

Approved January 10, 2011



Town of Duxbury Massachusetts Planning Board

TOWN CLERK
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DUXBURY, MASS.

Minutes 12/13/10

The Planning Board met at Town Hall, Small Conference Room, on Monday, December 13, 2010 at 7:00 PM.

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

Absent: No one was absent.

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

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

OPEN FORUM

Planning Board Elections: Mr. Glennon announced that he has taken out nomination papers to run for the Planning Board seat he was appointed to fill until Town elections.

Conflict of Interest Law Acknowledgements: Mr. Glennon distributed Conflict of Interest Law copies to Board members at the request of the Assistant Town Clerk. Board members were requested to submit acknowledgement of receipt to the Town Clerk's office.

Local Housing Partnership (LHP): Mr. Wadsworth reported that as a result of discussions with the Board, the LHP has revised its proposal regarding the Accessory Apartment bylaw to allow a change to the existing time for footprint change from five years to one year. No other changes are proposed.

Community Preservation Committee (CPC): Mr. Bear reported on various CPC articles, eight of which passed and two declined.

Amory Engineers: Ms. Grant reported that Mr. Walter Amory, principal of Amory Engineers, is retiring after many years of service as town consulting engineer. Mr. Broadrick added that Mr. Patrick Brennan will be taking over Mr. Amory's duties.

PUBLIC MEETING, ADMINISTRATIVE SITE PLAN REVIEW: 668 TREMONT STREET / TOWN OF DUXBURY (CENTRAL FIRE STATION)

Mr. Broadrick explained that at Annual Town Meeting 2010 funds were appropriated for design and specifications for renovation of the Fire Department facilities on Tremont Street. A Public Safety Building Committee was appointed by the Board of Selectmen and an RFP was issued for design and specifications. A site engineer and architect have been hired as a result of the RFP and the Board will be reviewing those plans.

Fire Chief Kevin Nord and Deputy Chief Christopher West were present as the applicants representing the Town of Duxbury. Also present were the site engineer, Mr. William Murray of PLACES Site Consultants, Inc. in Holden; the architect, Mr. Gregory Carell of The Carell Group, Inc. in Hopkinton; and members of the

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The mission of the Town of Duxbury is to deliver excellent services to the community in the most fiscally responsible and innovative manner while endeavoring to broaden our sense of community and preserve the unique character of our town.

Public Safety Building Committee: Mr. Andre Martecchini (chairman), Mr. Paul Brogna and Mr. Dennis Nolan.

Mr. Martecchini introduced the plans by showing an aerial view of the site and existing floor plans. He stated that the existing apparatus bay will remain, and a new wing will be built. The first floor of the new wing will have administrative and operational facilities. The second floor will provide living quarters that are not handicap accessible. No elevators are proposed. Another one-story part of the addition will house a small garage for additional storage of equipment that is currently kept outdoors. An existing basement will be filled because it is not cost effective to keep it.

Mr. William Murray then presented the site, noting that revised plans are being distributed tonight to reflect comments made at a Development Review Team meeting held December 8, 2011, particularly the drainage plans. The site includes three parcels:

- Existing site of fire station
- An additional parcel on the south side of Mayflower Street to the rear of the fire station
- A small parcel of land northwest of the site, to be included for nitrogen loading calculations

The properties are all town-owned and are zoned POLO (Publicly Owned Land), RC (Residential Compatibility) and APOD (Aquifer Protection Overlay District). The APOD has stringent requirements such as 15 percent building coverage without mitigation efforts. Mr. Murray noted that the proposed plans will result in all runoff being captured on site for a 100-year storm. Lined basins will provide infiltration in the front and back of the property with lower runoff than ever before. Revised plans show drainage calculations and details. A revised water quality certificate shows a Low-Impact Design (LID) using Best Management Practices.

Ms. MacNab noted that no consulting engineer has been retained to review the project and that most Board members lack the knowledge to confirm engineering specifications. She asked for a narrative description of the LID design, noting that they usually result in visually pleasing drainage areas.

Mr. Murray described the LID drainage plans, stating that it is a modified rain garden with not much curbing on site. A vegetated strip of bushes will be planted in front of the drainage basins, which would be lined with dense peat moss with plants around it. A two-foot retaining wall will be built on the south side of the property along Heritage Lane to create a low point. Trees will be replanted wherever areas are altered. The drainage is crucial for this public safety facility which needs to be available at all times. Nothing will be discharged to the ground that is not untreated.

Per DRT comments, a fire hydrant and indoor fire sprinkler system have been added and the septic system has been revised to accommodate the area required by Title 5 for septic systems within the APOD by adding a piece of land on Mayflower Street to the site. The land will not be touched and no nitrogen-yielding activities will take place on-site. Mr. Murray explained that Mayflower Street used to be a straight road and when curves were added it created small town-owned slivers of land like this one. Ms. MacNab asked if the parcels are contiguous and Mr. Murray responded that they are not because there is a privately owned property in between.

Mr. Wadsworth asked about nitrogen levels. Mr. Murray noted that town Board of Health regulations require less than five parts per million (ppm) and the state requirement is ten ppm. Ms. MacNab asked about the current nitrogen level on site and Mr. Murray responded that he could not address that. Ms. MacNab requested that current figures be obtained to use as a baseline. Mr. Wadsworth agreed that pre-existing conditions like this are critical to understanding the site. Mr. Murray agreed to obtain the current nitrogen levels on site. Mr. Wadsworth recommended the applicants consider installing monitor wells.

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Mr. Cutler asked if the northern parcel would in any way affect the siting of the future police station which is under consideration on Mayflower Street, and Mr. Murray replied that the site under discussion for the police station is on the other side of the street.

Mr. Murray noted that 41 parking spaces are proposed and approximately 29 parking spaces currently exist. Six spaces with a limited parking time will be placed near the front entrance. Staff parking is proposed to accommodate the maximum amount of staff required per shift, and spaces along the rear of the property are provided for call firefighters.

Mr. Halligan asked about the proximity of the public parking spaces to the equipment bays, and Chief Nord responded that the Fire Department gets a fair amount of emergency medical walk-in traffic. Although parking areas will be segregated to the extent possible, they prefer to leave the public parking at the front of the building where people are used to going. Ms. MacNab asked if it would be more prudent to re-train the public and Chief Nord responded that during an emergency situation people tend to follow familiar habits.

Ms. Ladd Fiorini asked if signs will be posted to discourage public parking in staff parking areas, and Mr. Murray confirmed that "Do Not Enter" signs and "Authorized Personnel Only" signs will be posted appropriately.

Mr. Glennon confirmed with Mr. Murray that the existing driveway off Tremont Street will be widened in order to provide a wider turning radius for emergency vehicles.

Ms. MacNab noted that the public may not be pleased with the loss of a buffer area at the northeast corner of the lot, and Mr. Martecchini noted that they tried to minimize loss of buffer wherever possible and landscaping will be provided wherever possible.

Mr. Murray noted that photometric plans are provided showing pole lights where needed over parking areas. In addition, four-foot bollards are proposed along public walkways. Mr. Cutler asked if solar lights would be utilized or solar panels considered for the roof and Mr. Carell responded that they are not proposed at this time due to time limitations but may be added in the future. Mr. Carell did note that the building's heating system is energy efficient and will save approximately fifteen to twenty percent on energy bills. Mr. Cutler and Ms. MacNab both recommended the Public Safety Building Committee consider using "green" efficiencies wherever possible in order to reduce energy consumption and cut operating costs.

Mr. Murray noted that an antenna will be installed and the height has not yet been determined but will be estimated to be approximately sixty feet in height.

Mr. Wadsworth noted that because the property is located in a Zone II, there are a number of restrictions. He asked what activities will be happening on site that may conflict with Zone II requirements. Chief Nord responded that while apparatus bay floor drains currently are being discharged, with the current proposal they will go into a tight tank. A drainage system operations and maintenance plan and erosion and sedimentation control plan have been provided.

Mr. Wadsworth asked if any vehicles are maintained at the facility, and Mr. Murray responded that they are not. Chief Nord added that no oil changes have taken place on site since 2006. All maintenance is either outsourced or performed at the Department of Public Works (DPW) service facility.

Mr. Murray noted that existing gas pumps were replaced approximately ten years ago and alarms were installed for leakage. Ms. MacNab asked who set the parameters of the "Limited Use Area" and Mr.

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Martecchini responded that the DEP set them. Mr. Carell offered to provide the report and Ms. MacNab declined the offer.

Mr. Wadsworth asked about impervious coverage and Mr. Murray responded that the total site coverage is 33.1 percent including the third parcel. Building coverage is 9 percent with the third parcel and 14 percent without. Ms. MacNab noted that the site coverage is at 33 percent on a pre-existing nonconforming municipal use. Mr. Murray noted that Zoning Bylaws Section 406.6.29 requires site coverage at 15 percent *or* mitigate drainage according to Best Management Practices, which the applicants have complied with. Ms. Ladd Fiorini stated that it would be good to know the existing site coverage and Mr. Murray responded that it is greater than 15 percent.

Mr. Wadsworth asked about the drainage area design and Mr. Murray explained that they are less than three feet in depth. Pre-treatment will be provided by the rain garden where water stays until it evaporates, with any overflow going into the infiltration system. Water is contained in the ground so there is no mosquito-breeding standing water. Mr. Bear asked where the roof will drain and Mr. Murray replied that it would drain into drywells.

Mr. Wadsworth asked about the Landscape and Maintenance Plan, and Mr. Murray stated that plants are selected from a MA Department of Environmental Protection list and are guaranteed for one year. They are selected for attractiveness and minimal maintenance. Elm trees are also proposed.

Mr. Glennon asked if a decontamination room is proposed, and Mr. Carell responded that a washdown room is proposed. Chief Nord added that no chemicals or acids are used on-site and contamination is mainly biohazardous.

Mr. Glennon asked about the proposed building height and Mr. Carell responded that it is 30 feet to the midpoint of the slope and estimated the height at approximately 44 feet. Board members requested actual figures for the height.

Mr. Glennon asked about sight distances, and Mr. Murray responded that they are more than adequate. Mr. Glennon expressed concern with two curb cuts on Mayflower Street. Chief Nord explained that one curb cut is for public access and the other one will accommodate emergency vehicle access and egress.

Mr. Martecchini asked if it would be possible for the applicants to do a construction bid in early January, and Mr. Broadrick responded that he will need to check with Mr. Scott Lambiase, the chief procurement officer for the town. Mr. Murray noted that the bid process takes about a month.

- Mr. Bear summarized outstanding issues:
- Tower construction specifications
 - Monitoring wells
 - Document building height and add to plan.

MOTION: Mr. Cutler made a motion, and Mr. Glennon provided a second, to continue the public meeting for Administrative Site Plan Review of the Town Of Duxbury Central Fire Station at 668 Tremont Street to January 10, 2011 at 7:05 PM.

VOTE: The motion carried unanimously, 7-0.

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Mr. Broadrick offered to provide a draft decision for the next meeting. Mr. Robert Hays of the Cemetery Trustees requested that the Board consider adding language to ensure that the cemetery will get its land as promised in the proposed land swap.

ZBA REFERRAL, SPECIAL PERMIT: 71 OCEAN ROAD NORTH, 213 & 219 GURNET ROAD / HUMMOCK LLC

Board members reviewed this special permit application to construct dwellings on pre-existing nonconforming lots that previously had been granted 81L exemptions. The applicants now wish to raze existing structures to construct new, larger dwellings. Ms. MacNab noted that the special permit application is based on plans that do not exist because they show lot lines that have not been approved by the Board. Mr. Glennon noted that the 81L division of land happened in the 1990s and has not been divided since. Ms. MacNab concurred that the original 81L decision stands.

Board members reviewed a draft memo prepared by staff. Mr. Broadrick clarified that Lot 1 on the proposed plan does exist; however proposed Lot 2A is a combination of existing Lots 4 and 5, and proposed Lot 3A is a combination of existing Lots 2 and 3. If the applicants chose to submit an ANR plan, Lot 2A could be created but Lot 3A would not have sufficient area. When structures are removed from a nonconforming lot, then the lot loses zoning protection and must comply with current zoning.

Ms. MacNab observed that not all members of the LLC ownership signed the special permit application. Mr. Glennon noted that he had researched the LLC on the Secretary of State web site and the LLC had been reinstated in October 2010 by only one owner.

Mr. Broadrick pointed out other issues with the proposed application:

- The plan references and notes list "existing lots" that have not been approved by the Board
- The stamped, signed plan references Ocean Road North and Hummock Lane as public ways, which they are not
- The proposed lots do not comply with zoning
- A locus is not shown
- There is no certification of property lines.

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Ms. MacNab stated that the land is under water a good portion of the time. Mr. Halligan reported that he had walked the site when he served on the Conservation Commission, and it appeared then that the plan was to fill, mound and construct dwellings. Because the access road cannot be raised, a large retention basin was proposed near the road.

Board members made minor edits to the draft memo.

MOTION: Mr. Bear made a motion, and Mr. Cutler provided a second, to recommend that the Zoning Board of Appeals deny a special permit for 71 Ocean Road North and 213 and 219 Gurnet Road / Hummock LLC on the basis of issues outlined in a draft memorandum presented at tonight's Board meeting.

VOTE: The motion carried unanimously, 7-0.

DISCUSSION OF PENDING ZBA HEARING RE: 21 RIVER LANE

Mr. Cutler, Mr. Halligan and Ms. Ladd Fiorini reported that they would not be able to attend the Zoning Board of Appeals (ZBA) continued hearing on December 16, 2010.

Mr. Broadrick asked the Board if they would prefer to request specific zoning enforcement, or if they would be content with public acknowledgment of a decision that agrees with the Board that zoning enforcement should be sought regarding two dwellings on one lot.

Mr. Broadrick noted that with an accumulation of amenities the guest house under construction could become a second dwelling. Mr. Bear added that as soon as plumbing is installed it does become a second dwelling.

Mr. Wadsworth proposed a two-part solution: Is there a violation? And is there a remedy?

Mr. Broadrick noted that one member of the ZBA will be absent for the upcoming hearing. Therefore the decision may be deferred until the next ZBA meeting date, and the Board may be asked for a recommended remedy at that point. Ms. Ladd Fiorini noted that the ZBA has already requested a recommended remedy from the Board at two previous ZBA meetings.

Ms. MacNab noted that if the case went to court, a judge most likely would not order teardown of one of the dwellings. However, anything less than a teardown would be an unfair outcome for everyone else in town. She stated that she is hesitant to recommend a remedy.

Mr. Wadsworth noted that a positive outcome of this hearing is that the ZBA has the opportunity to discuss when does a building structure become a dwelling.

Mr. Glennon suggested that any remedy be reasonable. Mr. Bear noted that the Board may consider offering a range of remedies, such as tear down, remove plumbing, allow no insulation, etc. Ms. MacNab responded that she would rather request that the property be put back into conformance with Zoning Bylaws. She suggested that the homeowner could be asked to provide a remedy and they may choose to seek a variance or combine buildings. Mr. Glennon agreed that providing reasonable options makes sense. Mr. Bear added that there may be remedies that the Board would not want to see, such as a deed restriction (which would be difficult to enforce) or complete teardown (which would be impractical).

Mr. Glennon recommended that the Board should consider preparing a list of proposed remedies rather than deferring to the ZBA. Mr. Wadsworth suggested that the ZBA should make its decision first before the Board provides remedies, making it clear that the Board would appreciate the opportunity to have a role in finding an appropriate remedy.

Ms. MacNab summarized the following recommendations:

1. The property should be brought into compliance with Zoning Bylaws through remedies such as:
 - a. An application for a variance
 - b. Attaching both structures
 - c. Removing sufficient amenities, such as heating, water, septic or kitchen
2. Teardown is not recommended
3. A deed restriction is also not recommended.

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OTHER BUSINESS

Meeting Minutes:

MOTION: Mr. Wadsworth made a motion, and Mr. Bear provided a second, to approve meeting minutes of September 27, 2010 as written.

VOTE: The motion carried, 6-0-1, with Mr. Glennon abstaining.

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to approve meeting minutes of November 8, 2010 as amended.

VOTE: The motion carried unanimously, 7-0.

Zoning Articles: Board members reviewed zoning articles submitted to the Board of Selectmen on December 7, 2010 and made revisions to the following proposed zoning articles:

- *Definition of Accessory Structure* – wording changes.
- *Definition of Bed and Breakfast* – no changes.
- *Adoption of FIRM maps* – no changes.
- *Lot Coverage* –Mr. Bear recommended that the Board consider changing the Site Coverage maximum to 70 percent (rather than 60 percent as submitted) and the Open Space maximum to 30 percent (rather than 40 percent as submitted).

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Mr. Bear, Ms. Ladd Fiorini and Mr. Wadsworth had served on a Lot Coverage working group that submitted the recommendation of 60/40. Mr. Wadsworth noted that the Lot Coverage working group voted 3-2 on 60/40 as a compromise. He stated that the 60/40 change is valuable because it makes commercial property more valuable. Less parking means less traffic. He stated that he would prefer to keep as much open space as possible on Neighborhood Business lots because it is viable and more attractive. There are properties in town that have the current 50 percent lot coverage, such as 104 Tremont and Snug Harbor Tile.

Mr. Bear noted that most commercial businesses do not comply with the current 50 percent lot coverage requirement although that has been the standard up until now. There have been previous attempts to correct the situation and the Board has publicly promised to rectify the issue.

Ms. MacNab stated that she would support the 60/40 allowance that was voted by the Lot Coverage working group. She noted that the percentage could go up incrementally but it would be difficult to start higher and then decrease the coverage allowance.

Ms. Ladd Fiorini pointed out that existing businesses are really at 70 percent site coverage up to 100 percent. Currently gravel is allowed for parking and because it is pervious it is not counted toward lot coverage, but it is generally agreed that over time gravel becomes impervious and should not be allowed. She expressed concern that restrictive site coverage requirements may discourage small businesses from setting up shop.

Mr. Wadsworth agreed that there are many nonconforming business lots in existence and that is why the Lot Coverage working group agreed to 60 percent lot coverage as a compromise. Ms. Sara Wilson, who also served on the Lot Coverage working group, also agreed to a 60 percent compromise and she

will have a strong argument on the Annual Town Meeting floor if anything over 60 percent is proposed.

Mr. Cutler noted that businesses in town are struggling to survive. Neighborhood Business districts comprise only two percent of land in the town. He recommended that the Board focus its attention on the residential land and help attract vibrant small businesses in town.

Mr. Glennon suggested that the Board consider a 65 percent lot coverage as a compromise between 60 and 70 percent.

MOTION: Mr. Bear made a motion and Mr. Cutler provided a second, to revise a proposed amendment to Zoning Bylaws for an Annual Town Meeting 2011 warrant article for a Lot Coverage maximum of 70 percent and a proposed Open Space maximum of 30 percent.

VOTE: The motion passed, 4-3, with Mr. Bear, Mr. Cutler, Ms. Ladd Fiorini and Mr. Glennon voting for, and Mr. Halligan, Ms. MacNab and Mr. Wadsworth voting against.

- *Definition of Open Space* – wording changes.
- *Updated Parking Bylaw* – Mr. Cutler noted that he had done some research on other towns' parking space regulations, and most range from 9' x 18' to 9' x 20,' with Marshfield the largest at 10' x 20.'

MOTION: Mr. Cutler made a motion, and Mr. Glennon provided a second, to revise a proposed Parking regulation update to Zoning Bylaws for an Annual Town Meeting 2011 warrant article to require parking space dimensions at ten feet wide by twenty feet in length.

DISCUSSION: Ms. Ladd Fiorini noted that no research has been done to determine the potential effect of such a change. Mr. Wadsworth noted that the proposal would mean that businesses would require more land in order to provide the required number of parking spaces. Mr. Broadrick noted that building size could also be decreased.

VOTE: The motion carried, 5-2, with Mr. Cutler, Mr. Glennon, Mr. Halligan, Ms. MacNab and Mr. Wadsworth voting for, and Mr. Bear and Ms. Ladd Fiorini voting against.

- *Deleting Use Variances* – no changes.

Letter from Mr. K. Penwell of 240 Depot Street: Board members reviewed a letter dated November 27, 2010 from this resident who is concerned about the lack of sidewalks on Depot Street and safety concerns due to the number of pedestrians who use the road.

Permit Extension Act: Board members reviewed a FAQ sheet from the state on a Permit Extension Act that passed in November 2010 which would establish an automatic two-year extension to certain permits and licenses concerning the use or development of property that were issued from August 15, 2008 through August 15, 2010.

ADJOURNMENT

The Planning Board meeting adjourned at 11:03 PM. The next meeting of the Planning Board will take place on Monday, January 10, 2011 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.

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