



Town of Duxbury Massachusetts Planning Board

Approved 02/14/11

TOWN CLERK
11 FEB 22 AM 11:23
DUXBURY, MASS.

Minutes 01/24/11

The Planning Board met at the Duxbury Senior Center, 10 Mayflower Street, on Monday, January 24, 2011 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

Goodrich Lumber Property, Railroad Avenue: Mr. Bear reported that this vacant business is up for auction and apparently someone is interested in purchasing a portion of the property. The Economic Advisory Committee (EAC) is trying to determine if the property was sold at auction, and is also looking into the history of contamination at the site.

MacFarlane Farms Subdivision, High Street: Ms. MacNab noted that from reading local newspaper reports on Historical Commission hearings, it appears that the owners are requesting to raze both a dwelling and barn on the property. During the subdivision approval process the applicants were representing that only the barn would be razed. The owners apparently told the Historical Commission that all other boards they had applied with were in favor of demolition when that is not the case. Mr. Broadrick offered to find out the result of the Historical Commission demolition delay hearings.

Wind Turbines: Ms. Ladd-Fiorini noted an article about wind turbines on the South Shore in the January 23, 2011 *Boston Globe*. Mr. Broadrick reported that the town was awarded a \$65,000 state grant to perform a feasibility study, and Sustainable Energy Development (SED), a national firm, was selected to carry out the study for siting a wind turbine on town-owned land in Duxbury. A kickoff meeting was held last Wednesday with the Alternative Energy Committee, chaired by Mr. Jim Goldenberg.

AS-BUILT REVIEW: FREEMAN FARMS DEFINITIVE SUBDIVISION / ELM STREET REALTY TRUST

Because of the scheduled public hearings for Annual Town Meeting zoning articles, the Board will review this plan at its next meeting, January 31, 2011. Mr. Wadsworth asked why trees were planted outside the public way and Mr. Broadrick agreed to look into the matter.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

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.

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OTHER BUSINESS

Because it was not yet time for the scheduled public hearings, the Board addressed other business.

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MOTION: Ms. Ladd Fiorini made a motion, and Mr. Cutler provided a second, to approve payment of Amory Engineers invoice #13362 dated January 11, 2011 in the amount of \$302.50 for services related to Freeman Farms As-Built.

VOTE: The motion carried unanimously, 6-0. (Mr. Halligan was not present for the vote but was present soon after for the public hearings).

PUBLIC HEARINGS ON ANNUAL TOWN MEETING ZONING ARTICLES

Ms. MacNab opened the public hearing at 7:16 PM with approximately 25 members of the public present.

Ms. Ladd Fiorini read the public hearing notice and correspondence list into the public record:

- Public hearing notice published in *Duxbury Clipper* 01/05/2011 and 01/12/2011
- "Town of Duxbury Citizen's Petition to Amend Article 302 Definitions of the Town of Duxbury Zoning Bylaws" document prepared by proponents and received at the Planning Office on 11/30/2010
- Email from F. Kouble dated 01/20/2011 re: Rezone of property at Cape Verde Terrace
- Email from S. & J. Pons dated 01/24/2011 re: Rezone of property at Cape Verde Terrace

Ms. MacNab introduced the public hearing, noting that it provides the official opportunity for public input. The Board is not the sponsor of all articles and the petitioners will be allowed to present their proposals. Each article will be addressed separately.

A. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER SECTION 302 "DEFINITIONS" AND UNDER ARTICLE 400 (USE, INTENSITY, DIMENSIONAL AND COVERAGE REGULATIONS FOR ALL DISTRICTS), SECTION 410.3 "USES AND STRUCTURES PERMITTED BY SPECIAL PERMIT," IN ORDER TO CHANGE THE TERM "GUEST HOUSE" TO "BED AND BREAKFAST" (SUBMITTED BY THE PLANNING BOARD).

Ms. MacNab noted that this is a housekeeping article in an effort to clarify definitions for accessory structures. The current definition of 'guest house' resembles what we know as a 'bed and breakfast.' A special permit is required for bed and breakfasts.

Ms. MacNab opened the floor to public comment. There were no public comments. Ms. MacNab noted that the Board could choose to close the public hearing or not, and if the public hearing is closed could choose to recommend, not recommend, or take no position.

MOTION: Mr. Wadsworth made a motion, and Mr. Glennon provided a second, to close the public hearing regarding a proposed Annual Town Meeting 2011 warrant article to see if the town will vote to amend the Duxbury Protective Bylaw under Section 302 "Definitions" and under Article 400 (Use, Intensity, Dimensional and Coverage Regulations for All Districts), Section 410.3 "Uses and Structures Permitted by Special Permit," in order to change the term "Guest House" to "Bed and Breakfast" (submitted by the Planning Board).

DISCUSSION: There was no discussion regarding the motion.

VOTE: The motion carried unanimously, 7-0.

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Therefore, the public hearing for this article was closed.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to recommend APPROVAL of a proposed Annual Town Meeting 2011 warrant article to see if the town will vote to amend the Duxbury Protective Bylaw under Section 302 "Definitions" and under Article 400 (Use, Intensity, Dimensional and Coverage Regulations for All Districts), Section 410.3 "Uses and Structures Permitted by Special Permit," in order to change the term "Guest House" to "Bed and Breakfast" (submitted by the Planning Board).

DISCUSSION: There was no discussion regarding the motion.

VOTE: The motion carried unanimously, 7-0.

B. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER SECTION 302 "DEFINITIONS," IN ORDER TO CHANGE THE DEFINITION OF "ACCESSORY STRUCTURE" (SUBMITTED BY THE PLANNING BOARD)

Mr. Broadrick noted that this article was generated as a result of a review by a Zoning Bylaw Study Committee to recommend revisions that would make the intention clear to allow accessory structures but would prevent them from becoming dwellings in the future.

Mr. Bear suggested adding 'pool house' to a proposed list of allowed structures. Although a pool house does have many elements of a potential dwelling, such as cooking, plumbing, lavatory facilities, limited dimensions could be added elsewhere to Zoning Bylaws that would limit the structure's use as a dwelling, such as height and footprint. Ms. MacNab agreed with the concept but noted that procedurally it may not be possible at this point in time. Mr. Broadrick advised the Board that they could produce an amendment on Annual Town Meeting floor, but creating dimensional restrictions may be outside of the Board's scope and may need to be confirmed with Town Counsel.

Ms. MacNab opened the floor to public input.

Mr. John Baldwin of 180 High Street asked why the Board is concerned with "double density." Mr. Broadrick responded that one dwelling per lot is assumed per the town's Comprehensive Plan. The concept of more than one dwelling per lot was never anticipated. Allowing guest houses may lead to double density and that is what the Board wants to avoid. How do we prevent a guest house from becoming a dwelling?

Mr. Baldwin asked if the structure would be double density if it were attached, and Mr. Broadrick responded that by attaching the structure guest quarters would be created, which are not prohibited by Zoning Bylaws. Zoning Bylaws do allow guest quarters within a single family home.

Mr. Baldwin read the current definition of 'accessory use' from current Zoning Bylaws, asking what the term 'customarily incidental' means. Ms. MacNab stated that she understood Mr. Baldwin's point that there may be increased density whether the structure was attached or not. However, the Board has to project maximum build-out numbers using a firm rationale, and the potential for double density is greater in detached structures. The current definition of a lot assumes one dwelling per lot, and this article attempts to clarify rather than change current Zoning Bylaws.

Mr. Paul Driscoll of 232 Crescent Street disclosed that he is an attorney who served on a recent Zoning Board of Appeals hearing with the Planning Board, and stated that tonight he is attending as a 35-year resident of the town. He stated that he is hearing that Zoning Bylaws restrict property owners to one dwelling per lot; however the Zoning Bylaws actually restrict the maximum density to one single family dwelling per 40,000 square feet. At a recent ZBA public hearing Mr. James Dowd, a town building inspector, was asked about permits for potential double density structures and he stated that an average of one per year are permitted.

Mr. Driscoll stated that the typical family unit has changed. In the town of Duxbury you are not finding two dwellings with two families. He objected that the proposed list using the term 'such as' is illustrative, not exclusive. He suggested that the Board consider including an exclusive list of allowed accessory structures. He stated that the current proposal may only confuse the situation further. He stated that in the nearly 400 years of land use in the town, multiple dwellings have been allowed for most of those years. He stated that the Board seems to imply inherent evil in a second structure. He called the proposed article "ill-conceived" and "unnecessary."

Ms. Sara Wilson of 120 Bay Road asked why the Board would want to prohibit a guest cottage or similar small backyard structure, and Ms. MacNab responded that the intent is to uphold current Zoning Bylaws that prohibit separate guest quarters that can be used as a dwelling. Many existing detached guest cottages are pre-existing nonconforming structures. Ms. Wilson noted that the current definition of 'dwelling' is exclusively for residential occupancy and asked if it would be permissible as a dwelling unit if it does not contain a kitchen. Ms. MacNab responded that there is currently no reference to a stove or kitchen in the definition of 'dwelling,' and 'dwelling unit' is only referenced in the Planned Development section of Zoning Bylaws. Ms. Wilson noted that previous Zoning Bylaws used the term 'dwelling unit' in a chart showing allowed intensity in all zoning districts. Ms. MacNab noted that this chart is no longer included in Zoning Bylaws. Ms. Wilson stated that since 1971 'dwelling unit' has been referenced as a basic unit of living space. Somehow the term must have been inadvertently dropped in more recent Zoning Bylaws. She stated that she does not believe the town should prohibit guest houses, recommending that the Board consider restrictions to guest houses such as size, use, or components. She stated that she is not sure that the current proposal accomplishes the Board's intent, suggesting that it may require more precise language.

Mr. Doug Friesen of 153 West Street suggested that if the Board wants to prevent double density it would require a better definition than what is presented in the proposed warrant article. He agreed that no one wants double density, but expressed concern that the current language "won't fly." He suggested that the Board consider refining the language to accomplish the goal of not having double density.

Ms. Judith Barrett of 843 Franklin Street, current chair of the Zoning Board of Appeals, asked why the current proposal does not contain a reference to 'dwelling unit.' Ms. MacNab explained that the term 'dwelling unit' does not appear in the Residential Compatibility section of Zoning Bylaws. Mr. Bear noted that in past instances homeowners have promised to remove a stove and then later added one. The Board wants to stay clear of utilizing the term 'dwelling unit' because it is only used in the Planned Development section of Zoning Bylaws. It is impossible to create Zoning Bylaws that are perfect; that is why the Zoning Board of Appeals exists.

Mr. Thomas Tucker of 18 Winsor Street asked if the Board's proposal is intended to be different than a separate citizen petition that also addresses the definition of 'accessory structure.' He stated that when he served on the Zoning Board of Appeals (ZBA), if there was no kitchen the structure would not be considered a dwelling unit. He asked if the Board's definition is intended to exclude what the citizen

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petition intends to include. Mr. Cutler responded that it is not the Board's intent to address the citizen petition with its proposal.

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Mr. Tucker stated his opinion that a guest house over garages should be allowed as long as it is not considered a dwelling unit. Ms. MacNab noted that the Board has no enforcement ability. The build-out analysis is not based on double density and enforcement is critical to preventing double density.

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Mr. Paul Furcinito of 11 Bumblebee Lane noted that the Board appears to be guarding against a future ability to allow rental of a detached building; however, a legal lease does require a certain set of amenities. Ms. MacNab noted that current Zoning Bylaws do not address rentals.

Ms. Jessica Williams of 1243 Tremont Street stated that the Board of Health and state regulations already prevent rental of guest houses. Mr. Broadrick responded that no rental permit system exists in the town of Duxbury and therefore zoning enforcement is required with a set of rules or guidelines. The Board of Health does not do inspections on rentals. Ms. Williams asked if the Board could name a property where double density exists in town, and Ms. MacNab replied that she is not going to do that. Mr. Wadsworth noted that the Board of Assessor's has a list of 120 properties in town with two kitchens, although there is no indication of whether they are in detached structures or not.

Ms. Williams objected that the Board appears to be addressing what will or will not happen in the future. She suggested that spending millions of dollars on a detached structure only to rent it out is a poor economic decision. She added that the homeowner would pay additional taxes on a larger living area, which would benefit the town. She asked which dwelling in town is not a dwelling unit. Mr. Wadsworth responded that the Zoning Bylaws are silent on dwelling units in the Residential Compatibility District. Ms. Williams noted that the term is utilized in Massachusetts General Law and in the state building code. She stated that all dwellings are dwelling units. If there is no stove it is not a dwelling according to state building code. She asked why scale and mass are not considered. Mr. Wadsworth explained an example of a large carriage house barn on a lot with a smaller dwelling.

Ms. Williams asked how a building can be used "in part," according to the proposed definition. Ms. MacNab replied that an example might be a garage with potential living space above it. Ms. Williams asked how the proposed definition would prevent such a living space. Mr. Cutler asked if those present would rather see no change, and many in the audience responded affirmatively.

Ms. Kay Foster of 134 Surplus Street stated that although potential rental is one issue, another issue is having another part of the same family living in a second dwelling on the same lot.

Ms. Diane Bartlett of 200 Franklin Street asked about a figure brought up at a recent Board meeting regarding the number of available apartments in town, and Ms. MacNab responded that she does not have the figures. Ms. Bartlett stated that as chairman of the Local Housing Partnership, she has heard from the community that there is a need for seniors to have options for living. Not everyone can afford the local assisted living facilities. She asked if the Board would be willing to perform a study of economic issues in town to determine needs. She stated that it is unreasonable not to allow people to use their properties. Ms. MacNab responded that the Board is simply trying to clarify what is or is not allowed in town. The town votes on the Zoning Bylaws, and this town has voted to allow only one dwelling per lot. The Board is trying to find a way to clarify Zoning Bylaws to uphold one dwelling per lot as voted by residents.

Mr. Scott Casagrande of 500 Washington Street noted that he had attended the Zoning Bylaw Study Group meetings as an observer. He stated that the proposed article is worded differently than what was discussed in the subcommittee. He stated that the proposed article does not really clarify the definition of dwelling

and may just confuse the situation further. He suggested that it may be preferable to "go back to the drawing board" for further discussion. He stated that his property contains a rental dwelling unit and the Assessors have his property zoned as multiple residences and the state and the Fire Department are aware. He admitted that there may be other detached rental units that the town is not aware of.

Mr. Steve Antonellis of 102 Washington Street noted that it appears that the Board is attempting to write Zoning Bylaws that prohibit something when they are actually trying to control a use instead. He stated that the Board may be inadvertently overreacting by limiting legitimate uses. He stated that although anyone can propose language for Zoning Bylaws, the Board has the background and knowledge to support a credible proposal. This one does not ring true to him. He advised the Board to back off and rethink its proposal.

Mr. Driscoll stated that everyone wants a bylaw that is clear. He reminded the Board that the Building Inspector relies on the Zoning Bylaws and the state building code, which uses 'dwelling unit' as a structure with permanent cooking facilities.

Mr. Baldwin noted that the current definition of 'dwelling' prohibits overnight occupants. He stated that from the discussion it appears that homeowners are allowed overnight occupants. He stated that it appears that the concern over accessory structures is adding children to the schools which would affect the build-out analysis. Ms. MacNab clarified that the build-out projections relate to traffic, water supply, public safety as well as school enrollment. Mr. Wadsworth added that the build-out analysis projects the maximum potential.

Ms. Wilson stated that the proposed language appears to be exclusionary rather than inclusive. For instance, under the proposed language it appears that if she had a barn and wanted to put animals in it she could not do it. Ms. MacNab responded that the current definition does not address barns or chicken coops. She stated that the proposed term "may include" is inclusionary and could include other things than listed.

Mr. Friesen urged the Board to reconsider its proposal and come up with comprehensive language to prevent an undesired outcome. He told them that they have not reached that goal yet.

Ms. MacNab declared that the public hearing will continue to a date certain, to be determined by the end of tonight's meeting.

C. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER SECTION 302 "DEFINITIONS," IN ORDER TO CHANGE THE DEFINITION OF "ACCESSORY STRUCTURE" (SUBMITTED BY CITIZEN PETITION)

Ms. MacNab invited the proponent to present the article. Ms. Jessica Williams of 1243 Tremont Street stated her recommendation that the Board withdraw its article and use her proposal instead because it is clearer. She stated that the wording 'but not limited to' is clearer and the term 'dwelling unit' as used in the state building code requires a kitchen. Mr. Wadsworth asked if this proposal is moving toward allowing a second dwelling. He noted that the term 'dwelling unit' is not used in the Residential Compatibility section of the Zoning Bylaws.

Mr. Cutler noted that the citizen petition is similar to the Board's proposal. Ms. Williams noted that some residents would like to allow finished living space in an accessory structure. Mr. Cutler noted that the placement of the term 'detached' is a critical difference. Ms. Williams replied that she could add the term 'detached' on the Annual Town Meeting floor.

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Ms. MacNab noted that although the proposals are similar, she is concerned that the citizen petition may have unintended consequences. A by-right ability to build multiple structures with out kitchen facilities on a single lot would be allowing a motel or motor inn. Ms. Williams stated that what she would like to see allowed would be artist studios, greenhouses. She asked what the difference would be if the property had fifteen different structures? Ms. MacNab stated that multiple accessory structures are already allowed.

Ms. Ladd Fiorini noted some anger in Ms. William's tone. Ms. Williams responded that her anger is common with other residents over the Board disallowing the Building Inspector from doing his job. She stated that what she presented to the Zoning Board of Appeals (ZBA) for the Zurlo property is exactly what the Board is trying to disallow. The Building Inspector is doing what he and a long line of his predecessors allowed. She blamed the Board for creating tension in the town and she is attempting to make clarifications.

Ms. MacNab explained that a process exists to take appeals to the ZBA and it does not need to be an acrimonious process. The Board saw actions taken in conflict with Zoning Bylaws. The Town Manager and town counsel agreed that there were violations of the Zoning Bylaws. The Board wants residents to have a clearer understanding of Zoning Bylaws.

Mr. Paul Driscoll of 232 Crescent Street recommended that the Board define 'dwelling' and 'dwelling unit' the same as the state building code.

Mr. Scott Casagrande of 500 Washington Street noted that the struggle appears to be what can be allowed in a detached structure. He suggested that the bedroom is the critical factor, not the kitchen. He recommended adding the term 'dwelling unit' to the Residential Compatibility section of Zoning Bylaws. He stated that the Board's proposal is restrictive and the proposed citizen petition is less divisive.

Mr. Wadsworth noted that it is difficult to produce a "bright line." He stated that the Zoning Bylaws appear clear to him, that a single family dwelling lot can have 40,000 or more square feet; however, Mr. Driscoll reads it differently. He welcomed ideas for language that would help clarify the Zoning Bylaws.

Mr. Baldwin agreed with Mr. Driscoll and urged the Board to adopt the state building code definition of 'dwelling unit.' Mr. Wadsworth stated his preference to "define ourselves" rather than deferring to the state building code which changes from time to time. Ms. MacNab stated that the term 'dwelling unit' is defined differently between boards and the state building code. She agreed that it would be helpful for everyone to work with the same definition.

Mr. Paul Furchinito of 11 Bumblebee Lane noted that residents may be more amenable to tightening double density concerns if the Board could find a way to bolster existing regulations. He stated that there is a lack of proportionality in property rights as deemed by the Board. Ms. MacNab responded that some Board members have served for up to twenty years and there is no change in the Board's interpretation of Zoning Bylaws, but a change at the permitting level.

Ms. Judith Barrett of 843 Franklin Street, current chair of the ZBA, stated that it is not fair to say that the Planning Board came up with a new interpretation of Zoning Bylaws. She stated that perhaps the issue was not on residents' radar screen until the Planning Board saw an increase in activity.

Mr. Thomas Tucker of 18 Winsor Street stated that he is an attorney and a former ZBA member. He stated that the citizen petition is clearer if it allows a bedroom in only one accessory building, so that motels would be disallowed. He stated that it is restrictive not to allow a bedroom in an accessory structure.

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Ms. Ashley MacCallum of 7 Winter Street stated that she would like to build an accessory structure on her property for her mother from England to stay in. If it were attached it would exceed her budget. Ms. MacNab responded that current Zoning Bylaws would not allow what she is proposing.

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Mr. Khalil Farhat of 22 Hound's Ditch Lane asked if the Board is trying to prevent multiple families from living on the same lot. Ms. MacNab responded that the Board is trying to clarify Zoning Bylaws that currently allow only one dwelling per lot. Mr. Farhat noted that two families are currently allowed under one dwelling if the accessory structure is attached. He stated that population density seems to be the issue and is not really being addressed. Ms. Ladd Fiorini replied that the Board is not trying to make policy but is trying to clarify current Zoning Bylaws.

Ms. MacNab declared that the public hearing will continue to a date certain, to be determined by the end of tonight's meeting.

D. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER ARTICLE 400 (USE, INTENSITY, DIMENSIONAL AND COVERAGE REGULATIONS FOR ALL DISTRICTS), SECTION 425 "INTENSITY AND DIMENSIONAL REGULATIONS FOR ALL NEIGHBORHOOD BUSINESS DISTRICTS" IN ORDER TO CHANGE INTENSITY REQUIREMENTS FOR SITE COVERAGE AND TO ADD REQUIREMENTS FOR OPEN SPACE AND BUILDING COVERAGE (SUBMITTED BY THE PLANNING BOARD)

Mr. Bear provided background on the proposed article, as member of a working group that met during the past year to study lot coverage and parking. He stated that the issue of drainage was the starting point for discussion. Although gravel used to be allowed toward pervious coverage, experts determined that gravel in parking lots is not pervious because it eventually gets packed in and does not allow rainwater to be captured and treated. The goals of the working group were to modernize parking for various uses that require updating, and also to provide for open space on a Neighborhood Business lot.

Three Annual Town Meeting articles in the past three years regarding lot coverage have not passed. At Annual Town Meeting 2010 the Planning Board committed to bringing a proposal for next year's Annual Town Meeting. A working group was formed with Mr. Bear, Ms. Ladd Fiorini, and Mr. Wadsworth from the Planning Board; Ms. Jill Cadigan-Christenson from the Zoning Board of Appeals (ZBA); and Ms. Sara Wilson as an at-large member. Staff members serving ex-officio were Mr. Scott Lambiasi, Director of Inspectional Services, who did not attend the meetings; and Mr. Thomas Broadrick, Planning Director.

Mr. Wadsworth noted that the existing pervious coverage allowed is 50% and the current proposal is for 70%. He stated that he had searched but could find no official state position. He did find that the state finds parking lots to be a source of pollution and recommends that municipalities deal with stormwater treatment; however, the town of Duxbury Zoning Bylaws are silent. There is an effect of runoff on Kingston Bay and Duxbury Bay. He expressed his concern with the proposed 70% lot coverage.

Mr. Bear noted that the proposed Parking bylaw is a complete overhaul. A major change is that macadam is required for all parking. The maximum building coverage is proposed as 20%. A new definition of 'open space' is proposed in a separate article. These changes apply only to commercial lots.

Mr. Bear pointed to research by the former Planning Director and research done by the working group of properties permitted in the 1990s allowing gravel to count as pervious area. Zoning Bylaws currently allow up to 50% lot coverage, but when gravel is counted the actual average is 70% coverage. Ms. Ladd Fiorini noted that stormwater requirements have been added.

Approved 02/14/11

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Ms. MacNab noted that the Planning Board is not unanimous in its opinion; however, a majority voted to recommend 70% lot coverage. Ms. Ladd Fiorini added that the Board recommends a minimum of 30% open space.

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Ms. Sara Wilson of 120 Bay Road recommended that the Board review a "Smart Growth Toolkit" DVD prepared by the state which recommends that town's adopt an LID (Low Impact Design) approach and limit impervious coverage. Mr. Broadrick offered to get copies of the Smart Growth Toolkit DVD for Board members to review.

Ms. Wilson stated that the Board's proposal would increase impervious coverage. She stated that although the current Neighborhood Business District is only three to four acres of the town's area, more business-zoned land can be expected especially as land becomes more valuable. The rate of pollution is much higher than the amount of land in commercial districts. She quoted three state experts who all recommend limiting impervious coverage and adopting LID and Smart Growth techniques with pervious parking surfaces.

Ms. Wilson stated that she is opposed to the proposed article because it would decrease groundwater recharge, increase pollution, and affect the quality of local shellfish beds. She recommended the use of pervious pavers with liner underneath and not gravel.

Mr. Thomas Tucker of 18 Winsor Street stated that he is the current chair of the Economic Advisory Committee (EAC). He stated that the EAC supports this article and the proposed Parking bylaw. Requiring paved parking eliminates the pervious/impervious issue. The town's businesses would be assisted by allowing more lot coverage and improving parking requirements, as both proposals would bring co-existence with reality.

Ms. Lorrie Hall of 175 Abram's Hill asked about the current building coverage requirement, and Ms. MacNab responded that there is no current requirement other than building plus parking no greater than 50%. Ms. Hall asked if a WalMart could go on the Bongi's property and Mr. Tucker responded that with the proposed amendments, it would not be a large one. Ms. Hall objected that a Walmart would put existing smaller retail operations out of business. Ms. Wilson stated that Bongi's is a 4.83 acre parcel of land, and with 20% building coverage they could get a one-acre sized building.

Ms. Wilson noted that 104 Tremont Street has 50% lot coverage. Mr. Bear noted that the 104 Tremont Street property owner has come to the Board asking for more parking spaces even though the building is not completely occupied. He stated that the Board would prefer for stormwater to be processed naturally. Many existing building lots may not be able to do this due to site or elevation issues. There are issues with pervious pavers especially regarding snowplowing. He stated that runoff from travel and parking areas need to be captured on an impervious surface. He noted that the current proposal does not actually increase coverage; some good looking sites already have 70-80% coverage. The proposed open space and parking requirements were added in order to limit a development's size so it would be difficult to achieve 20% building coverage.

It was agreed to continue the public hearing to a future date.

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- E. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER SECTION 302 "DEFINITIONS" IN ORDER TO ADD THE DEFINITION OF "OPEN SPACE" (SUBMITTED BY THE PLANNING BOARD)** FEB 22 AM 11:23
Ms. Diane Bartlett of 200 Franklin Street asked how the proposed article would be applied and Mr. Bear responded that it would only apply to Neighborhood Business districts. DUXBURY MASS.

MOTION: Mr. Glennon made a motion, and Mr. Cutler provided a second, to close the public hearing regarding an article to see if the town will vote to amend the Duxbury Protective Bylaw under Section 302 "Definitions" in order to add the definition of "Open Space" (submitted by the Planning Board).

DISCUSSION: There was no discussion regarding the motion.

VOTE: The motion carried unanimously, 7-0.

- F. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER ARTICLE 600 (SPECIAL REGULATIONS) TO DELETE SECTION 603 "PARKING REGULATIONS" IN ITS ENTIRETY AND TO REPLACE IT WITH A NEW SECTION 603 "PARKING REGULATIONS" IN ORDER TO UPDATE PARKING REGULATIONS (SUBMITTED BY THE PLANNING BOARD)**

Mr. Bear noted that much of the research for this proposed new Parking bylaw came from the former Planning Director. Two major areas of interest:

1. Medical activities require twice the amount of parking spaces than non-medical uses.
2. A change in parking space area is recommended from the existing 8.5 x 19 feet to the proposed 10 x 20 feet.

The end result is that any new proposal in a Neighborhood Business district will require more parking area than in the past.

Ms. Lorrie Hall of 175 Abram's Hill stated that the reason 104 Tremont needs more parking is that the building is too big. Businesses should consider constructing smaller buildings. Duxbury is a residential town that does not need large commercial buildings.

MOTION: Mr. Glennon made a motion, and Mr. Cutler provided a second, to close the public hearing regarding an article to see if the town will vote to amend the Duxbury Protective Bylaw under Article 600 (special regulations) to delete Section 603 "Parking Regulations" in its entirety and to replace it with a new Section 603 "Parking Regulations" in order to update parking regulations (submitted by the Planning Board).

DISCUSSION: There was no discussion regarding the motion.

VOTE: The motion carried unanimously, 7-0.

- G. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER SECTION 906.3 "VARIANCES" IN ORDER TO REMOVE USE VARIANCES FROM ALLOWED VARIANCES (SUBMITTED BY THE PLANNING BOARD)**

Ms. MacNab noted that this amendment was proposed at the request of the Zoning Board of Appeals. Most towns do not allow use variances.

Approved 02/14/11

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MOTION: Mr. Cutler made a motion, and Mr. Glennon provided a second, to close the public hearing regarding an article to see if the town will vote to amend the Duxbury Protective Bylaw under Section 906.3 "Variances" in order to remove use variances from allowed variances (submitted by the Planning Board).

DISCUSSION: There was no discussion regarding the motion.

VOTE: The motion carried unanimously, 7-0.

H. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER ARTICLE 400 (USE, INTENSITY, DIMENSIONAL AND COVERAGE REGULATIONS FOR ALL DISTRICTS), SECTION 410.6 "ACCESSORY APARTMENT SPECIAL PERMIT REGULATIONS AND RESTRICTIONS" IN ORDER TO CHANGE THE LIMIT OF ADDITIONS OR ALTERATIONS TO CREATE ADDITIONAL LIVING SPACE FROM FIVE (5) YEARS TO ONE (1) YEAR (SUBMITTED BY THE LOCAL HOUSING PARTNERSHIP)

Ms. MacNab noted that the Local Housing Partnership proposes the amendment in order to facilitate accommodating an additional family member(s) to live within the existing footprint of a dwelling.

Ms. Diane Bartlett of 200 Franklin Street, Local Housing Partnership chair, noted that Town Counsel, Atty. Robert S. Troy has recommended amending the proposed article to reference the Plymouth County Registry of Deeds rather than just 'Registry of Deeds.'

MOTION: Mr. Cutler made a motion, and Mr. Glennon provided a second, to close the public hearing regarding an article to see if the town will vote to amend the Duxbury Protective Bylaw under Article 400 (Use, Intensity, Dimensional and Coverage Regulations for All Districts), Section 410.6 "Accessory Apartment Special Permit Regulations and Restrictions" in order to change the limit of additions or alterations to create additional living space from five (5) years to one (1) year (submitted by the Local Housing Partnership).

DISCUSSION: There was no discussion regarding the motion.

VOTE: The motion carried unanimously, 7-0.

I. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO REZONE THE TOWN'S WETLANDS PROTECTION OVERLAY DISTRICT TO CHANGE A PORTION OF LAND ON ASSESSOR'S LOT 020C-038-005 (CAPE VERDE TERRACE) SO THAT THE ENTIRE PARCEL IS ZONED AS RESIDENTIAL COMPATIBILITY DISTRICT, AS SHOWN ON A PLAN FILED WITH THE TOWN CLERK (SUBMITTED BY LANDOWNER PETITION)

Present for the discussion were the landowners, Mr. William Driver and Ms. Doreen Driver of 1 Cape Verde Terrace, along with their representatives, Mr. Brad McKenzie of McKenzie Engineering Group and Mr. John Baldwin. Mr. Broadrick noted that two emails had been submitted in opposition to the proposed article (see Correspondence List on page 2).

Mr. Baldwin submitted two documents:

- Letter from Brad Holmes of Environmental Consulting & Restoration, LLC dated 07/06/10 re: Wetlands delineation report
- "Wetland Protection Zoning" article from *Duxbury Clipper* dated 03/25/1976.

TOWN CLERK

Mr. Baldwin described the site as Assessor's parcel ID 20C-038-005, containing 4.13 acres on Cape Verde Terrace, off Franklin Street. Currently a portion of the lot is zoned Wetlands Protection Overlay District (WPOD) and the landowner petition proposes to remove the WPOD overlay district so that the entire parcel would be zoned only Residential Compatibility.

Mr. McKenzie explained that the WPOD was created in 1971 to protect wetlands over five acres in size, with a 25-foot buffer from the water resource area. At the time, the water body near this property was a wetland. He noted the Clipper article that described how maps could be changed; currently zoning maps can only be changed through a vote at Annual Town Meeting. He stated that Zoning Bylaws Section 404.9 provides the process to grant a special permit in the WPOD. He stated that testing confirmed that the soil is mostly Carver soil, permeable and well-drained. All soil tests were observed by the Board of Health. Mr. McKenzie noted that the land is not subject to 100-year flooding. It should not be included in the WPOD.

Ms. MacNab noted that the past history is important. She noted that the special permit process is not relevant to the current proposal. She asked if conditions in the original Definitive Subdivision approval preclude further development of the land, and staff agreed to look into the matter.

Mr. Baldwin stated that Mr. Joseph Grady, Conservation Administrator, has provided guidance in this matter. Ms. MacNab asked if the Conservation Commission has made a recommendation, and Mr. Baldwin responded that it is on the Conservation Commission agenda of February 15, 2011.

Mr. Glennon noted that wetlands do appear to exist on the site. Mr. Baldwin stated that, based on advice from Mr. Grady, the landowners will propose a 25-foot buffer around the wetlands shown on the plan.

Mr. Broadrick noted that it is not possible to change a zoning district with a special permit or variance from the Zoning Board of Appeals; this type of change requires Annual Town Meeting approval. Some may call the proposal spot zoning.

Mr. Glennon asked if the adjacent properties were zoned WPOD, and Mr. Broadrick confirmed that they are.

MOTION: Mr. Cutler made a motion, and Mr. Glennon provided a second, to continue the public hearing regarding an article to see if the town will vote to rezone the town's Wetlands Protection Overlay District to change a portion of land on Assessor's lot 020c-038-005 (Cape Verde Terrace) so that the entire parcel is zoned as Residential Compatibility district, as shown on a plan filed with the Town Clerk (submitted by landowner petition) to Monday, January 31, 2011 at 7:05 PM.

DISCUSSION: There was no discussion regarding the motion.

VOTE: The motion carried unanimously, 7-0.

ADJOURNMENT

The Planning Board meeting adjourned at 9:55 PM. The next meeting of the Planning Board will take place on Monday, January 31, 2011 at 7:00 PM at Duxbury Senior Center, 10 Mayflower Street.