



Town of Duxbury Massachusetts Planning Board

Approved 01/14/2013

TOWN CLERK

13 JAN 15 AM 10:56

DUXBURY, MASS.

Minutes 11/26/12

The Planning Board met at the Duxbury Town Hall, Mural Room, on Monday, November 26, 2012 at 7:00 PM.

Present: George Wadsworth, Chairman; Brian Glennon, Vice Chairman; Cynthia Ladd Fiorini, Clerk; Scott Casagrande, Josh Cutler.

Absent: John Bear and Jennifer Turcotte.

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

Mr. Wadsworth called the meeting to order at 7:00 PM.

OPEN FORUM

No items were brought forward for Open Forum.

APPROVAL OF COVENANT, HOMEOWNERS' ASSOCIATION AND ENDORSEMENT OF RESIDENTIAL CONSERVATION CLUSTER SUBDIVISION PLANS: FISHER RIDGE, OFF SUMMER STREET / KOPLOVSKY

Board members reviewed a covenant and proposed homeowners' association document entitled, "Declaration of Covenants and Restrictions Establishing Fisher Ridge Neighborhood Association" prepared and submitted by the applicant. Mr. Broadrick noted that the restrictions listed in the homeowners' association represent what the applicant wants. Board members made edits to the homeowners' association document in order to clarify wording.

MOTION: Mr. Glennon made a motion, and Mr. Casagrande provided a second, to approve the following documents:

- "Declaration of Covenants and Restrictions Establishing Fisher Ridge Neighborhood Association" as amended
- Covenant for roadway construction.

VOTE: The motion carried unanimously, 4-0. (Mr. Cutler had not yet arrived at the meeting.)

Board members endorsed the covenant and a set of subdivision mylars.

DISCUSSION OF DEFINITIVE SUBDIVISION: INGALLS GROVE, OFF BAY ROAD / MCCRISTAL

Present for the discussion of this two-lot subdivision originally approved in 2005 were the applicant, Ms. Nicole McCrystal, and her representative, Mr. Paul Brogna of Seacoast Engineering. Mr. Broadrick explained that he had visited the site along with Mr. Joseph Grady, Conservation Administrator, and Mr. Scott Lambiase,

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Director of Municipal Services. Mr. Brogna also attended that site walk. Mr. Grady had scheduled the site walk upon observing apparent cutting and grading in a "no cut" area after an abutter had complained that water is draining onto their property.

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Mr. Broadrick stated that Town Hall staff had observed an un-vegetated area in the "no cut" zone, noting that it is unknown how much vegetation had been removed. He stated that the applicants want to correct the situation and need the Board's guidance on the following:

- Whether a swale should be installed
- Whether the "no cut" area should be replanted
- Whether a proposed fence can be installed on the property line.

Mr. Glennon responded that the applicants should file a modification to the definitive subdivision.

Mr. Cutler arrived at the meeting.

Mr. Brogna explained that there is a 3:1 slope on the side of the property in question and the drainage grades end at the "no-cut" line. The abutters, the Brodies, had been maintaining a lawn over the McCrystal property line over a 6-7 foot plateau area. During construction the contractor backfilled approximately 12-13 feet of soil into the "no cut" zone. Mr. Glennon, who was not on the Board at the time of subdivision approval, asked the purpose of the "no cut" area, and Mr. Brogna replied that it was a buffer zone to prevent clear cutting and to maintain privacy. After the contractor encroached on the "no cut" zone, the homeowner planted five or six arborvitae trees in order to restore the buffer zone.

Mr. Broadrick advised that a 15-foot treed buffer was approved in 2005 and the foundation of the garage is about eight feet from that 15-foot buffer for a total of 23 feet off the property line. He added that the abutter, Mr. Brodie, would like to participate in the discussion but he was not available for tonight's meeting.

Mr. Glennon asked about the elevation prior to construction, and Mr. Brogna responded that seven to nine inches of elevation was added when the lawn was installed and then the driveway installation added another four inches.

Mr. Broadrick reported that water flows toward the abutting property and then pools onto the property line. Mr. Broadrick asked if a swale would suffice, noting that six trees have been planted as a remedial measure and they will eventually fill in the buffer.

Mr. Brogna reported that he had met with Mr. Brodie on the property just after hydroseeding had been completed on the McCrystal property. Mr. Brogna stated that two major storms have occurred in the past month with a lot of rain but very little erosion only because the grass had not been established. Mr. Brogna proposed a trench drain to the side of the garage as a remedy to the drainage runoff.

Mr. Wadsworth noted that the rainfall in September and October was significantly below average. He stated that the Board wants a good sense of where the water is coming from. He recommended installing a small swale next to the curved parking area. Mr. Brogna responded that he does not want to infringe on the "no cut" area. Mr. Glennon noted that the area has already been disturbed. Mr. Wadsworth recommended against a trench drain because they tend to get plugged over time with leaves and silt and eventually will lose their functionality. Mr. Brogna stated that the filter fabric would prevent clogging and it would be up to the homeowner to maintain it. Mr. Wadsworth stated that it is easy to forget about the maintenance and then the drain loses its functionality.

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Mr. Wadsworth continued to recommend the small swale noting that it would not have to be maintained regularly. However, he noted that if the water is coming from the house then drainage from the house would need to be addressed. Mr. Broadrick agreed that a swale would be effective in providing drainage from the driveway. He noted that although an interim swale may help, until the grass starts filling in and the "no cut" vegetation grows, there may be some runoff.

Mr. Glennon noted that the Board will want the neighbor, Mr. Brodie, to weigh in regarding the proposed fence. If the abutter has no objections, Mr. Glennon said that he would have no problem modifying the Definitive Subdivision decision to allow a fence. He stated that any solutions regarding drainage or the fence need to be acceptable to all parties involved.

Mr. Broadrick asked the Board if they would require a minor modification or a major modification to the Definitive Subdivision decision, and Board members agreed by consensus that a minor modification would suffice.

Mr. Wadsworth requested Mr. Brogna to provide some drainage calculations to help determine the size of the drainage swale. Mr. Brogna objected, stating that the homeowners only need to show that there is less drainage than before the site was built. Mr. Broadrick disagreed with Mr. Brogna's assessment, noting that at the site walk Mr. Lambiase said to "keep water on the property." Mr. Brogna stated that Mr. Brodie's property is draining into the "no cut" zone also. Ms. Ladd Fiorini noted that the new construction on Ingall's Grove has increased the slope of the property, and Mr. Wadsworth noted that the construction of the driveway has also contributed to drainage issues.

Mr. Broadrick advised Mr. Brogna that revised plans and drainage calculations should be submitted to the Planning Office one week in advance of the next meeting. Mr. Brogna stated that although it is a major job to produce drainage calculations, he will provide approximate numbers based on preliminary calculations. Mr. Glennon stressed that the Board is looking for a cost-effective solution with an estimated size of swale required to resolve the drainage issue.

Mr. Broadrick asked for the Board's consensus on the proposed fence installation. Mr. Wadsworth asked what would be the purpose of the fence, and Mr. Broadrick replied that it would be for privacy. Mr. Wadsworth noted that the shrubs were supposed to provide privacy and also noted that the Board has no jurisdiction over fences. Mr. Broadrick asked again that if no trees are disturbed, if the Board would agree to the proposed fence installation, and Board members agreed by consensus. Mr. Glennon asked who would enforce the "no cut" easement, and Mr. Broadrick replied that Mr. Lambiase would enforce it as the Zoning Enforcement Officer. Mr. Broadrick asked if the Board would allow him to review the proposed drainage plan rather than sending it out to a consulting engineer, and Board members agreed.

Mr. Brogna agreed to submit revised plans and drainage calculations by December 3 for an agenda item at the next Planning Board meeting on December 10, 2012.

ANR PLAN OF LAND: 175 TREMONT STREET / PIERCE FAMILY NOMINEE TRUST

Present for the discussion was the applicant's representative, Mr. Mark Casey of South Shore Survey Consultants, Inc. in Kingston. Mr. Glennon recused himself from the discussion because he had represented a party regarding this property some years ago.

Mr. Broadrick noted that the applicant is proposing to carve out a 2.42 acre lot from a 21.2 acre parcel. "Lot A" would contain the existing dwelling, and the larger parcel, "Parcel B," would be unbuildable due to lack of frontage.

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Mr. Casey presented the plan, noting that access is off a private way off of Parks Street that was created by a subdivision approved by the Board in 1975. Mr. Casey explained that the plan creates a lot for the existing house and barn. All of the property will remain in the family.

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MOTION: Ms. Ladd Fiorini made a motion, and Mr. Casagrande provided a second, to approve an ANR Plan of Land entitled, "Plan of Land in Duxbury, 175 Tremont Street," dated November 15, 2012 and signed and stamped by Shane M. Mallon, RPLS on November 15, 2012, scale 1" = 100', as not requiring approval under Subdivision Control Law.

VOTE: The motion carried unanimously, 4-0.

Board members signed the mylar and two paper copies of the ANR plan, and the mylar was released to Mr. Casey for recording at the Registry of Deeds.

ZBA REFERRAL: 505 BLACKBERRY PATH, OFF KINGSTOWN WAY / GALLOWAY

Board members reviewed application materials for this special permit amendment application to construct a screened porch on an existing deck at a Village at Duxbury garden home.

Mr. Broadrick noted that during an agenda meeting with the Board's chairman and vice-chairman, the question arose of who the applicant should be. Mr. Glennon asked if the homeowners' co-op had given permission for this proposal. Mr. Wadsworth added that the Zoning Board of Appeals should be alerted of this issue because others may want to do the same thing. He noted that the proposal will increase the lot coverage, and coverage is an issue in that area due to high groundwater issues. For these two reasons he recommended denial of the application.

MOTION: Mr. Cutler made a motion, and Mr. Glennon provided a second, to DEFER JUDGMENT to the Zoning Board of Appeals regarding the special permit amendment application Case #2012-0006 for 505 Blackberry Path / Galloway.

DISCUSSION: Mr. Wadsworth requested that Mr. Cutler recommend denial rather than deferring judgment. Mr. Cutler kept the recommendation the same but agreed to add the comments discussed earlier.

AMENDMENT TO MOTION: Mr. Cutler amended his motion, and Mr. Glennon agreed to the amendment, to note that the applicant for this special permit amendment application, John Galloway, is different from the applicant and owner listed on the special permit to be amended, ZBA Case #2000-08. The Planning Board recommends that the Zoning Board of Appeals determine whether the special permit applicant, Welch Group Duxbury Management Corp., and the special permit owner, The Village at Duxbury Limited Partnership, have granted permission for the permit to be amended.

VOTE: The amended motion carried 4-1, with Mr. Wadsworth voting against.

ZBA REFERRAL FOR AMENDMENT TO COMPREHENSIVE PERMIT: BREWSTER COMMONS, OFF TREMONT STREET AND WOODRIDGE ROAD / NORTHLAND RESIDENTIAL CORPORATION

Board members reviewed application materials for this amendment to a comprehensive permit by a new owner to remove the age restriction of 55+. Mr. Cutler stated that this has happened before: a developer gets a 40B permit approved with an age restriction of 55+ and then after approval comes back to remove the age restriction. He noted that no rationale was presented with the application other than that they could not sell the units with the age restriction. Mr. Wadsworth noted that removal of the age restriction would require a change in septic system design.

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Mr. Glennon noted that the original decision was designed as if no one under age 55 would live there and there is nothing presented to justify removal of the age limit. In addition, he noted that the applicants propose to change the term "no disturb" zone to "no clearing" zone. He also noted that this location currently has traffic issues which the current proposal would amplify. He recommended an emphatic "no."

MOTION: Mr. Cutler made a motion, and Mr. Glennon provided a second, to recommend DENIAL of an amendment to a comprehensive permit to remove a 55+ age restriction for Brewster Commons / Northland Residential Corporation, noting the following:

- No presentation is offered and no justification is given to rationalize why the applicant is requesting a waiver of the age restriction.
- The Planning Board also opposes a proposed amendment to Paragraph 39L of the redlined decision that would change a "no disturbance" area to a "no clearing" area that would run from 35 feet of the rear of each building to the property line.
- The term "Director of Inspectional Services" should be amended to "Director of Municipal Services" throughout the decision.

VOTE: The motion carried unanimously, 5-0.

PREPARATION FOR ANNUAL TOWN MEETING 2013

Board members reviewed packet materials regarding the following potential zoning articles:

- Residential Conservation Cluster
- Parking
- Lot Coverage
- Wetlands Protection Overlay District.

Mr. Glennon recommended waiting for the Zoning Bylaw Review Committee (ZBRC) to conclude its review of Zoning Bylaws and wrap up any potential amendments as listed above into the final changes made as a result of the ZBRC's study.

Residential Conservation Cluster (RCC): Mr. Glennon noted that he had originally suggested amending the Zoning Bylaws to allow the Board's discretion to recommend either an RCC or a grid layout. Currently the Board must recommend RCC for most sites. Mr. Glennon stated that at this time he would rather propose an amendment as a harmonious whole with other proposed amendments that may result from the ZBRC study. Mr. Wadsworth noted that Ms. Judi Barrett, who is on the ZBRC, feels strongly that it is illegal to force a cluster. He stated that RCCs should be encouraged but not required.

Lot Coverage/Parking: Mr. Cutler recommended that an article should not be proposed until all boards are in agreement with lot coverage requirements for Neighborhood Business Districts. Mr. Wadsworth noted that parking spaces should be larger, also. Mr. Wadsworth stated that he has no problem increasing minimum coverage as long as stormwater mitigation requirements are incorporated into the Zoning Bylaws. He stated that it was clear from the Stormwater Education presentation in October that federal stormwater regulations are expected.

Wetlands Protection Overlay District (WPOD): Mr. Wadsworth noted that the Zoning Bylaw Review Committee proposes removing this zoning district because state and local regulations have been put into place since the district was created. Mr. Casagrande noted that state and local wetlands regulations are more specific and it is cumbersome for property owners to have to go through Town Meeting to change a WPOD line. Mr.

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Broadrick noted that if the WPOD is removed it would add buildable land that was not considered in the 1990 Comprehensive Plan. Mr. Casagrande suggested that property owners should be able to get the WPOD line changed through the Conservation Commission or Zoning Board of Appeals, and Mr. Broadrick noted that the Conservation Commission does not have jurisdiction over upland and all zoning changes require Town Meeting approval according to Massachusetts General Law. He also noted that Zoning Bylaws protect the upland. Mr. Wadsworth agreed that the WPOD keeps density down. Board members agreed that any WPOD changes should be addressed at a later date.

Tree Protection Plan: Mr. Broadrick noted that Ms. Lorrie Hall of 175 Abrams Hill had submitted a letter dated November 19, 2012 to Mr. Wadsworth recommending that the Board consider a tree bylaw that would prohibit cutting trees within a certain setback of a property line. The letter stated that tree bylaws are in effect in Newton, Lexington and Wellesley and provided information from those towns. She also submitted photographs of recent tree clearing on Cove Street and Abrams Hill. Mr. Broadrick noted that the Town of Duxbury currently has a Tree Clearing Bylaw that prohibits tree clearing of 30,000 square feet or more. Mr. Glennon noted that Ms. Hall, who serves on the Open Space Committee with him, has also brought this suggestion to that committee, recommending a 15-foot buffer in the Residential Compatibility District. Mr. Wadsworth suggested that the Open Space Committee should make a recommendation to the Planning Board. Mr. Broadrick reported that Ms. Hall asked to meet with the Board at its December 10, 2012 meeting. Mr. Cutler recommended that it is up to the Open Space Committee to recommend a proposal, and Mr. Casagrande noted that the Board would be willing to consider a proposal next year when there is more time to develop it.

CONSIDERATION OF CHANGING PLANNING BOARD MEETING DAY FROM MONDAY TO WEDNESDAY

Mr. Glennon recommended the Board consider changing its meeting day to Wednesday in order to use the Mural Room so that PAC-TV, the local cable channel, can broadcast it. He noted that the Planning Board is a mystery to many residents. Board members agreed to review this proposal at its next meeting when more Board members are available.

OTHER BUSINESS

Engineering Invoices:

MOTION: Mr. Cutler made a motion, and Ms. Ladd Fiorini provided a second, to approve the following invoices:

- Fay, Spofford & Thorndike invoice #LG-403-B dated October 22, 2012 in the amount of \$1,286.00 for services related to Cushing's Retreat
- Horsley Witten invoice #32022 dated October 29, 2012 in the amount of \$677.50 for services related to 16 Hounds Ditch Lane.

VOTE: The motion carried unanimously, 5-0.

Meeting Minutes:

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to approve meeting minutes of October 22, 2012 as amended:

VOTE: The motion carried unanimously, 5-0.

Correspondence regarding 16 Hounds Ditch Lane: Board members reviewed a letter from Atty. Paul Driscoll with an "offer of settlement" for this special permit application decision. Mr. Broadrick noted that the letter was submitted prior to the appeal that was filed by Atty. Driscoll on behalf of the applicants. Mr. Cutler stated that his understanding is that the Board of Selectmen will not defend the Planning Board in the appeal case.

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Mr. Broadrick reported that he had spoken with Interim Town Counsel, Atty. Arthur Krieger, who offered to meet with the Board for an executive session. Mr. Glennon noted that filing an appeal is the only way the applicant can challenge the decision. The decision could be amended if there is new information or if there has been any change since the appeal. Mr. Glennon noted that there may be no reason to meet with the interim town counsel as this is a very straightforward zoning appeal.

Mr. Broadrick asked for the Board's direction in response to a filing made by the applicant's representative, Mr. Mark Casey of South Shore Survey Consultants in Kingston. Mr. Casey had sent an email stating that the applicants want to amend their special permit decision with no detailed information as to why or how. Mr. Glennon recommended asking Mr. Casey to attend a future Board meeting and find out what has changed. Mr. Wadsworth agreed with Mr. Glennon, stating that an amendment may provide a way to settle, especially if the Board of Selectmen does not want to protect the Zoning Bylaws. Mr. Glennon noted that he has never heard of a town not providing defense to an appeal of a board's decision. He stated that even if the Board amends its decision, the applicant can still appeal that.

Old Colony Planning Council (OCPC) Planning Board Appointment: With Mr. Cutler's election as State Representative, he will need to reduce time commitments and therefore must step down as Planning Board representative to the OCPC. Board members agreed to postpone discussion of appointing a replacement until the next Board meeting when more members are available.

Comprehensive Plan Update: Mr. Broadrick reported that Mr. Barry Keppard, Regional Planner for the Metropolitan Area Planning Council (MAPC), has offered to work with him on incorporating the latest census figures for the updated Comprehensive Plan. A further update will be provided at the next Board meeting.

ADJOURNMENT

The Planning Board meeting adjourned at 10:12 PM. The next Planning Board meeting will take place on Monday, December 10, 2012 at 7:00 PM at the Duxbury Town Hall.

MATERIALS REVIEWED

FISHER RIDGE / KOPLOVSKY

- "Declaration of Covenants and Restrictions Establishing Fisher Ridge Neighborhood Association" submitted 11/13/12
- Covenant submitted 11/19/12

ANR PLAN OF LAND: 175 TREMONT STREET / PIERCE FAMILY NOMINEE TRUST

- ANR application and plan submitted 11/15/12
- Vision GIS map, property card and aerial photo
- 81R subdivision plan approved by PB 09/24/1975

DISCUSSION OF DEFINITIVE SUBDIVISION: INGALLS GROVE, OFF BAY ROAD / MCCRYSTAL

- Cover sheet and plan dated 11/19/12
- Vision Government property information, GIS map, and Pictometry orthophoto
- Approved subdivision plan endorsed 12/12/05
- Original definitive subdivision approval dated 11/08/05
- Emails between P. Brogna & T. Broadrick dated 11/09/12
- Memo from T. Broadrick to J. Grady dated 01/11/11 and PB meeting minutes of 01/10/11

ZBA REFERRAL: 505 BLACKBERRY PATH, OFF KINGS TOWN WAY / GALLOWAY

- ZBA referral materials
- Vision Government property information, GIS map, and Pictometry orthophoto
- Original ZBA special permit dated 08/20/01

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ZBA REFERRAL FOR AMENDMENT TO COMPREHENSIVE PERMIT: BREWSTER COMMONS

- ZBA referral materials
- Vision Government property information, GIS map, and Pictometry orthophoto

PREPARATION FOR ANNUAL TOWN MEETING 2013

ZBRC

- ZBRC draft report (minus appendices) dated 09/17/12
- Emails between S. Casagrande and T. Broadrick dated 11/05/12

RESIDENTIAL CONSERVATION CLUSTER (RCC)

- PB minutes of 04/09/12 and 07/09/12

PARKING & COVERAGE

- Proposed Parking Bylaw as printed in ATM 2011 warrant
- PB report on Parking article for ATM2011 with related meeting minutes
- Summary of research on parking & lot coverage submitted by J. Bear on 11/08/10
- "Parking Lot Design" un-cited article submitted by S. Lambiase
- PB minutes of 06/25/12
- PB report on Lot Coverage article for ATM2011 with related meeting minutes

WETLANDS PROTECTION OVERLAY DISTRICT

- PB minutes of 01/09/12

TREE PROTECTION BYLAW

- Info from Lorrie Hall

CONSIDERATION OF CHANGING PLANNING BOARD MEETING DAY FROM MONDAY TO WEDNESDAY

- Town Calendar for Wednesdays in 2012

OTHER BUSINESS

- FST invoice #LG-403B-3 dated 10/22/12 (\$1,286.00) re: Cushing's Retreat, off Olde Pasture Lane
- HW invoice #32033 dated 10/29/12 (\$677.50) re: 16 Hounds Ditch Lane
- PB Minutes 10/22/12
- Letter from P. Driscoll dated 11/05/12 re: Offer of settlement, 16 Hounds Ditch Lane
- Response to Atty. Driscoll dated 11/6/12
- Construction Cost Estimates for October 2012