board of Health regulations
- Email from T. Kelso dated 07/21/10 re: Town Historian approval of MacFarlane Farm Lane street name
- Letter from M. Nelson and T. Wong dated 07/22/10 re: Horsley Witten Group review of plans dated 07/13/10
- Emails between M. Nelson and D. Grant dated 07/23/10 re: project status
- Draft Certificate of Notification dated 07/26/10
- Mutual Extension form signed at 07/26/10 PB meeting to continue public hearing until 08/09/10, with a decision deadline of 08/27/10
- Conservation Commission Orders of Condition dated 08/03/10
- Revised plans dated 07/26/10 with cover letter from McKenzie Engineering Group dated 08/02/10
- Email from D. Murphy dated 08/19/10 re: concern with property title
- Email from D. Murphy to G. Pye dated 07/29/09 and submitted to Planning office on 08/19/10 re: Local Historic District
- Draft Certificate of Notification dated 08/24/10

Board members reviewed a draft decision distributed to them at the meeting. Ms. MacNab asked about the status of a barn that straddles a proposed lot line and Mr. Baldwin responded that he will not be able to obtain a building permit as long as the barn straddles the lot line. Mr. Broadrick noted that this is also a requirement for subdivision approval. Ms. MacNab advised Mr. Baldwin that he needs to apply to the Historical Commission for a demolition delay permit due to the age of the barn.

Mr. Haslett made a presentation on the latest set of plans dated July 26, 2010, noting that he would be focusing only on issues with the Horsley Witten Group review letter of July 22, 2010. Mr. Broadrick noted that he had checked the latest set of plans against the Horsley Witten consulting engineers' comments and had advised Horsley Witten consultants not to attend tonight's meeting.

Mr. Haslett noted that a planting plan had been added to provide a clearer representation of plants to be used in the drainage system. He also noted that the proposed septic systems can comply with requirements to keep the system below the original existing grade.

Mr. Haslett noted that the Erosion Control Plan has been updated that shows a silt sack to be installed at the existing catch basin on High Street. Instead of trees, bean poles will be used to mark the limit of work area. Temporary silt fencing is to be removed when the area has been stabilized.

Mr. Wadsworth noted that Sheet 5 needs to be corrected to show plastic service lines instead of type K copper. Board members reviewed and noted minor revisions to the draft decision.

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Ms. MacNab asked for public comment. Mr. Dennis Murphy of 290 High Street stated that he has title issues in the interest in preserving the neighborhood:

- Historic preservation
- Property title
- Demolition delay bylaw.

Atty. Pye objected to discussion of the property title, stating that it has no relevance to the Planning Board and that there is nothing wrong with the title. Ms. MacNab noted that it is a public hearing and therefore all have a right to speak. Mr. Broadrick noted that title and deed references are required in the Definitive Subdivision application and the Planning Office operates on faith that the applicants have done any relevant title search. Anyone can challenge any part of the application by appeal.

Mr. Murphy explained his title research using a whiteboard, noting that there appears to be a missing link to other heirs besides the present owner, Mr. MacFarlane. Mr. MacFarlane objected that Mr. Murphy was incorrect in his understanding.

Mr. Murphy stated his concern that a definitive subdivision approval cures title issues, so if the ownership is incorrect it could affect the title. He acknowledged that additional information could exist but he has not been able to identify it. He stated that he has been unable to attend earlier public hearings because of a conflict with Zoning Board of Appeals meetings, of which he is chairman.

Atty. Paul Driscoll of 232 Crescent Street, who was attending the meeting for another matter, noted that matters of title are not under Planning Board jurisdiction but are determined in a court of law. He stated that it is not true that the subdivision plan "cures" the title.

Mr. MacFarlane explained the history of the property ownership, again using the whiteboard, showing that he owns the property outright. He stated that three attorneys had researched the property. Mr. Baldwin showed Board members the deed. Board members agreed that the question of title is not under the jurisdiction of the Planning Board.

Mr. Murphy noted that when a historic district had been discussed for this neighborhood, Mr. MacFarlane had been a vocal opponent and now he is applying for a subdivision. Mr. MacFarlane stated that his objection to an historic district had nothing to do with his subdivision application.

Ms. Ladd Fiorini asked about the applicants' plans for the existing dwelling and barn, inquiring if they had applied for demolition delay on the barn, and Mr. Baldwin responded that they had not applied for anything yet. Mr. Baldwin offered to move the lot line so it does not impinge on the existing barn. Ms. MacNab asked why he had not acted yet and Mr. Baldwin replied that he has not figured out what he is going to do with it yet. Mr. MacFarlane noted that he had requested that Mr. Baldwin not tear down the barn until the land is under Mr. Baldwin's name.

Mr. Haslett suggested that a condition be added to the subdivision approval that the barn would be removed from the lot line before subdivision construction can begin. Mr. Baldwin stated that it is not unusual to approve a subdivision plan with a lot line over a structure. Board members noted that this type of approval does not happen in the Town of Duxbury.

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to close the public hearing for MacFarlane Farm Definitive Subdivision / Olde Kings LLC.

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DISCUSSION: Mr. Bear noted that he was uncomfortable with closing the public hearing before final plans were submitted and before the lot line issue was resolved. Ms. MacNab agreed.

VOTE: The motion failed due to a tie vote, 3-3, with Mr. Cutler, Mr. Halligan and Mr. Wadsworth voting for the motion and Mr. Bear, Ms. Ladd Fiorini and Ms. MacNab voting against. Therefore the public hearing remained open.

Mr. Wadsworth noted that updated plans need to be submitted. Mr. Bear noted that those plans need to indicate that the existing structure is to be removed.

Mr. Baldwin requested that the subdivision approval be finalized, noting that it has been twice delayed due to quorum issues. Ms. MacNab noted that the lot line issue is not a new one. Mr. Broadrick noted that lots will not be released until the barn issue is resolved.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to close the public hearing for MacFarlane Farms Definitive Subdivision, 180 High Street / Olde Kings LLC

VOTE: The motion passed unanimously, 6-0.

MOTION: Mr. Wadsworth made a motion, and Mr. Halligan provided a second, to accept-waive #1, 2 and 3 as presented in the draft decision for MacFarlane Farms Definitive Subdivision, 180 High Street / Olde Kings LLC.

VOTE: The motion passed unanimously, 6-0.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to approve a draft decision with conditions as amended at tonight's meeting for MacFarlane Farms Definitive Subdivision, 180 High Street / Olde Kings LLC.

VOTE: The motion passed unanimously, 6-0.

Mr. Baldwin complained that Horsley Witten consulting engineering invoices represented forty percent of his entire engineering bill for the MacFarlane Farms project. Ms. MacNab recommended holding off approval of Horsley Witten invoice #28338 dated June 30, 2010 in the amount of \$2,377.50 until a detailed breakdown of time spent and reports produced can be submitted to substantiate the work performed. She advised Mr. Baldwin that the Board reviews every invoice before payment and she appreciated his comments. She advised staff not to accept any future invoices that do not contain a detailed breakdown of time spent and reports.

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

Ms. MacNab opened the continued public hearing at 8:45 PM. Ms. Ladd Fiorini read the correspondence list into the public record:

- Draft Homeowners' Association submitted to the Planning office on 07/09/10
- Revised plans dated 07/08/10 and submitted at PB meeting of 07/12/10
- Mutual extension form signed at the PB meeting of 7/12/10 to continue the public hearing until 08/23/10
- Statement from South Shore Pipeline dated 08/23/10 and submitted to Planning office on 07/28/10 re: Flow test results
- Draft Certificate of Notification dated 08/24/10.

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Present for the discussion were the applicant's representatives, Mr. Mark Casey of South Shore Survey and Mr. John Moon. Mr. Moon noted that a flow test had been performed.

Mr. Halligan noted that he had made some revisions to the draft Homeowners' Association.

Mr. Broadrick led the Board through the draft decision, and the Board requested that the Homeowners' Association be moved to become higher priority conditions and make its recording a condition before lots will be released. The Board made other minor edits as well.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to close the public hearing for Cushing's Retreat Definitive Subdivision, off Olde Pasture Road / Elm Street Realty Trust.

VOTE: The motion carried unanimously, 6-0.

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to approve waivers #1, 2, 3, 4, 5, 6, and 7 as shown on a draft decision for Cushing's Retreat Definitive Subdivision, off Olde Pasture Road / Elm Street Realty Trust.

VOTE: The motion carried unanimously, 6-0.

MOTION: Mr. Wadsworth made a motion, and Mr. Halligan provided a second, to approve a Certificate of Notification for Cushing's Retreat Definitive Subdivision, off Olde Pasture Road / Elm Street Realty Trust, as presented and amended.

VOTE: The motion carried unanimously, 6-0.

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INITIAL PUBLIC HEARING, DEFINITIVE SUBDIVISION: MC LEAN'S WAY, 56 & 70 BOW STREET / BAYSIDE PROPERTIES (REINHALTER)

Present for the discussion were the applicants, Dr. Emil Reinhalter and Mrs. Marianne Reinhalter, and their representative, Mr. Paul Brogna of Seacoast Engineering Company. Ms. MacNab noted that because the proposed application is not consistent with Zoning Bylaws (ZBL) Section 500, she was uncertain whether to open the public hearing. Mr. Bear suggested opening the hearing because the applicants and abutters had been waiting for two hours for it to begin. Mr. Wadsworth recommended that the Board discuss the process first.

Ms. MacNab explained that at a routine meeting with staff she had questioned why the applicants had not filed for a Residential Conservation Cluster (RCC) which is mandatory for subdivisions with six or more lots according to ZBL Section 500. Mr. Bear noted that ZBL Section 544 triggers the RCC requirement. Ms. MacNab noted that Annual Town Meeting approved the RCC zoning bylaw as a way to address the few remaining large parcels of land in the town in a way that preserves open space.

Mr. Broadrick agreed that it is clearly mandatory for applicants to file an RCC subdivision for six or more lots. The Planning Board has no power to waive this requirement and must consider an RCC plan in tandem with a traditional subdivision plan. So far the applicants have only submitted a traditional subdivision plan, which has been stamped in with the Town Clerk. Mr. Broadrick suggested that the applicants consider withdrawing their current application rather than the Planning Board denying it as incomplete. He noted that there would be no additional filing fee to submit an RCC plan and it would allow the process to move forward.

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Ms. MacNab asked Mr. Brogna if the applicants would consider withdrawing and Mr. Brogna responded that due to potential legal and financial issues he would prefer to discuss the matter with his clients. Mr. Brogna conferred with his clients and then asked the Board questions regarding the process. Mr. Brogna then stated that the applicants do wish to withdraw their applications for the Definitive Subdivision and special permit for affordable housing.

MOTION: Mr. Bear made a motion, and Mr. Cutler provided a second, to accept the withdrawal of McLean's Way Definitive Subdivision, off Bow Street / Bayside Properties and Special Permit for Inclusionary Housing, 56 & 70 Bow Street / Bayside Properties. There was no discussion regarding the motion.

VOTE: The motion carried unanimously, 6-0.

INITIAL PUBLIC HEARING, SPECIAL PERMIT: MC LEAN'S WAY, 56 & 70 BOW STREET / BAYSIDE PROPERTIES (REINHALTER)

This public hearing was not opened due to the withdrawal of the special permit application concurrent with the Definitive Subdivision withdrawal.

AS-BUILT APPROVAL AND RELEASE OF ESCROW FUNDS: 30 RAILROAD AVENUE / CLIFFORD

Board members reviewed an As-Built plan. Mr. Broadrick noted that instead of "substantial" parking barriers along Railroad Avenue, the owners have placed plastic planters with plastic plants. They are heavy but they are moveable. He stated that he was expecting a more solid barrier such as half-barrels. He stated that he believes they will deter vehicle parking even though they are not substantial.

Mr. Cutler stated that he felt the barriers were fine. Mr. Bear stated that they were less substantial than he expected. Ms. MacNab stated that the barriers installed were not what the Board had in mind. She noted that the Board should have required a landscaping plan. Ms. Ladd Fiorini stated that the Board cannot design projects for applicants, noting that the existing barriers are effective in preventing parking.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Wadsworth provided a second, to approve an As-Built plan for 30 Railroad Avenue / Clifford with Administrative Site Plan Review Conditions # 3, 4, 5, 6, 7, 8, 9 and 10 to remain for the duration of the project.

VOTE: The motion carried, 5-1, with Ms. MacNab voting against.

MOTION: Mr. Bear made a motion, and Mr. Halligan provided a second, to release all funds in an escrow account for Administrative Site Plan Review of 30 Railroad Avenue / Clifford, only after all engineering invoices are paid and proof of recording of the As-Built certificate has been returned to the Planning office.

VOTE: The motion carried 5-1, with Ms. MacNab voting against.

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ZBA REFERRAL: 577 WASHINGTON STREET / ALLEN

Board members reviewed this application for a special permit to construct a 14-foot square screened porch onto an existing deck that sits within the required fifteen-foot side setback on a nonconforming lot. Mr. Bear noted that the application perpetuates the nonconformity rather than making it more conforming. Ms. MacNab noted that coverage calculations were not included with the application materials. She also noted that it appears that a shed on the property appears to be located on a lot line.

MOTION: Mr. Bear made a motion, and Mr. Wadsworth provided a second, to recommend denial of a special permit application for 577 Washington Street / Allen because it perpetuates and increases the nonconformity.

DISCUSSION: Ms. Ladd Fiorini noted that she would have recommended approval because in that neighborhood houses appear to be built right up to the lot line. Mr. Wadsworth noted that it is a potential fire hazard when structures are located close to each other. Ms. MacNab spoke in favor of the motion because the proposal increases the nonconformity.

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

Board members noted that site coverage calculations, both existing and proposed, should be provided, and that the existing shed appears to straddle a lot line in violation of Zoning Bylaws.

ZBA REFERRAL: 384 KING CAESAR ROAD / CORBETT

Board members reviewed this special permit application to construct a 21.9 by 18.1-foot deck within the fifteen-foot side setback on a nonconforming lot. Ms. Ladd Fiorini noted that she would recommend denial because the proposed deck is within the fifteen-foot setback. Ms. MacNab noted that it would create a nonconformity.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Wadsworth provided a second, to recommend denial of a special permit application for 384 King Caesar Road / Corbett due to an increase in nonconformity or the proposed deck.

VOTE: The motion carried unanimously 6-0.

OTHER BUSINESS

21 River Lane: Atty. Paul Driscoll addressed Board members regarding a letter he had submitted earlier that day demanding that the Board withdraw its appeal of the Inspectional Services Director's response to a request for zoning enforcement for 21 River Lane. He questioned how it could be that there was no Planning Board meeting between July 19, 2010 – the date of the response by the Director of Inspectional Services – and August 18, 2010, the date of the appeal. He could find no reference to a motion or vote.

Mr. John Cook introduced himself as the construction supervisor at 21 River Lane and noted the Planning Board has not taken action during the previous nine months the project has been under construction. He complained that the appeal will cost his client. Mr. Bear responded that it was an administrative process only, and no motion was required. Ms. MacNab emphasized that it was the full consensus of the Board to move forward. The Board had hoped not to be in the position of filing this appeal.

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Mr. Scott Casagrande of 500 Washington Street noted that Board seems to be discussing zoning enforcement as a regular agenda item, and suggested that the property owners should be notified when their property is on the agenda.

Engineering Invoice:

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to pay Amory Engineers invoices #13207 dated August 3, 2010 in the amount of \$460.00 for services related to 30 Railroad Avenue / Clifford.

VOTE: The motion carried unanimously, 6-0.

Meeting Minutes: Due to the late hour Board members agreed to defer approval of meeting minutes dated May 10, 2010 and June 14, 2010.

ADJOURNMENT

The Planning Board meeting adjourned at 10:48 PM. The next meeting of the Planning Board will take place on Monday, September 13, 2010 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.

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