



Town of Duxbury Massachusetts Planning Board

Approved January 10, 2011

TOWN CLERK
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DUXBURY, MASS.

Minutes 11/22/10

The Planning Board met at Town Hall, Small Conference Room, on Monday, November 22, 2010 at 7:00 PM.

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

Absent: Brendan Halligan.

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

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

OPEN FORUM

New Addition to Planning Board: Mr. Cutler announced the birth of his baby daughter, Delilah, on November 16, 2010.

DISCUSSION OF POTENTIAL ARTICLES FOR ANNUAL TOWN MEETING 2011

Mr. Broadrick introduced the topic, noting that the discussion is only for Board review of subcommittee work and is not intended to take the place of a public hearing.

Detached Accessory Apartment Bylaw: Present for the discussion were three members of the sponsoring group, the Local Housing Partnership: Ms. Diane Bartlett, chairman; Ms. Leslie Lawrence and Mr. Matthew Walsh. Ms. Joanne Moore, Council on Aging Director, was also present as a proponent.

Ms. Bartlett provided some background, noting that a proposed affordable accessory apartment bylaw was defeated at Annual Town Meeting 2005 by a small turnout of voters. She stated that on November 10, 2010 the LHP held a public forum on the current Accessory Apartment bylaw. The proposed amendments are a result of input from approximately twenty residents who attended this public forum. Ms. Bartlett referenced a summary list of supporting issues submitted to the Board in their packets along with the proposed wording of the bylaw.

Ms. Moore, the Council on Aging Director, addressed the Board, stating that many people have contacted her with a concern about finding housing for their elderly parents. She stated that seniors are leaving Duxbury because there are not a lot of viable options for them to stay in town. She noted that the proposed Accessory Apartment bylaw would not burden the town taxwise, but will generate revenue with no impact to school enrollment.

Mr. Walsh then addressed the Board, asking what the LHP can do to make the proposed bylaw more feasible from the Board's perspective. He stated that the LHP would like to preserve the town's character and support the current philosophy of one dwelling per lot. Ms. MacNab questioned if the LHP really intended only one dwelling per lot, and Mr. Walsh responded that the proposed bylaw would provide for an accessory apartment with limitations. Wording would be required with the issuance of a special permit that a restriction would be

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recorded with the title verifying that the apartment is accessory to a single family dwelling and that no application can be made to convert the accessory apartment to a condominium.

Mr. Bear confirmed with Mr. Walsh that the proposed accessory apartments would not fall under Chapter 40B. Mr. Walsh stated that the LHP would not go through the Department of Housing and Community Development, and the accessory apartments would not count toward the Subsidized Housing Inventory.

Mr. Bear stated that although it is true that some people retire and move away, there are housing options for people over age 55 in Duxbury. Ms. Moore stated that some developments are too expensive, and many elderly are house rich and cash poor.

Mr. Wadsworth expressed concern that the proponents' stated needs may not be addressed in the proposed bylaw, such as first floor living. Ms. Moore responded that the elderly would have their own spaces instead of living in the same dwelling. Mr. Wadsworth noted that an accessory apartment, whether attached or separate, would cost at least \$100,000, making it cost prohibitive for some.

Mr. Cutler asked about the implications of a detached accessory structure, and Mr. Walsh concurred that although it may appear to be a second dwelling, it is accessory to the primary dwelling. Mr. Walsh stated that the LHP kept the maximum size at 850 square feet in order to discourage people from exceeding the intent of the bylaw. He stated that it may be possible to limit the number of permits issued per household either annually or over a lifetime. They could also restrict the tenancy by family or by age. These ideas would need to be reviewed by Town Counsel.

Mr. Cutler suggested that the LHP consider explicitly stating that the accessory apartment cannot be detached from a primary dwelling. He stated that he generally supports their purpose but does not believe Annual Town Meeting voters would approve a bylaw revision that would allow an accessory apartment in a detached structure.

Mr. Wadsworth asked if the LHP is proposing an age restriction, and Mr. Walsh replied that they are not united in their opinion; he would like to see an age restriction and others may not. Ms. Moore stated that there may be circumstances such as a special needs adult child where an accessory apartment might be appropriate. Ms. Bartlett added that an accessory apartment could be used for children coming home after college.

Mr. Bear stated that while it is perfectly acceptable to allow a family member to live with you, creating a new detached apartment would create a density issue. He stated that as soon as the family member is no longer living in the accessory space, it would more than likely become marketed as a two-dwelling property. Mr. Walsh noted that the proposed revision would ensure that homeowners could not exceed Title 5 or lot coverage requirements. As special permit granting authority, the Zoning Board of Appeals (ZBA) would put restrictions on the title that are not transferrable. Mr. Bear expressed concern over enforcement of such a restriction. Mr. Cutler added that there are already current issues with enforcement.

Mr. Wadsworth stated that if the intent is to get an elderly parent first floor living, he would suggest that applicants could add anything within the existing footprint except a kitchen. When a kitchen is added there is potential for rental. Current Zoning Bylaws allow an accessory apartment within the footprint that does not create a rental apartment. Mr. Walsh observed that the LHP is not opposed to a restriction of no kitchen.

Ms. MacNab agreed with Mr. Wadsworth that current Zoning Bylaws allow an accessory apartment within the existing footprint. Current Zoning Bylaws require the primary structure to be at least ten years old with no additions within the past five years. She stated that although she is sympathetic to the cause, the LHP's proposed bylaw revisions may create unintended issues such as increased density. Creating an accessory

apartment within a dwelling is entirely different than creating one in an existing accessory structure. There would be an impact on traffic, fire, police and energy usage. It is the Board's job to project the build-out of current land and the potential for double density is huge.

Ms. MacNab stated that the Comprehensive Plan research indicated that what residents want is to protect the rural and historical character of the town. The town has taken several actions to carry out this intention, such as purchasing open space and increasing requirements for land within the Aquifer Protection Overlay District. Annual Town Meeting approved the current Accessory Apartment Bylaw without the ability to convert an existing accessory structure to an apartment.

Ms. Bartlett asked if it would help to revise the proposal to limit to one per resident per year, and Ms. MacNab responded that zoning enforcement is difficult enough already without that added restrictions to enforce. She stated that Assessor's Department records show the following figures:

- 224 accessory apartments on file currently, although others may exist
- 49 single-family dwellings with more than one kitchen
- 51 barns or finished garages
- 111 properties with more than one dwelling.

From a revenue perspective, these are not moneymakers for the town. For every dollar a resident pays, the resident receives \$2.50 in services. According to Assessor's a second dwelling has little impact on the assessed value.

Ms. MacNab suggested that the LHP members consider a revision to the existing Accessory Apartment bylaw to allow construction after five years instead of the current ten-year restriction. She stated that although the LHP's concerns are valid, she would be opposed to accessory apartments in a secondary structure.

Mr. Broadrick noted that it is currently possible to add habitable space, but if it becomes an apartment then the Board would have an issue because after the family member dies it may become a rental apartment. The town does not have the infrastructure to enforce the use. He added that the Board is grappling with guest quarters detached from dwellings. As soon as a kitchen is added it becomes another dwelling. A dwelling with an attached accessory apartment is not the direction the town wants to go.

Ms. Lawrence asked the Board to consider the potential for income for those who would not be able to afford to stay in their homes otherwise. Mr. Wadsworth questioned if there is a study to support this perceived need, and Ms. Moore replied that the need is anecdotal, from people telling her. Mr. Wadsworth noted that the LHP had performed a study and determined that the elderly are the largest growing population in the town; not everyone is leaving. He asked about the capacity of housing at Island Creek, and Ms. Bartlett responded that there will be 213 units when constructed, all one or two bedrooms.

Mr. Bear stated that income for homeowners is not part of the Board's purview. To allow the proposed bylaw would increase density and change the rural nature of the town.

Mr. Walsh asked about the second dwelling issue and what is currently allowed for guest houses. Ms. MacNab responded that the current definition of guest house is more of a boarding house, not what would generally be considered a guest house. She stated that there is a proposal to change the title of "guest house" to "bed and breakfast." She noted that guest houses do exist that predate zoning.

Mr. Walsh asked the Board's opinion on existing carriage houses being converted to guest houses with no kitchen. Mr. Bear responded that if plumbing was added it would become a dwelling. Mr. Walsh stated that the LHP needs to take the results of this discussion back and process it to present a bylaw that would not allow

kitchens. Ms. MacNab noted that the State Building Code addresses kitchens and it may not be as simple as not allowing a kitchen.

Ms. MacNab stated that she is not certain the town wants to go down this path of allowing two dwellings per lot. Ms. Bartlett and Ms. Moore stated that residents want the independence and privacy that two kitchens would provide. Mr. Wadsworth stated that the issue would be the second kitchen.

Ms. MacNab suggested that in order to address the perceived need, the LHP could consider changing the building permit limit in the current Accessory Apartment Bylaw from five years to one or none. Although the concept needs to be studied further, it is something worth looking into.

Mr. Cutler recommended that the fewer proposed word changes to Zoning Bylaws, the better the chance of Annual Town Meeting approval.

Ms. MacNab thanked the LHP members for attending the meeting.

Proposed Revisions to Parking Bylaw: Mr. Broadrick noted that this article would propose an overhaul of the Parking bylaw. Mr. Bear, who led the Lot Coverage/Parking subcommittee, stated that the revisions apply only to Neighborhood Business Districts, only about two percent of town land. Residential parking regulations would not change. The goal of the Parking bylaw is to provide sufficient on-site parking while providing for open space. Uses are also updated. Mr. Bear, Ms. Ladd Fiorini and Mr. Wadsworth served on the subcommittee; along with Ms. Jill Cadigan-Christenson of the Zoning Board of Appeals and Ms. Sara Wilson as a member at large.

Mr. Bear provided some background, stating that at Annual Town Meeting 2008 Mr. J.R. Kent, a local business owner, introduced a proposal to establish a maximum building coverage for lots in the NB1 and NB2 zoning districts at thirty percent and to increase site coverage in NB1 and NB2 zoning districts from fifty to ninety percent. This citizen petition was indefinitely postponed.

In 2009, a subcommittee was formed to study the issue. The result was a proposed amendment to require a minimum open space of twenty percent, a maximum site coverage of eighty percent, and a maximum building coverage of twenty percent. Parking areas within NB districts would be required to be paved. The Board could not agree on a recommendation and the article eventually failed.

In 2010, another citizen's petition was put forward by Dr. Scott Oliver, another local business owner, based on lot size, with a minimum open space requirement ranging from twenty to fifty percent and a maximum site coverage of eighty to fifty percent. Parking areas within NB districts would be required to be paved. The Board did not support the article and the article was indefinitely postponed, with a verbal promise by Board members to study the issue further.

Another working group was formed after Annual Town Meeting 2010, with Mr. Bear, Ms. Ladd Fiorini, and Mr. Wadsworth representing the Board; Ms. Jill Cadigan Christenson from the Zoning Board of Appeals; Ms. Sara Wilson as an at large member; and Mr. Broadrick and Mr. Scott Lambiase, Director of Inspectional Services as ex-officio staff members. Mr. Lambiase did not participate in the meetings.

To address parking bylaw revisions, the 2010 working group reviewed research performed earlier on surrounding towns and tried to identify business-specific variables, such as for a dentist the number of chairs and the waiting room capacity. A major change to the parking bylaw is the proposal to require that all travel lanes be concrete or bituminous concrete. Mr. Wadsworth noted that the current parking bylaw is outdated and does not adequately address medical uses. He stated that it is difficult with Zoning Board of Appeals

applications for new construction to determine exactly what the future use will be. Dr. Oliver agreed, noting that he built half his building on speculation and did not foresee the future success of the medical practices using the space. Mr. Bear noted that there are not a lot of Neighborhood Business lots available to be developed. Town Counsel has advised to assign the most dense use if the use is uncertain.

Mr. Glennon asked if parking space area of 18.5 by nine feet would be revised, and Mr. Broadrick replied that it would remain the same. Mr. Glennon suggested that ten by twenty feet would be more accommodating, although it may provide fewer parking spaces. Mr. Wadsworth noted that the working group did not discuss parking space area. Board members discussed business areas with narrow parking spaces. Mr. Broadrick stated that at times certain businesses have restriped their parking spaces at a narrower width than originally permitted.

Ms. Ladd Fiorini noted that the new parking regulations would apply to existing businesses that want to change their parking, which could create fewer parking spaces in the town. There could be unintended consequences of changing the parking space area. Mr. Broadrick agreed to research other towns' bylaws to determine how many require ten by twenty parking spaces.

Mr. Cutler departed the meeting.

Proposed Revisions to Lot Intensity/Coverage: For lot intensity, the proposal will be to define open space as excluding wetlands. The building coverage maximum is proposed at twenty percent. It was the consensus of the working group to set total coverage at a maximum of sixty percent lot coverage and forty percent open space. Mr. Cutler confirmed that a septic system would be considered open space.

Mr. Bear noted that the current site coverage of twenty percent has been found by business owners to be restrictive. Ms. MacNab noted that current Zoning Bylaws are silent on building coverage and asked why it is being introduced now. Mr. Bear responded that having a maximum building coverage would eliminate potential massing issues.

Mr. Bear recommended that the Board consider proposing a seventy/thirty site coverage/open space requirement. He stated that taking forty percent of the property out of play is still too restrictive to business owners. Ms. MacNab noted that a majority of the working group voted for sixty/forty coverage maximum site coverage/open space. Mr. Bear stated that two out of three working group members support these less restrictive site coverage allowances. Mr. Wadsworth noted that the more pavement, the larger stormwater management system required. He stated that sixty percent site coverage is a number that could pass at Annual Town Meeting. Ms. MacNab agreed, noting that the working group's consensus recommendation should be followed. Mr. Bear pointed out that it was not a consensus but resulted in a three-to-two vote.

Mr. Bear stated that the current fifty percent site coverage is not an accurate number for existing businesses. Many were permitted at fifty percent site coverage not including gravel parking. Over time the gravel has compacted or been paved and is no longer pervious. Ms. Ladd Fiorini noted that lack of parking is an issue in the town and she does not want to restrict future businesses from surviving and thriving.

Ms. Wilson, the at-large member of the working group and a former member of both the Planning Board and the Zoning Board of Appeals (ZBA), provided background on the issue and various permits that had been granted by the ZBA. She stated that the existing fifty percent coverage requirement promotes clean water and compatible neighborhoods. She does not support the proposed change from fifty to sixty percent coverage because most business areas are in fragile environmental areas. The working group's final recommendation of sixty percent coverage was a compromise between those who wanted more coverage and those who did not want change.

Mr. Bear suggested that the Board consider taking a vote on a proposed seventy/thirty percent coverage requirement when all members are present. Mr. Broadrick pointed out that the final language is due to the Board of Selectmen on December 7 and there is no Planning Board meeting scheduled before then. An amendment would need to be introduced on Town Meeting floor. Ms. MacNab noted that the proposal has been made by the working group and the language should be submitted as proposed. She directed staff to provide Mr. Cutler and Mr. Halligan, who were absent for this discussion, with a recording of it.

Proposed Revisions from Zoning Bylaw (ZBL) Study Working Group: Ms. MacNab and Mr. Wadsworth served on this working group from the Planning Board along with Mr. Dennis Murphy from the Zoning Board of Appeals (ZBA); Mr. James Lampert as an at-large member and former member of the ZBA; and Mr. Broadrick and Mr. Scott Lambiase as ex-officio staff members. Ms. MacNab stated that the ZBL Study Working Group is proposing two revisions: the definition of Accessory Structure and the definition of Guest House.

Regarding the definition of Accessory Structure, the study group agreed on the intent of the existing Zoning Bylaws and wanted to clarify definition of Accessory Structure to reinforce that intent. Mr. Bear noted that the proposed change may be more of a regulation than a definition.

Ms. Sara Wilson suggested that the word "dwelling" be changed to "dwelling unit." Mr. Broadrick pointed out that the term "dwelling unit" is only referenced in the Planned Development bylaw, not in the Residential Compatibility section of Zoning Bylaws. Mr. Bear asked why the group had not listed the uses allowed for accessory structures, and Ms. MacNab responded that the group did not want to make substantial revisions.

Regarding the definition of Guest House, the ZBL study group proposes to change the term "Guest House" to "Bed and Breakfast," as the current definition matches the description of a bed and breakfast.

Proposed Removal of Use Variances from Zoning Bylaws: Mr. Broadrick stated that Ms. Judi Barrett, chairman of the Zoning Board of Appeals, requested the removal of use variances from Zoning Bylaws. Planning Board members agreed it was a good idea.

Proposed Revisions to Zoning Bylaws to Require Access to Lots over Frontage: Mr. Broadrick had added this proposal based on the fact that he was seeing building permits with access over other points than the legal frontage being allowed. During his research he discovered that the Zoning Bylaw language exists to require access over legal frontage and case law exists to support it. However, over time institutional knowledge gets lost and he believes this is where the problem lies. Mr. Broadrick will address the issue administratively and no Zoning Bylaw revision is needed.

DISCUSSION OF PENDING ZBA HEARING RE: 21 RIVER LANE

Ms. MacNab noted that the Zoning Board of Appeals (ZBA) hearing has been continued to December 16, 2010. She reported that the ZBA site walk of the property went well. She stated that the ZBA is limiting items that can be appealed to those listed on the cover sheet of the Planning Board's appeal, although other issues were raised. The Planning Board can elect to amend its request to add other issues. The ZBA wanted an answer at its public hearing of November 4, 2010; however Ms. MacNab wanted to discuss it with the entire Planning Board. Board members agreed to keep the appeal to the issues listed on the cover sheet.

Ms. McNab also noted that the ZBA asked the Planning Board provide a suggested remedy. Ms. Ladd Fiorini noted that the remedy is not the Planning Board's responsibility. Ms. MacNab agreed noting that zoning enforcement is also not the Planning Board's responsibility. She stated that the homeowner properly obtained a building permit and did not do anything wrong; however the permit is not in compliance with Zoning Bylaws. Mr. Glennon noted there would be no harm in suggesting a remedy. Board members agreed to defer the topic.

DISCUSSION OF BUFFER ZONE APPLICABILITY IN RESIDENTIAL CONSERVATION CLUSTERS (RCC)

Mr. Broadrick stated that the applicants for property on Bow Street are seeking guidance on a procedural question based on the Board's decision that the applicants file for a Residential Conservation Cluster. Under Zoning Bylaws Section 540.3 (RCC Standards and Dimensional Requirements) a fifty-foot setback or buffer is required around the perimeter of the site. However, applicants are also directed to Subdivision Rules and Regulations, which states that a fifty-foot buffer is required "between all basins or pre-treatment facilities and adjacent uses or structures...[and]...shall be fully contained within the drainage lot." Mr. Broadrick noted that since the use is residential it may make more sense for the fifty-foot buffer to be measured from an adjacent residential structure such as a shed, garage, dwelling, and not fully contained within the drainage lot. He recommended that the Board consider allowing a fifty-foot buffer between a basin and a residential structure. He noted that this question pertains not only to the potential application for this property but also for future applications in general.

Mr. Broadrick noted that with a fifteen foot setback for structures, this could require a 65 foot setback for basin location, questioning if that is really the intent. Ms. Ladd Fiorini asked if the term "use or structures" provides a choice of a fifty-foot buffer between uses. Mr. Wadsworth stated that the intent is to prevent fences from being built around a drainage basin.

Ms. MacNab noted that separate drainage lots are required by the Board so that drainage is not located within a homeowner's property. Past experience shows that residents sometimes mistakenly filled drainage areas. She agreed that it does not make sense to require a fifty foot buffer around drainage structures for an RCC development. Mr. Bear suggested the waiver could be tied to the scale of the buffer. Mr. Wadsworth noted that some buffer should be required because drainage lots are not necessarily attractive.

OTHER BUSINESS

Engineering Invoice:

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to approve payment of Amory Engineers invoice #13306 dated November 2, 2010 in the amount of \$155.00 for services related to Freeman Farms.

VOTE: The motion carried unanimously, 5-0.

Meeting Minutes:

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to approve meeting minutes of October 25, 2010 as written.

VOTE: The motion carried unanimously, 5-0.

Public Hearings for Zoning Articles: The Board agreed to schedule public hearings for zoning articles at the Senior Center on January 24, 2011 and January 31, 2011. The Board directed staff to invite members of the Finance Committee and Fiscal Advisory Group so that the intent of the public hearing process can be followed and to minimize hardship on article proponents.

ADJOURNMENT

The Planning Board meeting adjourned at 11:20 PM. The next meeting of the Planning Board will take place on Monday, December 13, 2010 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.

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