



Approved 07/11/2011

Town of Duxbury Massachusetts Planning Board

TOWN CLERK
11 JUL 27 AM 9:06
DUXBURY, MASS.

Minutes 05/23/11

The Planning Board met at the Duxbury Town Hall, Small Conference Room, on Monday, May 23, 2011 at 7:00 PM.

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

Absent: Josh Cutler.

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

Ms. MacNab called the Planning Board meeting to order at 7:01 PM.

OPEN FORUM

Open Meeting Law: Ms. MacNab noted a memorandum received earlier that day from Town Counsel, Atty. Robert S. Troy, stating that new agenda items may not be brought forth at an open meeting, either from a Board member or from the public. Mr. Wadsworth stated that his interpretation is that the Board cannot deliberate on items brought forth. Mr. Glennon agreed, noting that Open Forum is the only chance the Board gets to discuss topics. If a topic requires further discourse, it should be placed on the next meeting agenda.

Affordable Housing Trust: Ms. Ladd Fiorini reported that she had attended her first Affordable Housing Trust meeting. The process is just beginning to get underway, with one approved applicant and another with an issue to be worked out. More funding for the mortgage buydown program will be available starting July 1, 2011.

ANR PLAN OF LAND: 40 ANCHORAGE LANE / WILDLANDS TRUST

Present for the discussion was the applicant's representative, Mr. Rick Grady of Grady Consulting in Kingston. He stated that on January 13, 2011 the Zoning Board of Appeals (ZBA) had granted a frontage variance for the dwelling lot. One large lot is proposed to be divided into a dwelling lot (2.49 acres) and an unbuildable parcel (23 acres). The lot will be sold and the Wildlands Trust will retain the parcel.

Ms. MacNab noted that the ZBA decision included language that limits any further subdivision of the land in order to create lots for residential purposes. It is not clear that the lot cannot be further subdivided, however. Mr. Glennon noted that in the Planning Board's referral recommendation to the ZBA, it was suggested that the applicants file with the Planning Board for a lot frontage waiver. Mr. Broadrick advised that upon reviewing the ANR Handbook he found case law (*Cricone v Town of Dracut*, 1995) that showed that a subdivision creates two or more lots. In this instance one lot and one parcel are being created and therefore a frontage waiver is not required.

Mr. Glennon expressed concern that the Board is creating a property line, rather than moving a property line. He is not sure that the Board has the authority to endorse the ANR plan as presented. He expressed concern, and Mr. Bear agreed, that a future owner could try to further subdivide the lot since it contains 80,975 square

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feet of upland in a Residential Compatibility zone. Also the parcel, with 10.5 acres of upland, has a private deed restriction not making it buildable, with no town authority to enforce the restriction or prohibit construction. There is nothing to prevent the Wildlands Trust from coming back in the future in an attempt to carve off another building lot. Mr. Wadsworth noted that another frontage variance would be required, so it would go through the Zoning Board of Appeals again.

Ms. MacNab asked if a conservation restriction is being filed on the parcel as conditioned in the ZBA decision, and Mr. Grady responded that he believed so.

Mr. Bear noted a typographical error which Mr. Grady corrected on the mylar.

MOTION: Mr. Bear made a motion, and Ms. Ladd Fiorini provided a second, to endorse a plan of land entitled, "Plan of Land, #40 Anchorage Lane, Assessors Map 180A Block 418 Lots 000 & 013, Duxbury, Massachusetts," as not requiring approval under Subdivision Control Law.

VOTE The motion carried 5-1, with Mr. Glennon voting against.

Board members signed the mylar and two paper copies of the ANR plan.

CONTINUED PUBLIC MEETING, ADMINISTRATIVE SITE PLAN REVIEW: 421 ELM STREET / TOWER RESOURCE MANAGEMENT

Present for the discussion to represent the applicants was Mr. James George of T-Mobile, Inc. Mr. Broadrick provided background for the benefit of Ms. MacNab and Mr. Glennon, who were not present for the initial public meeting on April 25, 2011. The proposal is to construct a 100-foot monopole cell tower on a leased area of a 2.1 acre lot adjacent to Route 3 that is zoned Residential Compatibility and contains a private dwelling. On April 5, 2011 the Zoning Board of Appeals approved a special permit for construction of a cell tower and equipment facility and a variance for distance from adjacent lot lines.

Board members reviewed a draft decision. Mr. Wadsworth asked what would happen if the property is sold, and Mr. Broadrick responded that a modification to the special permit would be required.

MOTION: Ms. Turcotte made a motion, and Mr. Wadsworth provided a second, to approve the draft decision as presented for Administrative Site Plan Review of 421 Elm Street / T-Mobile and Tower Resource Management.

VOTE: The motion carried 4-0-2, with Ms. MacNab and Mr. Glennon abstaining.

Board members signed two paper copies of the Administrative Site Plan Review plans.

INITIAL PUBLIC MEETING, ADMINISTRATIVE SITE PLAN REVIEW: 489 WASHINGTON STREET / DUXBURY YACHT CLUB, INC.

Present for the discussion to represent the applicants were Ms. Carmen Hudson of Cavanaro Consulting and Mr. Sandy Salmela of the Duxbury Yacht Club. Also present was Mr. Mark Nelson of Horsley Witten, the town consulting engineer. The proposal is to close in an existing screened porch in the main building, convert the garage into office space, and construct a new 17-space parking lot with grading and lighting on a .93 acre residential lot on the northeast corner of Washington Street and Mattakeeset Court in the Residential Compatibility District. The applicants are also before the Zoning Board of Appeals for a special permit for use of a dwelling as a private club.

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Ms. Hudson presented changes to the site plans based on recommendations from the town consulting engineer at the initial public meeting on April 25, 2011. She stated that the parking lot has been moved approximately five feet north from its originally proposed location in order to allow for further drainage and to provide stacking space for vehicles exiting the parking lot. Some hedges will be removed in order to improve sight lines.

Mr. Nelson responded that overall this is a good project. Based on the value of adding parking spaces to the town harbor it makes good sense. Duxbury Yacht Club members will be able to utilize the private lot, thereby opening up more public parking spaces. Drainage has been improved and grading has been minimized now that two smaller crushed stone trenches with rain gardens have been added instead of one larger drainage area. Runoff to the existing driveway has also been captured with the improved drainage plan.

Some considerations for the decision include:

- Overflow gravel outlet layer to reduce scour and minimize erosion
- Test pit for bioretention
- Updated erosion sediment control plan.

Mr. Nelson stated that overall the Administrative Site Plan Review process has improved sight lines and reduced traffic backup. Mr. Wadsworth expressed concern with utilizing gravel as parking material, and Mr. Nelson responded that gravel makes sense in this project. The less asphalt the better, and gravel provides more infiltration and will slow down runoff. Mr. Wadsworth stated that gravel will allow runoff to go untreated to the bay, and Mr. Nelson responded that although it is true that gravel becomes impervious over time, stormwater runoff will go through the bioretention area.

Ms. MacNab asked if this design is the best way to protect pollutants from going into the bay, and Mr. Nelson responded that if it is not the best, it is close to the best. Gravel can capture runoff from small storms. The higher the rainfall, the more runoff will move through the swales into the bioretention facility. The trade-offs need to be weighed considering the aesthetics, the heat produced, and the recharge resulting from using asphalt pavement. Ms. Turcotte expressed concern with paving equipment in this fragile area near the bay. She supported crushed stone for the parking material.

Mr. Wadsworth asked how snow removal will be handled, and Mr. Salmella replied that the Yacht Club's snow plows do a careful job of snow removal.

Mr. Bear asked how the revised parking plan minimizes grading, when at the last meeting it was stated that moving the parking lot to the north would increase grading. Ms. Hudson explained that the elevation of the proposed parking lot has been increased from 12.8 feet to 15 feet.

Mr. Wadsworth asked if the applicants intend to utilize the existing seven bedrooms in the dwelling as sleeping quarters, and Mr. Salmella responded that they do not have plans to do so at this time. Ms. Hudson added that the primary reason her clients pursued the purchase of this property was in order to provide more parking for members, with a secondary benefit of providing meeting space. Mr. Salmella noted that the proposed private club space is not suited for events like weddings because the rooms are too small. However, they would like the ability to plan new ideas for the future.

Ms. MacNab asked if a loading dock and dumpster would be needed, and Ms. Hudson responded that there is no expected need for either. Mr. Salmella noted that the former garage space will be converted into office space for two full time employees, and the amount of trash generated should be minimal.

Ms. MacNab confirmed with Mr. Salmella that the two existing lots will be retained under separate ownership.

Mr. Bear asked about Erosion and Sediment Control plan, and staff confirmed that it had been submitted to the Planning Office. Ms. Hudson agreed to include that plan with the set of site plans.

Ms. Grant reported that a property abutter, Mr. John Balboni, had submitted an email earlier that day, and she distributed copies to Board members. In his email Mr. Balboni asked the Board to consider minimizing impact of lighting, and also stated a strong preference for non-paved surface for the parking lot. Mr. Broadrick noted that Mr. Spenser Balboni, son of the abutter, had come to the Planning Office that day as well with similar concerns.

Mr. Wadsworth expressed concern with the gravel vs. pavement issue, noting that he has issues with gravel because it cannot be delineated for parking and it hardens and becomes impervious over time. Mr. Bear agreed to the extent that pavement is preferred especially for heavily travelled spaces. Mr. Nelson, the town consulting engineer, stated that he is not a proponent of paving unless necessary, and he does not see a reason here. The parking use is primarily seasonal, and the proposed parking plan would result in no loss of water quality but would gain aesthetics that would fit in with the neighborhood.

Ms. MacNab directed staff to update the draft decision to include the Erosion and Sediment Control Plan as part of the approved plans, and to add two conditions relating to an overflow outlet and test pit at the bioretention area.

Ms. Hudson noted that the applicants have a purchase and sales agreement with the property seller and would like the Administrative Site Plan Review (ASPR) resolved. They will be meeting with the Zoning Board of Appeals (ZBA) on Thursday, May 26, 2011 and do not want the ASPR to delay the ZBA special permit decision. Mr. Salmella noted that the closing date is set for June 30, 2011, and Ms. MacNab assured him that the Planning Board would be reviewing the final decision at its meeting of June 13, 2011.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Bear provided a second, to continue the public meeting for Administrative Site Plan Review of 489 Washington Street / Duxbury Yacht Club, Monday, June 13, 2011 at 7:10 PM.

VOTE: The motion carried unanimously, 6-0.

ZBA REFERRAL: DUXBURY ESTATES, CARRIAGE LANE / BY DESIGN CONSTRUCTION

Mr. Broadrick asked Mr. Mark Nelson of Horsley Witten Group to stay for discussion of this referral from the Zoning Board of Appeals (ZBA) since his firm is the consulting engineer for the ZBA. Mr. Broadrick explained the history of the project, noting that it was originally filed in 2006 as a Planned Development in a joint application with site plans reviewed by the Planning Board and a special permit issued by the ZBA. Now the Director of Inspectional Services has directed the applicant to file a special permit amendment for a revised drainage system which was partially installed without a permit. Mr. Joe Henderson of Horsley Witten has been retained by the ZBA as consulting engineer and the ZBA public hearing is scheduled for June 9, 2011.

Mr. Bear noted that after project approval the applicants changed the units from duplexes to single family units and enclosed porches to increase the unit size. Mr. Broadrick noted that amendments to the special permits were granted for those changes and the Director of Inspectional Services, Mr. Scott Lambiase, determined that there was no issue with coverage due to these changes.

Ms. MacNab noted that groundwater separation was a major issue, stating that Horsley Witten was not called to perform proper inspections as the project was developed. It appears that some foundations were installed

lower than approved. It also appears that clearing was performed beyond what was approved. She stated that homes in the development are flooding.

Mr. Nelson noted that the region is experiencing record high groundwater levels, and the drainage situation should be resolved prior to further construction. Ms. MacNab noted that site coverage should be recalculated as well. Board members reviewed a draft memorandum to the ZBA requesting the applicant to submit information in compliance with Zoning Bylaws Section 807.4 #5 Drainage Impact Evaluation Report, so that the Planning Board can review and make a recommendation to the ZBA.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to approve a draft memorandum dated May 24, 2011 from the Planning Board to the Zoning Board of Appeals, as written.

VOTE: The motion carried unanimously, 6-0.

INVITATION FROM BOARD OF SELECTMEN FOR JOINT LAND USE MEETING ON JUNE 6, 2011

Ms. MacNab reported that she, Mr. Wadsworth and Mr. Broadrick had met with the new member of the Board of Selectmen, Mr. Ted Flynn, about this proposed land use meeting to discuss the formation of a new Zoning Bylaw Study Committee. Although Mr. Flynn had called this joint meeting with a goal of reducing litigation, Ms. MacNab stated that research performed by Mr. Broadrick indicates that the Town of Duxbury is not out of step with other towns regarding amount of litigation. She also noted that the Comprehensive Plan, which forms the basis of Zoning Bylaws, will be updated during the next fiscal year. The last revision was in 1999.

Mr. Broadrick noted that the meeting with Mr. Flynn gave him a better understanding of the process. Mr. Bear noted that the Planning Board is supposed to update Zoning Bylaws based on the Comprehensive Plan, but without an update the Board is in a weakened position. Ms. MacNab noted that now that census figures are available the build-out analysis can be performed. The Comprehensive Plan will not be a total re-write but will update numbers.

Mr. Glennon noted that regarding appointments made by the Board of Selectmen, a cross-section of the town should be represented.

ZBA REFERRAL: 31 SHIPYARD LANE / LANGS

Mr. Broadrick explained that the applicants propose to raze an existing dwelling and construct a new dwelling on a pre-existing nonconforming lot. According to Zoning Bylaws Section 410.4, in the Residential Compatibility District 15 percent building coverage is allowed. On lots less than 20,000 square feet an additional coverage of 3 percent of the difference between 20,000 square feet and the size of the lot is allowed by special permit. Current building coverage is 18.3 percent. The applicants are seeking to add 1.9 percent to their existing 18.3 percent for a total of 20.2 percent coverage.

The question is since they are "razing" the building are they limited to 15 percent plus the allowable 3 percent by special permit for a total of 18 percent? If they wanted to reconstruct what is already there, then Mr. Broadrick stated that they should get the existing 18.3 percent. But if they want more than that, they may need a variance to the 15 + 3 rule on lots less than 20,000 square feet. Because they are razing the existing dwelling, they need to comply with current Zoning Bylaws.

Ms. MacNab commented that the "3 percent" rule was adopted from an amendment made on the floor of Annual Town Meeting and it needs to be cleaned up. She noted that the 3 percent formula has never been applied to new construction. Mr. Glennon noted that the existing garage is not depicted on the plan submitted with the special permit application, and it should be included in building coverage calculations. Board members calculated the allowable amount.

MOTION: Ms. Turcotte made a motion, and Mr. Wadsworth provided a second, to recommend DENIAL of this special permit application, noting the following:

- Based on the stamped plan submitted with the ZBA referral, the **existing** lot coverage is 18.3 percent which exceeds the by right allowance of 15%.
- Where an applicant voluntarily razes an existing structure, no protections are granted under MGL Chapter 40A, therefore the applicant is allowed by right only 15% lot coverage.
- According to ZBL Section 410.4 Definition of Coverage, the Board of Appeals has the *discretion* to permit additional building coverage in an amount not greater than 3 percent of the difference between the total area of the lot and 20,000 square feet.
- According to the math supplied by the professional engineer who stamped the site plan lot size is $8940.24 \text{ s.f.} \times 15\% = 1341.03 \text{ s.f.}$ allowed by right. $20,000 \text{ s.f.} - 8940.24 \text{ s.f.} = 11,059.76 \text{ s.f.}$ $\times 3\% = 331.79 \text{ s.f.}$ allowed at discretion of ZBA via a special permit finding. Therefore the applicant is allowed 1341 s.f. by right (15%) plus 332 s.f. with special permit finding (additional 3%) for a total of 1673 s.f.
- The applicant is seeking 1807 s.f. which is 20.2% lot coverage and is 134 s.f. beyond what is allowed by right (15%) combined with a special permit finding (3%) and therefore a variance would be required.

VOTE: The motion carried unanimously, 6-0.

ZBA REFERRAL: 33 RAILROAD AVENUE / MILLBROOK SQUARE LLC

Mr. Broadrick noted that the applicants propose to erect a 14-foot freestanding double-sided unlighted sign.

MOTION: Mr. Wadsworth made a motion, and Ms. Turcotte provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit application for 33 Railroad Avenue / Millbrook Square LLC.

VOTE: The motion carried unanimously, 6-0.

ZBA REFERRAL: 48 HICKS POINT ROAD / GILSON

Board members reviewed this special permit application to install an in-ground pool on a lot in a Wetlands Protection Overlay District (WPOD). Mr. Broadrick noted that although the pool is considered a structure it would not be located within the WPOD.

MOTION: Ms. Turcotte made a motion, and Mr. Glennon provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit application for 48 Hicks Point Road / Gilson, noting that there are no planning issues.

VOTE: The motion carried unanimously, 6-0.

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OTHER BUSINESS

Meeting Minutes:

MOTION: Ms. Turcotte made a motion, and Ms. Ladd Fiorini provided a second, to approve meeting minutes of April 25, 2011 as written.

VOTE: The motion carried 5-0-1, with Mr. Glennon abstaining.

Engineering Invoice:

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to approve payment of Amory Engineers invoice #13464 in the amount of \$302.50 for services related to 421 Elm Street / Tower Resource Management.

VOTE: The motion carried unanimously, 6-0.

FEMA Update: Mr. Broadrick noted a letter from FEMA stating that the Flood Insurance Rate Maps are still being updated and this update will continue over the next two years.

ADJOURNMENT

The Planning Board meeting adjourned at 10:02 PM. The next Planning Board meeting will take place on Monday, June 13, 2011 at 7:00 PM at Town Hall, Small Conference Room, lower level.

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