



Town of Duxbury Massachusetts Planning Board

Approved 04/22/13

TOWN CLERK

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DUXBURY, MASS.

Minutes 03/25/13

The Planning Board met at the Duxbury Town Hall, Small Conference Room, on Monday, March 25, 2013 at 7:00 PM.

Present: George Wadsworth, Chairman; Brian Glennon, Vice Chairman; Cynthia Ladd Fiorini, Clerk; John Bear, Josh Cutler, Scott Casagrande, and Jennifer Turcotte.

Absent: No one was absent.

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

Mr. Wadsworth called the meeting to order at 7:08 PM.

OPEN FORUM

Swearing-In of Newly Elected Members: Mr. Wadsworth acknowledged Ms. Ladd Fiorini and Mr. Glennon, who had been sworn in just prior to tonight's meeting as newly re-elected Planning Board members who both ran unopposed.

Zoning Bylaw Review Committee (ZBRC): Mr. Broadrick informed Mr. Casagrande that he had been appointed by Town Manager as chair pro tem for this newly configured committee appointed by the Board of Selectmen on January 28, 2013. The Selectmen appointed five members from those who had previously served on the 11-member ZBRC in 2011-2012.

Tree Bylaw: Mr. Glennon thanked Mr. Broadrick for attending a recent Open Space Committee regarding a potential tree bylaw.

Medical Marijuana: Mr. Broadrick reported that he had attended a session on this topic at the recent Citizen Planner Training Collaborative Annual Conference. A record crowd attended this session because towns are trying to figure out how to handle the dispensing of medical marijuana in light of its recent legalization by state ballot in November 2012. He reported that many towns are choosing to adopt a two-year moratorium to allow time to study the issue, and distributed a copy of Marshfield's Town Meeting article to do just that. He suggested that Duxbury could use similar language for a future Town Meeting article.

Sea Level Rise: Mr. Broadrick reported the towns of Duxbury, Marshfield and Scituate are working together to address this issue and have chosen Kleinfelder (architects, engineers and scientists) in Boston to perform a study which should be completed by the end of June. He stated that towns need to adapt to both climate change in general and to a more local issue of erosion caused by abnormally high tides combined with storm surge.

Planning Board Resignation by Mr. Josh Cutler: Mr. Wadsworth reported that Mr. Cutler, who had not yet arrived, has indicated that he intends to resign at the end of tonight's meeting.

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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.

ELECTION OF PLANNING BOARD OFFICERS, COMMITTEE ASSIGNMENTS, AND MEETING DATES

Election of Planning Board Officers:

Mr. Wadsworth addressed the nominations for Planning Board officers. He called for nominations for Planning Board chairman.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Bear provided a second, to nominate Mr. Glennon as Planning Board Chairman. Mr. Glennon nominated Mr. Wadsworth as Planning Board Chairman.

DISCUSSION: Mr. Glennon stated that with a grateful but heavy heart he must decline the nomination because at this time his work schedule does not allow him the time the office deserves. He thanked his colleagues for their support.

AMENDMENT TO MOTION: Mr. Bear made a motion, and Mr. Glennon provided a second, to nominate Mr. Wadsworth as Planning Board Chairman.

VOTE: The motion carried unanimously, 6-0.

Mr. Wadsworth called for nominations for Planning Board Vice-Chairman.

MOTION: Mr. Wadsworth made a motion, and Mr. Casagrande provided a second, to nominate Mr. Glennon as Planning Board Vice-Chairman.

DISCUSSION: Mr. Glennon accepted the nomination.

VOTE: The motion carried unanimously, 6-0.

Mr. Wadsworth called for nominations for Planning Board Clerk.

MOTION: Mr. Glennon made a motion, and Mr. Casagrande provided a second, to nominate Ms. Ladd Fiorini as Planning Board Clerk.

DISCUSSION: Ms. Ladd Fiorini accepted the nomination.

VOTE: The motion carried unanimously, 6-0.

Committee Appointment Recommendations:

Mr. Wadsworth addressed recommendations for committee appointments for Planning Board representatives, noting that the following appointments will not be addressed because they expire after 2013:

- Alternative Energy Committee (Mr. Cutler through 2014)
- Economic Advisory Committee (Mr. Bear through 2015)
- Metropolitan Area Planning Council (Mr. Broadrick through 2015)
- South Shore Coalition / MAPC (Mr. Casagrande through 2015)
- Zoning Bylaw Review Committee (Mr. Casagrande and Mr. Wadsworth were re-appointed by the Board of Selectmen in January 2013 for this ad hoc committee)

Mr. Wadsworth called for nominations for Planning Board representative to the Open Space Committee.

MOTION: Ms. Turcotte made a motion, and Ms. Ladd Fiorini provided a second, to recommend that the Board of Selectmen appoint Mr. Glennon as Planning Board representative to the Open Space Committee.

VOTE: The motion carried unanimously, 6-0.

Mr. Cutler arrived at the meeting.

Mr. Wadsworth called for nominations for Planning Board representative to the Metropolitan Area Planning Council and the Old Colony Planning Council. Mr. Broadrick reported that he would be happy to continue serving on both unless a Board member is interested.

MOTION: Mr. Cutler made a motion, and Ms. Ladd Fiorini provided a second, to recommend that the Board of Selectmen appoint Mr. Broadrick as Planning Board representative to the Metropolitan Area Planning Council and the Old Colony Planning Council.

VOTE: The motion carried unanimously, 7-0.

Mr. Wadsworth called for nominations for Planning Board representative to the Community Preservation Committee (CPC). Ms. Ladd Fiorini expressed an interest in being appointed to the CPC. Mr. Wadsworth recommended nominating Mr. Bear to continue serving as Planning Board representative to the CPC. Mr. Glennon suggested that the Board defer making a recommendation for this position until a later date, since the Board of Selectmen does not make appointments until June. Mr. Wadsworth asked staff to schedule this recommendation for a Planning Board meeting in April or May.

Planning Board Meeting Night:

Mr. Wadsworth reported that it appears that the only night that Planning Board meetings could be broadcast live on PAC-TV would be Wednesdays, noting that some Board members have conflicts with Wednesday meetings. Ms. Ladd Fiorini stated that she has a family commitment on Wednesdays that she could change if there was a good reason; however she does not see a good reason to change meeting nights from Mondays.

Board members discussed whether their meetings should be shown on cable television or not. Mr. Glennon and Mr. Wadsworth spoke in favor of the idea, stating that residents would be better educated on what the Planning Board does, and Ms. Turcotte, Mr. Bear and Ms. Ladd Fiorini all made statements indicating that they did not see a benefit to broadcasting the meetings on cable television.

Mr. Bear suggested that it would be best to continue meeting on Mondays. Mr. Glennon recommended that Board meetings be taped on Mondays by PAC-TV for future broadcast for a period of time and see how it goes. He stated that he had spoken with PAC-TV personnel at a recent event and other towns tape their Planning Board meetings. Mr. Broadrick noted that taping would be contingent upon the availability of volunteers because PAC-TV staff is busy broadcasting the Board of Selectmen meetings on Monday nights.

MOTION: Mr. Glennon made a motion, and Mr. Casagrande provided a second, to direct staff to inquire whether PAC-TV is willing to tape Planning Board meetings in the Small Conference Room on Monday nights.

VOTE: The motion carried unanimously, 7-0.

ZBA REFERRAL: 23 HARRISON STREET / BARAKY

Board members reviewed special permit application materials for this proposal to raze an existing garage that lies three feet from a side setback on a pre-existing nonconforming lot of 14,375 square feet, and to construct a new garage with office space above that is slightly larger in footprint and still lies the same distance from the side setback, using the three percent rule for coverage.

Mr. Bear stated that the Board has seen many similar proposals and the Board's position has been that if a building is razed there is an opportunity to bring it into conformance with current zoning regulations. Mr. Casagrande pointed out that the Zoning Board of Appeals (ZBA) usually ignores that reasoning, cautioning that it may tarnish other Planning Board recommendations. Mr. Wadsworth noted that the siting of the garage could be more conforming. Ms. Ladd Fiorini noted that the proposal to add a second floor office space would increase the intensity of activity. Mr. Casagrande stated that it is a very narrow lot and the lot is built-out otherwise. Ms. Turcotte noted that even if the nonconformity improved it still would be nonconforming.

Mr. Casagrande noted that a right-of-way property surrounds this particular lot, and the neighbor on the closest side is the architect for the project. The neighborhood contains a plethora of pre-existing nonconforming properties. The existing garage is not in good shape and there would be no other way to obtain office space. He noted that that ZBA asks if the proposal is more detrimental to the neighborhood. He asked if there is anything more constructive that the Planning Board can comment to the ZBA.

Mr. Bear pointed out that volume is not addressed in Zoning Bylaws, and Mr. Casagrande responded that the ZBA does address volume.

Mr. Broadrick noted that the Planning Board looks only at regulations in the Zoning Bylaws, which is a different approach than the ZBA which also considers factors as what is more detrimental and whether the neighbors support the project or not.

Board members addressed various Zoning Bylaws that may relate to this special permit application. Board members agreed that applicants should at least try to make the proposed project more conforming on pre-existing nonconforming properties. Ms. Turcotte stated that in her opinion the proposal on this project is not more detrimental to the character of the neighborhood. The existing footprint is 20' x 24' and the proposed footprint is 23' x 24'.

Mr. Brad White arrived at the meeting and introduced himself as the project architect and next door neighbor (21 Harrison Street) on the side with the setback violation. He stated that the garage is being torn down because it is impossible to park cars there currently. He noted that the lot coverage would increase from 20.4 percent to 20.9 percent, which is allowable due to the three percent rule.

Mr. Glennon noted that although it is a beautifully designed building it has some zoning difficulties due to being on a pre-existing nonconforming lot. He stated that it is reasonable to ask applicants to conform to current zoning when a structure is razed yet the proposed building will remain three feet from the property line. Mr. White stated that he is the abutter and he has no objections. Mr. Glennon pointed out that the person who buys his property in the future might not like it.

Mr. Glennon stated that the application does not meet current setbacks and he took an oath earlier this evening to uphold Zoning Bylaw regulations such as this one. Town Meeting approved the current setback regulations and different regulations could be introduced at a future Town Meeting if anyone wants to change them. He stated that for this application there will be an increased volume of activity because the second floor of the garage will have windows with lights. The proposed office will bring more activity than before. He stated that the change in structure height from 13 to 18 feet is substantially more detrimental. Ms. Turcotte pointed out

that the height is within current regulations. Mr. Glennon stated that overall the proposed building is very large, going from one story to two stories within three feet of the side setback.

Mr. Wadsworth noted that setback regulations provide space between structures to prevent fires from spreading. Putting structures close together increases the amount of fire flow needed in hydrants. Mr. Casagrande noted that other structures are not located near the proposed garage. Mr. White noted that the proposed garage would be located fifty feet from his house. The neighborhood has fairly regular spacing of houses that this proposal fits. The intent is to make the garage usable. Currently you can get a car into the garage but then the driver could not get out of the car. Mr. Glennon pointed out that the applicant is not just replacing a garage, they are adding office space. Mr. White stated that they do not intend to construct the office immediately but it will become an office and storage space in the future.

Mr. Casagrande noted that Zoning Bylaws provide relief to applicants as long as neighbors do not object. Mr. Glennon stated that the Planning Board is guided by Zoning Bylaws, not neighborhood opinions. Zoning Bylaws are to be upheld for the greater good of the town.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to recommend regarding a special permit application for 23 Harrison Street / Baraky, that the Zoning Board of Appeals address criteria found in Zoning Bylaws Section 401.2.3 (Nonconforming Uses, Change of Use and Limitation on Intensity and Size of Use – Other Than Single or Two-Family Residential Dwellings) in its entirety due to zoning issues such as setback violations, increase in footprint, and change in use that are not remedied with the proposed application.

DISCUSSION: Mr. Wadsworth directed staff to email a draft of the memorandum to be sent to the ZBA to Ms. Ladd Fiorini and him for review prior to submitting.

VOTE: The motion carried, 6-0-1, with Mr. Casagrande abstaining.

ZBA REFERRAL: 520 BAY ROAD / HOCKING

Mr. Broadrick explained that the applicants propose to create an 869 square-foot accessory apartment in an existing second floor over a garage. Mr. Glennon noted that Zoning Bylaws Section 410.6.2a (Accessory Apartment Special Permit Regulations and Restrictions) states that an accessory apartment cannot exceed 850 square feet. He noted that it appears that mechanical and heat pump space totaling 31.5 square feet were subtracted from the total area of living space of 869.2 square feet in order to come in at 837.7 "total usable" square feet on the architect's plan. He stated that mechanical and HVAC space should be counted in total square footage because it is not excluded in Zoning Bylaws.

Ms. Ladd Fiorini asked if an additional parking space had been added according to Zoning Bylaws Section 410.6.2d, and Board members agreed that an additional space had not been added.

Mr. Casagrande asked if accessory apartments are by-right unless being rented out. Ms. Ladd Fiorini recalled that the Board had discussed this topic previously and that the intent of this Zoning Bylaw is to add space for family members who can have their own living space but not a kitchen. Mr. Casagrande stated that he believes that accessory apartments can have kitchens. However, if an owner wants to rent the space they would need to go through the process for approval. Mr. Wadsworth noted that illegal apartments are an issue statewide.

Mr. Glennon commented that the septic requirements are unclear on the plans. Is the dwelling going from five bedrooms to three? Or is it going from five to six bedrooms? Mr. Wadsworth agreed that the Sewer Commissioners should be consulted. Mr. Casagrande noted that the plans show an on-site septic system so it appears that the property is not tied into the Bay Road shared septic system. He stated that the Board of Health will address the number of bedrooms.

MOTION: Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to recommend that the Zoning Board of Appeals DENY the special permit application for 520 Bay Road / Hocking because Zoning Bylaws Section 410.6.2.a (Accessory Apartment Special Permit Regulations and Restrictions) allows a maximum 850 square-foot total area for accessory apartments and this application shows a total of 869.2 square feet and therefore exceeds the square footage allowed. The accessory apartment bylaw does not authorize omitting any space from the total square-foot calculation, so the reductions for mechanical and heat pump space shown on the proposed plan are irrelevant.

In addition, according to Zoning Bylaws Section 410.6.2.d, an additional parking space must be constructed to serve the accessory apartment and none is shown on the proposed plan. Also, the number of bedrooms existing and proposed is unclear from the application materials and should be clarified, and the Sewer Commission may need to be consulted.

VOTE: The motion carried 6-0-1, with Ms. Turcotte abstaining.

DISCUSSION OF TOWN MEETING ARTICLES

Solar Array PILOT: Mr. Wadsworth noted that there had been considerable confusion at this year's Annual Town Meeting over the Payment in Lieu of Taxes (PILOT) article for the solar array that was approved at last year's Town Meeting.

Community Preservation Commission (CPC) Articles: Mr. Wadsworth stated that he was discouraged with discussions on the Town Meeting floor regarding CPC articles. He noted that purchasing open space gives the town the "best bang for the buck." Mr. Casagrande stated that the CPC appears to be at odds with itself, and Mr. Bear, who serves as chairman of the CPC, disagreed, noting that historically the CPC has spent sixty percent of allocated and unallocated funds on open space. The vote at Town Meeting approved a requirement to spend ten percent of allocated funds on affordable housing, ten percent on recreation, and sixty percent on open space instead of the usual "10/10/10" format. Mr. Bear stated that the CPC recommended the 10/10/60 article because the total amount of funds was reduced by town ballot in November 2012 from three percent to one percent of real estate taxes. He noted that purchasing open space requires large amounts in funding. Mr. Bear noted that recreational activity has increased also, despite flat growth in population over recent years, due to increased participation.

Residential Conservation Cluster Developments: Mr. Broadrick reported that at a recent South Shore Coalition meeting of the Metropolitan Area Planning Council there was a presentation on proposed new regulations for Residential Conservation Clusters. The state is pursuing use of small lots with an adjacent park by right. Ms. Ladd Fiorini added that she participated in a recent webinar on the same subject, and a benefit is that RCCs leave a lot of area in its natural state. First the amount of open space is determined and then the number of house lots is determined. She stated that although this is a good idea it may not stop 40B developments. Mr. Cutler, who serves as State Representative, noted that there are dozens of bills pending regarding 40B, including one he filed himself; however he is not optimistic that 40B reform will come anytime soon.

DISCUSSION: OLD COLONY PLANNING COUNCIL / METROPOLITAN AREA PLANNING COUNCIL

Mr. Broadrick stated that at Annual Town Meeting 2012 voters approved the town of Duxbury joining the Old Colony Planning Council (OCPC) in addition to its ongoing membership in the Metropolitan Area Planning Council (MAPC). He noted that the Planning Board's intent was to try out the OCPC for one year and then re-evaluate whether to continue with both planning agencies.

Mr. Broadrick recommended that the town stay with both planning agencies because the MAPC is data-driven and the OCPC is transportation-driven, so the town can utilize both areas of specialization.

MOTION: Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, for the Planning Board to support continuing town of Duxbury membership in both the Old Colony Planning Council and the Metropolitan Area Planning Council.

VOTE: The motion carried unanimously, 7-0.

OTHER BUSINESS

Meeting Minutes:

MOTION: Mr. Cutler made a motion, and Mr. Casagrande provided a second, to approve meeting minutes of February 25, 2013 as amended.

VOTE: The motion carried 5-0-2, with Mr. Bear and Ms. Turcotte abstaining.

Resignation of Mr. Josh Cutler: Mr. Cutler submitted a letter of resignation and announced that with regret he is stepping down from the Planning Board in order to attend to the requirements of his election as State Representative in November 2012. He thanked his fellow Board members for their kindness and stated that he had learned much from his time on the Planning Board and will take that knowledge with him to his new position. Mr. Wadsworth presented Mr. Cutler with a plaque commemorating his contributions to the town of Duxbury highlighting his achievements as a Planning Board member. Board members applauded Mr. Cutler with words of appreciation for his service to the town.

ADJOURNMENT

The Planning Board meeting adjourned at 9:17 PM. The next Planning Board meeting will take place on Monday, April 8, 2013 at 7:00 PM at the Duxbury Town Hall.

MATERIALS REVIEWED

ELECTION OF PLANNING BOARD OFFICERS, COMMITTEE ASSIGNMENTS, AND MEETING DATES

- Planning Board Committee Appointments worksheet dated 03/11/13

ZBA REFERRAL: 23 HARRISON STREET / BARAKY

- ZBA referral materials submitted 02/26/13
- Vision GIS map, aerial map, property card, and Pictometry orthophoto

ZBA REFERRAL: 520 BAY ROAD / HOCKING

- ZBA referral materials submitted 02/26/13
- Vision GIS map, aerial map, property card, and Pictometry orthophoto

DISCUSSION OF ANNUAL TOWN MEETING ARTICLES

- BOS meeting minutes of 01/28/13 re: ZBRC new appointments
- PB meeting minutes of 11/26/12 re: potential warrant articles
- "Homes in Neighborhoods with Protected Open Space..." *Cranberry Coast Homes* article dated 03/14/13

DISCUSSION: OLD COLONY PLANNING COUNCIL / METROPOLITAN AREA PLANNING COUNCIL

- ATM 2012 vote Article #41

OTHER BUSINESS

- Meeting minutes of 02/25/13
- ZBA decision re: 6 Priscilla Lane /O'Sullivan & Dunn
- ZBA decision re: 9 Surfside West/Leahy & Nichols
- Construction Cost Estimates for February 2013

TOWN CLERK
13 APR 21 AM 9:49
DUXBURY, MASS.