



Town of Duxbury Massachusetts Planning Board

Approved November 22, 2010

TOWN CLERK
10 DEC 22 PM 1:16
DUXBURY, MASS.

Minutes 10/25/10

The Planning Board met at Town Hall, Small Conference Room, on Monday, October 25, 2010 at 7:00 PM.

Present: George Wadsworth, Vice-Chairman; Cynthia Ladd Fiorini, Clerk; John Bear, Brian Glennon and Brendan Halligan.

Absent: Amy MacNab, Chairman; and Josh Cutler.

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

Mr. Wadsworth called the meeting to order at 7:02 PM.

OPEN FORUM

Planning Board Appointment: Mr. Wadsworth welcomed Mr. Glennon to his first official Planning Board meeting since his appointment by the Board of Selectmen on September 27, 2010.

Lot Coverage/Parking Working Group: Mr. Bear reported that this study group has completed its research and voted on two draft amendments to Zoning Bylaws. The group will meet on November 8, 2010 just prior to the Planning Board meeting in order to approve the minutes that reflect this vote, and then Mr. Bear will present the amendments at the Board meeting that night. Mr. Wadsworth commended Mr. Bear's leadership on this productive working group.

Duxbury Estates, off Summer Street: Mr. Broadrick reported that the developers had begun construction of a new drainage system without proper permits, in response to frequent basement flooding during rainy weather in an area of high groundwater. This drainage system drains within twenty feet of wetlands. A stop-work order has been issued and in the future the Planning Board may be reviewing a modification.

PUBLIC MEETING: CONSIDERATION OF PROPOSED RESIDENTIAL CONSERVATION CLUSTER (RCC) CONCEPT PLAN / PRELIMINARY CONVENTIONAL SUBDIVISION PLAN FOR 56 & 70 BOW STREET / BAYSIDE PROPERTIES (REINHALTER)

Present for the discussion to represent the applicants were Dr. Emil and Ms. Marianne Reinhalter; Attorney Robert W. Galvin; Mr. Paul Brogna of Seacoast Engineering; and Mr. Steve Braconi, real estate broker. Mr. Broadrick noted that according to Zoning Bylaws, the Board has 45 days from submittal to make its determination regarding the number of lots and whether the RCC plan or conventional subdivision plan provides the best use of land according to Zoning Bylaws. Mr. Wadsworth noted that it would be beneficial to schedule a site visit so that Board members can view the property. Since added to the Zoning Bylaws in 2003, this is the first application under the bylaw.

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Atty. Galvin presented the application, noting that it has been filed as an RCC/Definitive Subdivision because five or more lots are proposed on a parcel of land over ten acres in size. The applicants' preference is to construct a conventional subdivision, and the letter submitted with the application explains the rationale. From an economic perspective a conventional subdivision would provide the developers a greater return on investment. Potential buyers have approached the owners and have expressed interest in a full-size conventional subdivision lot rather than a reduced-sized cluster lot. The owners have also discussed the project with abutters who also prefer a conventional subdivision if the land is to be developed. The applicants propose a traditional subdivision plan that mimics an RCC because buffer zones will be proposed for each lot. Atty. Galvin expressed concern over the legality of the RCC bylaw because it does not offer the developer an option.

Atty. Galvin noted that he reviewed minutes from a Development Review Team (DRT) meeting, and advised the Board that the applicants had requested to attend this DRT meeting but were told that it was a town business meeting and not open to the public. He stated that it may have been helpful to have allowed Mr. Brogna to attend in order to clarify some comments. He questioned if the DRT members had received his cover letter explaining why there are valid reasons to develop the land as a conventional subdivision. Mr. Broadrick confirmed that the DRT had indeed been provided a copy of the cover letter.

Mr. Brogna presented site plans with five sheets. A detailed subdivision plan was originally submitted and then it was discovered that the applicants should have filed under the RCC bylaw. Mr. Brogna had met with Mr. Broadrick who agreed to the level of detail presented in the RCC plan. Two properties are included in the site: 56 and 70 Bow Street, with a total of 10.29 acres and two existing structures. In spring 2009, 28 test pits were done on the site in order to comply with Title 5 and stormwater regulations. Findings concluded that the soils on site are not consistent; there are limitations on the rear western side of the property, and there are wetlands along the western slope as well. An Abbreviated Notice of Resource Area Delineation (ANRAD) was filed and approved by the Conservation Commission, which is in effect for three years. The soil conditions on the western side may not meet Title 5 requirements, which helped to determine the siting of proposed dwellings on each lot. The soil conditions on the eastern side were more ideal, with #28 in particular dry down to 12.5 feet even during a rainy February. Ms. Ladd Fiorini asked if all of the test pits on the western portion are unusable, and Mr. Brogna replied that a few are and a few are not. Mr. Broadrick requested that Mr. Brogna highlight which test pits are good or not for the next Board meeting.

Mr. Wadsworth asked about water contours and Mr. Brogna noted that with steep grades, the primary goal was to maximize the best areas on site. Mr. Wadsworth asked if the property is within Zone II and Mr. Brogna replied that although close to a Zone II area, it is not within it.

Mr. Brogna concluded that the current plans propose seven lots for either an RCC or standard subdivision. Current RCC plans meet or exceed requirements. With either plan the roadway is laid out with the intent that the town will accept the road layout and maintain it.

Mr. Wadsworth pointed out that six out of the ten acres must be maintained as open space. Mr. Brogna replied that due to site limitations, they come close but do not quite meet that standard. They plan to keep the dwelling at 70 Bow Street and have other plans for the dwelling at 56 Bow Street. Open space cannot include the structures, roadway or wetlands. In the RCC sketch plans most lots are near 20,000 square feet in area.

Mr. Brogna explained the cluster design, noting that the intent was to maximize open space and provide a buffer between properties. This was difficult due to site limitations.

Mr. Brogna then explained the conventional subdivision plans, noting that it would include two drainage parcels: one at the front of the property and the other near the Moriarty property at 52 Bow Street. Five new dwelling lots would be proposed. Mr. Broadrick noted that a 50-foot buffer is required from the edge of each

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structure, noting that it would not be the case for the drainage structure at the front of the property. Mr. Brogna responded that the applicants would propose a waiver to that requirement as they had with the original subdivision application.

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Mr. Brogna concluded that there is no greater disturbance with a standard subdivision. The applicants intend to create a conservation restriction so that the open space on each lot could not be disturbed without Conservation Commission approval. Mr. Wadsworth noted that this type of restriction would not provide public access to the open space. Atty. Galvin noted that the open space requirement would preserve the scenic view and would not disturb the wetlands resource area with the intent of maximizing the buffer between properties. They do not intend to promote access.

Mr. Wadsworth asked about the proposed retaining wall that would abut 52 Bow Street. Mr. Brogna noted that the retaining wall would be required under either plan due to the steep incline. The length of the retaining wall would be approximately 290 feet and the height would vary from four feet up to eleven feet for a short distance. After reviewing DRT comments, Mr. Brogna said that he contacted Department of Public Works (DPW) Director Mr. Peter Buttkus, who now has a better understanding of how the wall would use state of the art material to meet highway design standards. Mr. Wadsworth noted that under the current proposal the wall would become town property and he expressed concern that it may be an added cost for the town to maintain. Mr. Brogna responded that there are a number of public roads in town with an eleven-foot wall that the DPW maintains and are virtually maintenance-free. Mr. Broadrick requested that Mr. Brogna provide a list of those existing retaining walls on public roads. Mr. Broadrick also noted that the DRT members recommended moving the roadway away from the edge of the property in order to avoid the need for a retaining wall.

Mr. Wadsworth asked for comments from the Board, and Mr. Bear commented that the RCC design shows dwellings located close to the front setback. If the dwellings were sited further back they would provide a better buffer between dwellings. Mr. Bear also asked about the amount of cut and fill required under each proposal. Mr. Brogna responded that there would not be a significant difference between the two proposals. With a fifty-foot open space requirement, it does not allow for much leeway to place structures. Mr. Brogna noted that if dwellings were moved back from the front setback it would require more site disturbance. Mr. Bear asked about the amount of site disturbance in general between the two plans, and Mr. Brogna responded that it may be premature to predict due to the fact that they are currently working with sketch plans; however, he stated that the roadway where the retaining wall will be constructed will most likely cause the greatest site disturbance. Mr. Wadsworth noted that the 200-foot roadway plus extra drainage lot proposed in the conventional subdivision may create more disturbance. Mr. Brogna noted that it would be the applicants' goal to minimize cut and fill under either plan.

Mr. Bear noted that it would be useful to see a proposed conservation restriction or easement, and Atty. Galvin agreed to provide a draft.

Mr. Halligan stated that he would like to walk the property to get a better feel for the number of lots that might be possible. Mr. Glennon noted that he had viewed several existing cluster subdivisions the past weekend and asked how the proposed one might compare. Mr. Bear noted that although the existing clusters were constructed under an earlier bylaw, they generally look similar to what could be built under the current bylaw.

Mr. Wadsworth asked if the applicant could stake out the centerline of the proposed conventional subdivision roadway, and Atty. Galvin and Mr. Brogna confirmed that they could.

Ms. Ladd Fiorini asked about Atty. Galvin's cover letter reference to a real estate analysis, and Mr. Braconi explained that at the proposed location on the east side of Route 3, near the water, where building lots are

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scarce, larger lots will bring in more revenue. Where the applicants are looking to maximize the return on investment, \$300-400,000 homes would be a disservice to the area.

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Ms. Ladd Fiorini referenced a statement in Mr. Braconi's letter that assessed values of homes in an existing cluster subdivision are approximately twenty percent lower than assessed values of homes in an adjacent conventional subdivision. Ms. Ladd Fiorini asked if Mr. Braconi could submit his market analysis in writing, and he offered to do so. Mr. Bear noted that market value is not a part of the Board's decision criteria according to Zoning Bylaws.

Mr. Wadsworth opened the floor to public comment. Ms. Linda Moriarty of 52 Bow Street referenced a letter she had submitted on October 8, 2010. She objected to the cluster design with a dwelling up the hill overlooking their property.

Mr. Jeff Lick of 38 Bow Street noted that there are currently 100 houses for sale in the town within the \$450-850,000 price range and with a cluster design the subdivision may remain half-built for some time.

Mr. Wadsworth stated that he would talk to the Community Preservation Committee (CPC) about the potential to purchase the land as open space, and Ms. Elizabeth Sullivan, Selectman who was in the audience, noted that the CPC had already passed on a land purchase offer.

Mr. Brogna noted that the applicants have two letters of interest from potential buyers interested in conventional subdivision lots. Mr. Wadsworth re-emphasized that it is not up to the Board to determine marketability. Mr. Wadsworth noted that the Board's determination is to ensure that the project is designed according to the Zoning Bylaws and Subdivision Rules and Regulations of the town. Major issues at this point are that two drainage lots are proposed that do not meet regulations, and also that an eleven-foot high retaining wall is proposed that is to be maintained at the town's expense.

Ms. Becky Reed Vuilleumier of 7 West Street noted that Bow Street is a small, residential area with a lot of traffic. She stated her concern that the CPC chose not to purchase the land and now the property will have bulldozers, trucks and drainage lots where wildlife used to be.

Mr. Lick requested that the Board consider the abutters and the prospect of five or more new properties where only fifteen exist now. He questioned how the owners can do economic damage to themselves and abutters. Mr. Wadsworth responded that the applicants are allowed to develop land as long as they are complying with Zoning Bylaws and Subdivision Rules and Regulations.

Ms. Vuilleumier asked the Board to consider safety concerns with construction activity on Bow Street. Mr. Broadrick pointed out that five new dwellings are proposed along with two existing ones.

Dr. Emil Reinhalter, the applicant, asked for the Board's clarification regarding drainage and buffer areas. Mr. Wadsworth responded that drainage areas need to meet current Zoning Bylaws. He also suggested that the applicant consider a design that would eliminate the large retaining wall. Dr. Reinhalter noted that if the roadway is moved to the north, the dwelling at 70 Bow Street would need to be razed.

Mr. Wadsworth recommended a site visit to take place on Saturday, October 30, 2010 at 9:00 AM. Board members agreed to attend this public meeting. Mr. Brogna suggested that cars should park at 70 Bow Street. It was agreed to continue the discussion at the next Board meeting on November 8, 2010.

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DISCUSSION OF CONSULTING ENGINEERING INVOICES FOR MAC FARM #16 FARMS DEFINITIVE SUBDIVISION, OFF HIGH STREET

Mr. John Baldwin, the applicant, was present for the discussion. He referenced his letter to the Board dated October 9, 2010, noting that engineering invoices contain no breakdown of work performed. He expressed dismay that 59.25 hours were billed for a period from April through June 2010 for a total of \$6,486.75, an excessive amount. He suggested that the Board should obtain an estimate or proposal rather than allowing a "blank check."

Mr. Bear agreed that a more detailed breakdown should be required, noting that a flat fee cannot be established in advance. Mr. Baldwin observed that fifty percent of his engineering costs were from the consulting engineer. Mr. Wadsworth noted that Horsely Witten Group, the consulting engineer for this project, provided expertise on a considerable number of water issues for this project. He noted that future Requests for Proposals can require itemized invoices; however, this requirement may drive up the unit cost.

Mr. Halligan agreed that more detail is required on current Horsley Witten invoices in order to determine exactly what work was performed. He suggested that a sample project detail could be provided in a future Request for Proposal. He recommended that Mr. Mark Nelson of Horsley Witten be invited to a future Board meeting to discuss the invoices.

DISCUSSION OF APPOINTMENT OF PLANNING BOARD REPRESENTATIVE TO MASSACHUSETTS BAY TRANSIT AUTHORITY (MBTA) ADVISORY BOARD, AFFORDABLE HOUSING TRUST, AND DESIGN REVIEW BOARD

MBTA Advisory Appointment: Mr. Richard Prone was present for the discussion regarding appointment of a Board representative to the MBTA. Mr. Broadrick explained that Mr. Prone previously served as the Duxbury representative during the Old Colony Railroad reconstruction. During that time there was insufficient communication between Mr. Prone and the town. Mr. Broadrick explained that the MBTA representative should work with the Planning Director and the Board so that everyone will be on the same page as a coordinated effort. Mr. Broadrick noted that Mr. Prone was previously reporting to the Board of Selectmen but not the Planning Board.

Mr. Prone stated that he is a retired railroad engineer who is volunteering his services to the town. He was previously an active member of the MBTA Advisory Board and had been invited to legislative meetings. He objected that it appears he was replaced without proper notification, only an email from the Planning Director. He stated that his goal is to revitalize America's railroads. The commuter rail has been good for the town of Duxbury, adding to property values and easing the commute.

Mr. Prone requested that the Board consider recommending his appointment to the MBTA Advisory Board once again. He expressed concern that lately the commute time has increased and the service has gone down which has negatively affected ridership.

Ms. Ladd Fiorini asked about the scope of the MBTA's purview, and Mr. Broadrick responded that it involves the commuter rail, the bus and the "T." He noted that someone needs to report and review on behalf of the town. Ms. Ladd Fiorini asked if the job could be divided so that Mr. Broadrick could be representative for the MBTA and Mr. Prone would be representative for the Old Colony Railroad. Mr. Prone noted that the commuter rail will begin replacement of flawed concrete rails at a cost of \$91 million in March 2011. He offered to keep the Board posted. He stated that he would like to serve as representative at least until the construction is completed. He needs a letter from the Board of Selectmen appointing him.

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Mr. Wadsworth directed Mr. Prone to speak to Town Manager, Mr. Richard MacDonald, regarding a letter of appointment to the Old Colony Railroad advisory group. Mr. Broadrick will remain on the MBTA Advisory Board. Board members thanked Mr. Prone for his dedication and requested that he report back with updates.

Affordable Housing Trust: Mr. Wadsworth noted that it is important that the Board be represented on this committee because there is funding available. Ms. Ladd Fiorini expressed interest in serving, noting that if she was appointed she would need to resign from the Open Space Committee.

MOTION: Mr. Halligan made a motion, and Mr. Glennon provided a second, to recommend that the Board of Selectmen consider appointing Ms. Ladd Fiorini as Planning Board representative to the Affordable Housing Trust.

VOTE: The motion carried unanimously, 5-0.

Design Review Board: There was no discussion regarding this appointment.

DISCUSSION REGARDING ZONING ENFORCEMENT

52 Sunset Road: Mr. Broadrick explained that he wanted to make the Board aware that a building permit had been issued for a chimney to be added to an accessory structure despite his recommendation on the check-list that it should require a special permit. Earlier this year the Board had filed an appeal of a building permit for the same accessory structure at this address. Mr. Bear noted that the Board had withdrawn its appeal because the structure had been constructed without a fireplace. He suggested that the Planning Director should inform the Town Manager.

Ms. Ladd Fiorini noted that the original building permit was for a boat shed, questioning why a fireplace would be needed in a boat shed. Mr. Halligan agreed that a building permit for a chimney should not have been approved. Mr. Broadrick noted that the process is broken and it should have gone for a special permit.

Mr. Scott Casagrande, a resident attending the meeting, noted that the timing was crucial in this instance. He reported that the applicant found out that the Zurlo special permit was granted for an accessory structure so the Sunset Road owner decided to apply for a building permit. Mr. Casagrande noted that he had visited the accessory structure on Sunset Road and reported that it is a storage shed with a beautiful view of the Back River. The owner is using it for her hobbies as an artist and writer.

Mr. Bear suggested that Mr. Wadsworth should make an appointment with the Town Manager to discuss the situation. Mr. Broadrick offered to attend the meeting as well.

393 Tremont Street: Mr. Broadrick reported that an anonymous letter was submitted to the Board from a resident concerned with alleged illegal building activities at this address. Mr. Broadrick noted that the letter had been forwarded to the Director of Inspectional Services but wanted the Board to see it since it was addressed to them. Mr. Wadsworth noted that this letter could be added to the discussion with Town Manager. Mr. Halligan agreed, noting that there appears to be a perception among residents that there is a zoning enforcement issue.

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OTHER BUSINESS

Engineering Invoices:

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MOTION: Ms. Ladd Fiorini made a motion, and Mr. Halligan provided a second, to approve payment of Amory Engineers invoice #13275 dated October 5, 2010 in the amount of \$589.00 for services related to Freeman Farms Subdivision Modification.

VOTE: The motion carried unanimously, 5-0.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Halligan provided a second, to approve payment of Vine Associates invoice #0631944 dated October 7, 2010 in the amount of \$250.00 for services related to 95 Tremont Street / Oliver.

VOTE: The motion carried unanimously, 5-0.

Meeting Minutes:

MOTION: Mr. Halligan made a motion, and Ms. Ladd Fiorini provided a second, to approve meeting minutes of August 23, 2010 as amended and minutes of September 13, 2010 as written.

VOTE: The motion carried, 4-0-1, with Mr. Glennon abstaining.

Accessory Apartment Bylaw: Mr. Wadsworth informed the Board that the Local Housing Partnership (LHP) is holding a public forum on November 10, 2010 to determine public feedback on whether Zoning Bylaws should be amended to allow construction of a detached accessory apartment on a lot. He noted that the LHP will look to the Board to be a co-sponsor.

104 Tremont Street / Wiemeyer: Mr. Wadsworth asked if Dr. Wiemeyer had filed an application to expand his parking lot and Mr. Broadrick replied that he had not.

ADJOURNMENT

The Planning Board meeting adjourned at 10:58 PM. The next meeting of the Planning Board will take place on Monday November 8, 2010 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.