



Town of Duxbury Massachusetts Planning Board

Approved 03/26/2012

TOWN CLERK
12 APR -4 PM 1:08
DUXBURY, MASS.

Minutes 02/27/12

The Planning Board met at the Duxbury Town Hall, Small Conference Room, on Monday, February 27, 2012 at 7:00 PM.

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

Absent: John Bear and Jennifer Turcotte.

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

Ms. MacNab called the Planning Board meeting to order at 7:04 PM.

OPEN FORUM

Local Housing Partnership: Mr. Wadsworth reported that the LHP may be folded into the Affordable Housing Trust within the next two years. Mr. Broadrick added that the town of Hingham has consolidated its affordable housing groups into one committee, and the town of Duxbury hopes to do the same. Ms. MacNab noted that, although she does not agree, for the first time she is starting to hear more often the sentiment from residents that the town of Duxbury is only for those who can afford it. She sympathized with committees who are given the task of promoting affordable housing in Duxbury. Mr. Wadsworth noted that while ten percent of Community Preservation Act funds are allocated toward affordable housing, the LHP is frustrated with dealing with the state in order to get a letter of project eligibility.

Affordable Housing Trust: Ms. Ladd Fiorini stated that she is not interested in continuing on the Affordable Housing Trust.

Amy MacNab: Mr. Broadrick noted that this is Ms. MacNab's final meeting as a Planning Board member, and thanked her for her 14 years of outstanding service to the Board and the town. Ms. MacNab stated that it has been a privilege to serve, noting that the Planning Board always had its heart in the right place, although sometimes the town did not agree with their viewpoints. Mr. Christopher Sherman of 92 Hound's Ditch Lane stated his appreciation as a resident for Ms. MacNab's years of service on the Planning Board.

PREPARATION FOR ANNUAL TOWN MEETING 2012

Stretch Code: Mr. Wadsworth noted that at the last Board meeting, Board members asked to see the actual Stretch Code that is up for consideration to be adopted. Mr. Broadrick reported that at a recent motions meeting, Mr. Shawn Dahlen, chairman of the Board of Selectmen, expressed concern that the wording of this article may be incorrect. Mr. Broadrick noted that the article is written exactly the same way it was adopted at Town Meeting in Kingston. Mr. Broadrick stated that Atty. Robert S. Troy, Town Counsel, said that it can be accept as a warrant article but does not have to be adopted as a general bylaw. Mr. Broadrick stated that he is not sure how it will play out. Adopting the Stretch Energy Code is one step toward achieving Green Communities status which would make the town eligible for grant funding for renewable energy projects.

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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.

Ms. Ellen Nolan of 42 Hound's Ditch Lane stated that she has reservations about adopting the Stretch Code because the Green Communities status may allow by-right siting of wind turbines. Mr. Broadrick explained that in 2010 the town adopted a Zoning Bylaw to allow Research & Development offices with fewer than three parking spaces in order to meet Green Community standards for by-right renewable energy projects. The Department of Energy Resources (DOER) said at the time that the bylaw did not meet its standards. The current solar array project being sited on a capped landfill on town property may or may not be considered a by-right use because it is not included as one in Zoning Bylaws.

Mr. Christopher Sherman of 92 Hound's Ditch Lane stated that he has reviewed the DOER web site and believes that the state can override local Zoning Bylaws. He stated that it is important to understand the broader trend. He stated that local control is imperative and a Green Communities status may bring an end to local control. He cautioned the Board to delve deeper into the subject instead of looking at its face value, and urged Board members to understand potential long-term implications.

Mr. Cutler arrived at the meeting at this point.

Mr. Broadrick stated that it is widely accepted that the Stretch Code will eventually become part of the standard building code for the state. Ms. MacNab asked why residents are being asked to adopt the Stretch Code now, and Mr. Broadrick responded that it would help the town as a step toward becoming a Green Community. He commented that the state does not appear to be following through on its promises of millions of dollars of funding for Green Communities projects.

Mr. Cutler stated that the Board of Selectmen has recommended approval, noting that it provides more energy efficient standards that many contractors are already using. Ms. MacNab asked if contractors would be mandated to use energy-efficient standards if the Stretch Code was adopted by the town, and Mr. Broadrick replied that they would. Mr. Cutler re-iterated that it may be adopted by the state within the next five years.

Mr. Sherman noted that in the short-term residents will pay more for home building renovations. Ms. Ladd Fiorini noted that all costs should be considered, and in this case it may be the cost to the individual versus the cost to the environment, which would affect everyone in the long run.

Ms. MacNab noted that she would be surprised to see the town adopting a bylaw that would require more regulation, which may be seen as government interference by some. Mr. Cutler responded that many towns in Massachusetts have already adopted the Stretch Code with no negative results.

Ms. MacNab stated that she was not sold on the idea of adopting the Stretch Code at this point in time. Mr. Glennon stated that he appreciated the extra time allotted to the Board in order to review the proposed Stretch Code. He commented that it is highly technical but it may be a good idea in the long run. He expressed concern with the potential increase in cost to residents. Mr. Cutler recommended that the Board defer judgment regarding this article, since no recommendation is required for Annual Town Meeting, and Board members agreed.

ZBA REFERRAL: 21 CHESTNUT STREET / GRIFFIN

Board members reviewed this application to amend a special permit through the Zoning Board of Appeals to raze an existing garage and replace it with a two-story structure that would have a garage on the first level and office space with temporary lodging on the second floor. Mr. Broadrick noted that this is the applicants' third attempt to do the same thing. He noted that the only reason a business use originally was allowed on this property in 2006 was due to a mapping error.

Ms. Ladd Fiorini noted that according to Zoning Bylaws, principal structures need to be larger than accessory structures. At 32' x 40', the accessory structure appears to be larger than the existing office building. She also noted that no dimensions for the principal structure are shown on the site plan. Mr. Broadrick noted that Assessor's property records indicate that the footprint of the existing structure is listed as 27' x 35' excluding the deck and storage.

Mr. Glennon noted that because it is located adjacent to the Residential Compatibility District, the Zoning Board should be sensitive to the needs of residential abutters. Ms. MacNab recalled that during the Administrative Site Plan Review process in 2006 the business was going to be for a low-intensity use as a publishing company; with this application the proposed intensity of use is increasing. Mr. Wadsworth expressed concern that the accessory structure could be creating a potential use as a dwelling.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Wadsworth provided a second, to recommend DENIAL of this special permit amendment because the proposed accessory structure is an intensification of use and is larger in scale than the principal structure.

Zoning Bylaw Section 302 defines "Accessory Use" as "an activity customarily incidental to and located on the same lot as a principal use...and occupying less land area than the principal use to which it is related." On site plans submitted with the application, the principal structure is depicted as an office, while the proposed accessory structure is depicted as including a garage with an office and temporary employee lodging on the second floor. Planning Board members consider more office space and temporary lodging as an intensification of use rather than incidental. Also, although no dimensions for the existing principal structure were provided with the plans and materials submitted, Assessor's property card records show the footprint of the existing office space to be 756 square feet, which is substantially smaller than the proposed 1,280 square-foot accessory structure.

Staff is directed to attach a copy of a memorandum from the Planning Board to the Zoning Board of Appeals dated April 28, 2010 with similar comments. Although the definition of "Accessory Use" has been amended recently in Zoning Bylaws to allow living space that is not a dwelling, Planning Board members see no attempt to resolve other issues raised at that time through the current proposal.

VOTE: The motion carried unanimously (5-0).

ZBA REFERRAL: 60 PLYMOUTH AVENUE / BURMAN

Board members reviewed this application to raze and re-build a pre-existing nonconforming structure on a 13,068 square-foot lot. Mr. Glennon noted that the proposed structure perpetuates side setback nonconformities. He stated that if a structure is being torn down, the new structure must comply with current Zoning Bylaws. Also, he disagreed with the applicant's opinion that the proposed side setbacks would be a "substantial" improvement. He stated that the applicant should have been asked to file a variance and should be required to demonstrate some level of hardship before the Zoning Board of Appeals (ZBA). He noted that Zoning Bylaws state that the ZBA may allow a three percent increase in building coverage but is not required to allow it. He summarized that the applicants appear to have a lot more work ahead of them before the ZBA considers the application, recommending that the applicants attempt to site a conforming structure. Ms. MacNab agreed with Mr. Glennon's analysis.

Mr. Wadsworth expressed concern over fire safety considering the close proximity of dwellings.

Mr. Glennon noted that case law *Gale v. ZBA Gloucester* illustrates that a Zoning Board of Appeals can authorize an extension of a pre-existing nonconformity for a renovation without a variance as long as it is not substantially detrimental; however, this precedent does not apply to a raze and re-build.

MOTION: Mr. Glennon made a motion, and Mr. Wadsworth provided a second, to recommend DENIAL of this special permit application to raze and rebuild a pre-existing nonconforming dwelling at 60 Plymouth Avenue / Burman, noting the following:

- Since the applicant appears to be voluntarily razing an existing dwelling, no protections are granted under MGL Chapter 40A; therefore, the new dwelling must be constructed in compliance with current Zoning Bylaws.
- 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.
- The applicant is seeking to construct a new dwelling with side setback violations and therefore a variance would be required.
- Board members respectfully disagree with the applicant's interpretation that a change in side setback from 3'4" to 7'8" (right side) and from 4'6" to 5" (left side) is "substantial."
- In addition, Board members have safety concerns with the proposed side setbacks; a fire in either the applicant's dwelling or their abutting neighbors' houses would spread easily based on proposed setbacks.

VOTE: The motion carried unanimously, 5-0.

OTHER BUSINESS

Meeting Minutes:

MOTION: Mr. Glennon made a motion, and Mr. Cutler provided a second, to approve meeting minutes of January 23, 2012 and February 13, 2012 as amended.

VOTE: The motion carried unanimously, 5-0.

School Building Project: Board members reviewed a letter dated January 19, 2012 from Mr. Scott Lambiase, Director of Inspectional Services, to Ms. Elizabeth Lewis, chairman of the School Building Committee, stating that although Administrative Site Plan Review (ASPR) is not required because the project is an educational use, Mr. Lambiase recommends that the committee present its project to the Planning Board in order to have the benefit of the Board's insight. Mr. Cutler recalled that at a previous Board meeting, the Town Manager, Mr. Richard MacDonald, had said that all municipal uses should go through the ASPR process. Ms. MacNab commented that it is unfortunate that the project will not undergo ASPR because the Board could have helped improve access and egress, among other issues.

Mr. Glennon stated that Mr. Lambiase's letter is thoughtful in promoting dialogue between the School Building Committee and Planning Board. He requested that Mr. Broadrick contact Ms. Lewis to invite her committee to the next available Board meeting to discuss this significant town project. He remarked that the Board has collective expertise on reviewing important town projects.

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MOTION: Mr. Glennon made a motion, and Mr. Cutler provided a second, to direct staff to send a letter to Ms. Elizabeth Lewis of the School Building Committee inviting them to the next available Planning Board meeting, copying Mr. MacDonald and Mr. Lambiase.

VOTE: The motion carried unanimously, 5-0.

1053 Tremont Street: Mr. Broadrick pointed out an advertisement from a recent *Duxbury Clipper* promoting this existing dwelling along with "in-law potential." He noted that with Special Town Meeting 2011 approval for a change in zoning to remove the Wetlands Protection Overlay District on this particular property, along with a general change in definition of Accessory Structure at Annual Town Meeting 2011, this is what the town will be seeing more and more of.

ADJOURNMENT

The Planning Board meeting adjourned at 8:38 PM. Annual Town Meeting is scheduled for March 10, 2012, with Town Elections to follow on March 24, 2012. The next Planning Board meeting will take place on Monday, March 26, 2012 at 7:00 PM at Duxbury Town Hall, lower level.

MATERIALS REVIEWED

PREPARATION FOR ANNUAL TOWN MEETING 2012

- Final list of numbered ATM articles
- PB Votes ATM 2012
- 780 CMR, Appendix AA: Stretch Energy Code
- Stretch Code Adoption map by Community

ZBA SPECIAL PERMIT AMENDMENT REFERRAL: 21 CHESTNUT STREET / GRIFFIN

- Special permit application and materials received on 01/26/12
- GIS map, Assessor's property card, and Pictometry orthophoto
- ASPR decision dated 08/21/06
- Special permit decision dated 11/20/06
- PB referral recommendation dated 12/21/09
- PB referral recommendation dated 04/28/10

ZBA SPECIAL PERMIT REFERRAL: 60 PLYMOUTH AVENUE / BURMAN

- Special permit application and materials submitted on 02/13/12
- GIS map, Assessor's property card, and Pictometry orthophoto

OTHER BUSINESS

- Minutes of 01/23/12
- Minutes of 02/13/12
- Letter from S. Lambiase to E. Lewis dated 01/19/12 re: No ASPR required for new school project
- CPTC Conference Schedule
- Real estate ad for 1053 Tremont Street from Duxbury Clipper 02/15/12

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