



Town of Duxbury Massachusetts Planning Board

Approved 07/11/2011

TOWN CLERK
11 JUL 27 AM 9:07
DUXBURY, MASS.

Minutes 06/13/11

The Planning Board met at the Duxbury Town Hall, Small Conference Room, on Monday, June 13, 2011 at 7:00 PM.

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

Absent: Cynthia Ladd Fiorini, Clerk; and Jennifer Turcotte.

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

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

DISCUSSION OF OPEN FORUM

Ms. MacNab noted that Town Counsel, Atty. Robert S. Troy, has now sent two memos (dated May 16, 2011 and dated May 27, 2011) stating that new agenda items may not be brought forth at an open meeting, either from a Board member or from the public. She noted that the first memorandum appeared to be in response to a request for an opinion from the Board of Selectmen, and the second memorandum may be specific to the Planning Board, since it was addressed directly to Ms. MacNab although the Planning Board had not requested an opinion from Town Counsel. In his memo, Atty. Troy stated that the chairman of a committee can be held personally liable if anyone is allowed to bring up a subject not specified on an agenda. Instead, a resident can request a topic for a future agenda.

Mr. Bear observed that the Open Meeting Law does not apply to the state legislature, which does most of its business in private. He noted that real-time decisions are sometimes necessary as long as they are not controversial. He commented that he sees no reason why the public should not be able to bring up a topic during an open meeting, as long as it is not deliberated. Ms. MacNab agreed, noting that it is a sad day when residents are not allowed to speak at an open forum during a public meeting. Mr. Cutler noted that the Open Meeting Law was designed as a shield but is becoming a sword.

MOTION: Mr. Cutler made a motion, and Mr. Glennon provided a second, for the Planning Board to send a letter to state legislators and the state Attorney General urging them to reconsider the tightening of the Open Meeting Law which would not allow a time for open forum.

DISCUSSION: Board members asked who would draft the letter, and Mr. Cutler agreed to do so. Board members discussed the issues and possible solutions related to this topic.

MOTION: The motion carried unanimously, 5-0.

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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.

INITIAL PUBLIC MEETING, ADMINISTRATIVE SITE PLAN REVIEW**MODIFICATION: 454 FRANKLIN STREET / INDUSTRIAL TOWER AND WIRELESS**

Present for the discussion was the applicant, Mr. Rick Voci of Industrial Tower and Wireless. Mr. Patrick Brennan of Amory Engineers was also present as the town consulting engineer. Mr. Broadrick explained that the original Administrative Site Plan Review (ASPR) approval in 2009 called for temporary steel plates over a bridge to be removed and replaced with new culverts under oak planks. The applicants are now requesting to keep the steel plates. A Certificate of Compliance reflecting this modification was issued by the Conservation Commission on May 3, 2011.

Mr. Voci presented his application for modification, referencing his letter dated April 27, 2011. He noted that his consulting engineer, Mr. Mark Flaherty, had certified that the steel plates were structurally sound. The Conservation Commission also had backing on its decision from its consulting engineer, Ms. Lenore White from Wetlands Strategies. He requested that conditions #14 and #18 from the original decision be amended.

Mr. Bear asked what the applicants' repair obligations would be, and Mr. Voci responded that it is in the owners' best interest to keep the bridge in good repair because it provides the only access to the cell tower.

Mr. Glennon, who was not on the Board at the time of the original decision, asked for the rationale behind requiring the oak planks. Mr. Broadrick replied that there are four culverts on the access road to the cell tower site, and a large crane needed to travel over the access in order to install the tower. The applicants had offered to place temporary steel plates for this heavy equipment and it worked. Now the applicants want to minimize disturbance to the sensitive area by keeping the steel plates. Mr. Brennan added that the original grading was brought higher in order to install the steel plates.

Mr. Voci noted that the previous owner ran a business from the site and the access road was constantly in use by trucks and other heavy machinery. Now that the cell tower company owns the land, the access has been greatly reduced to only one truck per month for routine inspections and maintenance. He added that the steel bridge appeared to work fine even during heavy rainfall this spring.

Mr. Glennon asked why the Board had wanted the steel plates to be replaced with an oak beam, and Mr. Broadrick responded that the applicants had proposed the oak beam bridge. The Conservation Commission's original concern was creating no net increase in water flow so as not to flood abutting properties. Now the Conservation Commission is of the opinion that it is better to leave it alone because the current configuration appears to be working properly. Mr. Bear concluded that it saves the applicant money and the steel plates may have been a better material to begin with.

Mr. Wadsworth recalled that during the original application process, abutting property owners complained about water backing up on their properties. Now with the raised grading and steel plates, the complaints have abated. Mr. Brennan noted that the level of the grade had been raised approximately two feet prior to construction. The steel plates appear to have helped protect the access road from washing out.

Mr. Roger Welch of 460 Franklin Street, an abutter, noted that his property has had a pond for over forty years; his concern is maintaining current water levels so that the pond does not dry out. Mr. Voci agreed to a condition that would require routine inspections to ensure that the water level remains the same as it is today. He also agreed to a routine maintenance plan, noting that employees inspect the site regularly already. Mr. Broadrick recommended biannual inspections.

MOTION: Mr. Glennon made a motion, and Mr. Cutler provided a second, to approve a modification of the Administrative Site Plan Review decision dated June 8, 2009 for 454 Franklin Street / Industrial Tower and Wireless, to replace conditions #14 and #18 with the term "intentionally omitted," and to

add a new Condition #23 to allow the temporary steel plates installed over the access road to remain in place instead of requiring installation of permanent wood planks, and a new Condition #24 to require the applicant and/or property owner to provide inspection and maintenance of the steel plates and four culverts in good working condition to maintain current water flow, with inspection reports to be submitted every six months by the applicant and/or property owner to the Planning Department on a timely basis.

VOTE: The motion carried unanimously, 5-0.

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

**CONTINUED 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. Ms. MacNab noted that the town consulting engineer, Mr. Mark Nelson of Horsley Witten, has no outstanding issues with the proposed plans.

Mr. Bear asked if the use as a private club had been approved by the Zoning Board of Appeals (ZBA) and Ms. Hudson reported that the ZBA approved the use at its administrative meeting on May 26, 2011 as a private club used for office and meeting facilities. Ms. MacNab noted that if the use changes, the applicants would need to notify the Planning Board to modify its Administrative Site Plan Review decision.

Ms. Hudson noted that a gravel surface has been depicted on site plans, and the applicants are sensitive to maintaining the historic character of the neighborhood. The applicants are now offering to install pervious pavers with either grass or crushed stone at great expense in order to appease any Board concern with the impervious nature of gravel over time and also for aesthetic reasons.

Mr. Wadsworth, who had previously expressed concern with gravel, stated that the use of pavers with grass removes his concern because it stabilizes the surface and raises no issues with drainage or snowplowing. Ms. MacNab commended the applicants' offer, noting that grass pavers would look aesthetically pleasing.

Mr. Broadrick noted that a new set of site plans would be required showing the new paving material, suggesting that it could be a condition of approval.

Mr. Bear asked if the upper parking material would change, and Ms. Hudson replied that it would not.

MOTION: Mr. Bear made a motion, and Mr. Wadsworth provided a second, to approve an Administrative Site Plan Review decision for 489 Washington Street / Duxbury Yacht Club, with the following amendments:

- Revised plans to be submitted to reflect a change in material in the lower parking area from gravel to pavers and grass
- Reference to be incorporated in decision to Zoning Board of Appeals decision
- Reference to test pit data for drainage in raingarden

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

ZBA REFERRAL: 405 BAY ROAD / ANELLO & BRADFORD

Board members reviewed materials submitted from the Zoning Board of Appeals (ZBA) regarding this special permit application to construct an 8-foot by 24.2-foot deck to an existing dwelling on a pre-existing nonconforming lot. Mr. Wadsworth noted that the deck is not covered so the lot coverage would not change.

Mr. Bear noted that the issue is setback. Since it is a corner lot there is a 25-foot requirement on both sides of the corner. Mr. Broadrick noted that the lot size is only 4,300 square feet. Mr. Bear noted that any new construction must meet current Zoning Bylaws. Mr. Broadrick stated that if the proposal does not meet Zoning Bylaws a variance should be required.

Mr. Glennon observed that from looking at the site plan it appears that the existing dwelling encroaches Landing Road. Mr. Broadrick advised that the dwelling is already in violation of Zoning Bylaws, and the nonconformity should not be extended.

MOTION: Mr. Glennon made a motion, and Mr. Wadsworth provided a second, to recommend DENIAL to the Zoning Board of Appeals for a special permit application at 405 Bay Road / Anello and Bradford, noting that the application requires a variance pursuant to Zoning Bylaws Section 401.2.4 (Nonconforming Uses: Alteration, Extension or Structural Changes to Pre-Existing Nonconforming Single and Two-Family Residential Structures). Paragraph a) states that a pre-existing nonconforming structure may be altered provided that "the proposed alteration...itself conforms to the requirements of the present Bylaw and does not intensify any existing nonconformities or result in any additional nonconformities..." The lot and structure are substantially nonconforming. The proposed new porch addition would violate front and side setbacks, and therefore would not conform to current Zoning Bylaws.

VOTE: The motion carried unanimously, 5-0.

ZBA REFERRAL: 27 SUNSET ROAD / LANGE & PLOTKIN

Board members reviewed materials submitted from the Zoning Board of Appeals (ZBA) regarding this special permit application to construct a 16 by 16 foot screened porch on a pre-existing nonconforming lot. Ms. MacNab noted that the issue with this application is lot coverage. Mr. Glennon reported that he had done the calculations and the figures presented appear to be accurate. Ms. MacNab noted that although the ZBA has the discretion to allow an additional three percent lot coverage on a lot under 20,000 square feet with over fifteen percent coverage, it is not allowed by right. The proposed porch would replace an existing raised patio.

MOTION: Mr. Glennon made a motion, and Mr. Cutler provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit application for 27 Sunset Road / Lange and Plotkin, noting that there are no planning issues.

VOTE: The motion carried unanimously, 5-0.

DISCUSSION RE: ZBA ORDER ON REMAND FOR 21 RIVER LANE /PATTERSON

Board members reviewed the court order to remand the property owner's appeal of a ZBA decision. Mr. Glennon noted that the judge ordered the remand by agreement between parties in light of an Annual Town Meeting vote in March 2011 approving a change in the definition of accessory structure to allow guest houses.

Mr. Broadrick noted that according to that change in Zoning Bylaws, an accessory structure can have living space but it cannot be a dwelling. At 21 River Lane there is a single-family dwelling with another subordinate

structure that has living space. The Planning Board's concern is the potential for the accessory structure to become a future dwelling.

Ms. MacNab noted that an accessory structure can have living space that is not a "dwelling unit." A dwelling unit has kitchen facilities, including a stove plus a refrigerator or sink. The ZBA decision that was appealed required removal of a sink, dishwasher and washer/dryer. Mr. Bear pointed out his concern that kitchen appliances such as stoves and refrigerators are not constructed so it is difficult to enforce. Mr. Wadsworth stated that he considers living space as finished area, not appliances.

Ms. MacNab noted that under previous Zoning Bylaws there was a clear violation, but now the Zoning Bylaws have changed. Mr. Bear stated that the ZBA should review the Zoning Bylaws in place at the time of the appeal.

Board members agreed that they should attend the ZBA hearing on this remand in order to defend its position.

MOTION: Mr. Cutler made a motion, and Mr. Wadsworth provided a second, regarding a ZBA referral on a court order to remand the property owner's appeal of a ZBA decision at 21 River Lane, to reaffirm its original concern that the accessory structure may become a secondary dwelling. The Planning Board recommends that the final decision reflect the intention to prevent the accessory structure from being or becoming a dwelling unit.

VOTE: The motion carried unanimously, 5-0.

DISCUSSION RE: BOARD OF SELECTMEN'S ZONING BYLAW CITIZEN REVIEW GROUP AND APPOINTMENT RECOMMENDATION

Ms. MacNab noted that the Board of Selectmen (BOS) has requested that the Planning Board recommend a representative to serve on this group which was formed at a Selectmen's meeting on June 6, 2011. She recommended that Mr. Wadsworth be recommended because he has good knowledge of Zoning Bylaws, he served on the Comprehensive Plan Zoning Bylaw Implementation Committee which led to a major revision of Zoning Bylaws in 2003, and he would provide a good representation of the Planning Board.

Mr. Cutler noted that the committee may require a big time commitment, and asked Mr. Wadsworth if he would consider serving. Mr. Wadsworth responded that he is concerned with the process as it appears that the members already appointed own nonconforming lots and stand to potentially benefit from revisions. Also most of those appointed reside on the east side of Route 3A so do not provide a true representation of the town. He expressed hope that the appointed people can step in and serve in the best interest of the town.

Ms. MacNab stated her concern with the process as well, noting that the members were not chosen in a public meeting. Mr. Wadsworth observed that the BOS chairman has the authority to put together a list of names outside a public meeting. Ms. MacNab stated that although she was not present, she had been under the impression that the BOS meeting would be an initial conversation. Mr. Cutler agreed that usually the mission and members of a subcommittee like this would be fleshed out during a public meeting. He stated that other people had filled out talent bank forms but were not on the list proposed at the BOS meeting. Mr. Wadsworth observed that there was no real discussion at the BOS meeting, just a list of names and mission statement proposed and voted. He commented that this committee needs the "best and brightest" of residents with good judgment in order to review the Zoning Bylaws.

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Mr. Bear noted that Mr. Ted Flynn, the newest BOS member, proposed the idea in order to reduce litigation costs, when further research proved that the Town of Duxbury is in the middle of the pack regarding amount of litigation.

MOTION: Ms. MacNab made a motion, and Mr. Glennon provided a second, to recommend that the Board of Selectmen appoint Mr. George Wadsworth as the Planning Board representative to the Zoning Bylaw Citizen Review Committee.

VOTE: The motion passed, 4-0-1, with Mr. Wadsworth abstaining.

OTHER BUSINESS

Engineering Invoice:

MOTION: Mr. Wadsworth made a motion, and Mr. Glennon provided a second, to approve payment of Amory Engineers invoice #13495 in the amount of \$179.75 for services related to 454 Franklin Street / Industrial Tower and Wireless.

VOTE: The motion carried unanimously, 5-0.

Comprehensive Plan Update: Board members reviewed a draft timeline for the process to be completed by April 2012. Mr. Broadrick stated that he will update the document for Board approval, then he will distribute the updated draft to town department heads through the Development Review Team process before scheduling a public hearing. Mr. Bear confirmed with Mr. Broadrick that build-out analysis calculations will be done based on original formulas used in 1999.

2010 Census Data: Board members reviewed updated census information for Plymouth County showing that the Town of Duxbury has grown 5.7 percent since 2000. Mr. Broadrick noted that this data will be used in the Comprehensive Plan update.

Performance Evaluation: Mr. Broadrick advised Board members that the Executive Assistant to the Town Manager, Ms. Barbara Mello, needs the evaluation to be completed and returned to her by tomorrow morning. Mr. Broadrick then departed the meeting. Board members reviewed and scored performance evaluation categories for the Planning Director position, concluding that they were pleased with the performance of the Planning Director and will relay that positive evaluation to the Town Manager with the report submittal.

ADJOURNMENT

The Planning Board meeting adjourned at 9:15 PM. The next Planning Board meeting will take place on Monday, June 27, 2011 at 7:00 PM at Town Hall, Small Conference Room, lower level.

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