



# Town of Duxbury Massachusetts Planning Board

Approved 05/20/13

TOWN CLERK  
13 JUN -3 AM 10:22  
DUXBURY, MA 01932

## Minutes 04/22/13

The Planning Board met at the Duxbury Town Hall, Small Conference Room, on Monday, April 22, 2013 at 7:00 PM.

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

Absent: John Bear and Jennifer Turcotte.

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

Mr. Wadsworth called the meeting to order at 7:03 PM. He called for a moment of silence in memory of the victims of the recent Boston Marathon bombings.

### OPEN FORUM

Open Space Committee: Mr. Glennon reported that the Open Space Committee's Spring Scavenger Hunt has been cancelled for this year so that members can focus on organizing the Fun Fall Fiesta event.

Sea Level Rise Adaptation Study: Mr. Broadrick reported that a public forum introducing results of the study is scheduled for Thursday, May 16, 2013 in Scituate. He will forward more information to Board members as it becomes available.

Society of Saint Margaret: Mr. Broadrick reported that he and Mr. Scott Lambiase, Director of Municipal Services, recently met with representatives for a proposed expansion to an existing building at 21 Harden Hill Road for a retreat center. Although it is a religious use which is exempt, the property owners have agreed to an informal Site Plan Review with the Planning Board.

Planning Board Vacancy: Mr. Broadrick reported that no letters of interest have been submitted for the open Planning Board seat. Letters of interest are due on May 10 and a joint meeting with the Board of Selectmen has been scheduled for Monday, May 20, 2013 at 7:00 PM.

Affordable Housing Trust: Mr. Wadsworth reported that the newly re-formed Duxbury Affordable Housing Trust (DAHT) had its first meeting today. In March residents voted to eliminate the Local Housing Partnership and merge its functions with the Affordable Housing Trust. The new DAHT has seven members and at its meeting officers were elected and a to-do list was established.

### ZBA VARIANCE REFERRAL: 520 ELM STREET / BEDNARZ

Board members reviewed materials for this variance for a shed constructed within a 25-foot setback and an appeal of 21D fines. The applicants had filed a variance in 2010 to construct the shed but withdrew the application. Mr. Scott Lambiase, Director of Municipal Services, wrote a letter to the property owners on March 25, 2013 noting that the shed had been constructed without a permit within the front setback, advising

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the property owner to either bring the shed into compliance or file for a variance, and advising the applicant of fines that had accrued in the amount of \$7,800.00 at that point.

**MOTION:** Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to recommend that the Zoning Board of Appeals DENY a variance permit to allow a 12' x 14' shed within a front setback at 521 Elm Street / Bednarz because the shed has been constructed squarely within the front setback without a permit.

**DISCUSSION:** Mr. Casagrande noted that there appears to be plenty of space to move the shed inside the setback, adding that no statistical justification appears to have been provided. Mr. Glennon stated that the reasons for a variance include soil, shape, or topography, noting that this may be a more sympathetic case than it may seem; one obvious area to place the shed is not available because it would be over the septic system. Mr. Casagrande wondered whether the applicants were measuring from the edge of the street instead of the edge of the taking. Mr. Broadrick agreed, noting that an existing fence appears to be almost on the pavement.

**AMENDMENT TO MOTION:** Mr. Glennon proposed an amendment to recommend that the Zoning Board of Appeals (ZBA) support the Director of Municipal Services in his zoning enforcement efforts by not granting an appeal or abating 21D ticket fines. Mr. Casagrande seconded the amendment and Ms. Ladd Fiorini agreed to the amendment.

**DISCUSSION:** Mr. Glennon stated that he had spoken with Mr. Lambiasi prior to tonight's meeting and he is attempting to enforce Zoning Bylaws. If no action is taken within 21 days of a zoning enforcement order a 21D ticket is issued with fines that accrue daily. Mr. Lambiasi had advised Mr. Glennon that tickets are appealable to district court or to the ZBA. Mr. Wadsworth noted that the ZBA may have no choice but to approve the variance because they have been cautioned to keep legal expenses down.

**VOTE ON AMENDED MOTION:** The motion as amended carried unanimously, 4-0.

#### **ZBA SPECIAL PERMIT REFERRAL: 48 & 55 HICKS POINT ROAD / GILSON & QUINLISK**

Board members reviewed materials for this special permit for a shared pier and noted that a town landing appears to bisect one of the properties. Mr. Broadrick noted that in general the town wants to see shared piers.

**MOTION:** Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to DEFER JUDGMENT to the Zoning Board of Appeals regarding a special permit for a shared pier at 48 & 55 Hicks Point Road / Gilson & Quinlisk.

**VOTE:** The motion carried unanimously, 4-0.

#### **DISCUSSION: POTENTIAL MEETING WITH ZONING BOARD OF APPEALS**

Board members reviewed a spreadsheet prepared by staff that shows a history of Zoning Board of Appeals (ZBA) referrals since August 2012. Mr. Glennon stated that he had requested this agenda item because there appears to be a disconnect between Planning Board recommendations and ZBA decisions. He noted that the Planning Board spends a fair amount of time considering zoning implications of special permits and variances and often it appears that the Board's comments are ignored. He noted that this may be more of a perception than a reality but he would like to find out if it is a problem. He stated that he does not want to waste time on things that are not helpful and he would prefer to be in partnership with the ZBA.

Mr. Casagrande stated that at the ZBA hearings he has attended the Planning Board's referral memos are read aloud and discussed point by point. He has never seen the ZBA not address Planning Board comments. Mr. Broadrick noted that they may read and discuss the memos but may disagree. Ms. Ladd Fiorini noted that there appear to be many instances where the Planning Board recommends denial after reasoned discussion and the ZBA approves. Mr. Casagrande noted that during ZBA hearings sometimes the applicant or representative clarifies and/or presents revised plans. He noted that most of the disagreements are regarding pre-existing nonconforming properties. Mr. Glennon stated that he would like to know if the Planning Board's feedback is useful to the ZBA or not and would like to address the issue face-to-face.

Mr. Casagrande suggested that it may be a good idea to find out how the ZBA rationalizes its decisions by first determining if the proposal is a "substantial increase" in nonconformity and then determining if the proposal is "more detrimental to the neighborhood." He stated that perhaps the ZBA may be tempted to skip the first question if they have letters of support from neighbors. Mr. Glennon stated that letters from neighbors do not hold weight for him because they may not be an accurate representation of the entire neighborhood. He stated that he would like to discuss zoning theory with the ZBA members.

Mr. Casagrande mentioned an example where the application addresses volume and the Zoning Bylaws do not address volume. For example, if a new second floor is proposed on a pre-existing nonconforming property, a special permit may be granted because it does not represent an increase in nonconformity. Mr. Broadrick commented that it does not seem right to allow that. Mr. Casagrande referenced a court case, *Goldhirsh v. McNear*, that sets a precedent to allow a vertical increase in volume on a pre-existing nonconforming property.

Mr. Wadsworth requested that staff do further research on Planning Board referrals from the past three years that recommend "denial." He stated that this history may show where the "disconnects" occur.

## COMPREHENSIVE PLAN UPDATE

Mr. Broadrick stated that after reviewing notes and data, he believes he can provide the Board with a strikethrough draft update of the Comprehensive Plan by June 24, 2013. Mr. Casagrande asked if Mr. Broadrick would be able to provide explanations for updated sections and he replied that he could.

Mr. Casagrande suggested that it would be nice to see a map of land still developable. Mr. Broadrick noted that it may be difficult because some land is questionable whether it could be developed or not. Mr. Wadsworth added that some nonprofit land has been sold and developed that was not anticipated as developable. Other times land thought to be "un-percable" has passed and been developed. Mr. Broadrick noted that the methodology used by Ms. Roberta Cameron for the latest Comprehensive Plan in 1999 has not changed, so he will apply the same methodology for the updated build-out analysis.

## OTHER BUSINESS

Board members addressed "other business" before the Planning Director evaluation so that the Planning Director could be present.

16 Hounds Ditch Lane / Lilienthal: Mr. Wadsworth asked if there is any update regarding pending litigation regarding this property, and Mr. Broadrick replied that Town Counsel is scheduled to attend the Planning Board meeting of May 20, 2013.

### Meeting Minutes:

**MOTION:** Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to approve meeting minutes of March 25, 2013 as amended.

**VOTE:** The motion carried unanimously, 4-0.

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PAC-TV: Mr. Glennon asked if there was an update on the Board's plans to record meetings to be broadcast on PAC-TV, and Mr. Broadrick responded that PAC-TV requires volunteers for this duty and they do not have any available. Mr. Glennon suggested that Mr. Broadrick discuss the matter with the newly elected president of PAC-TV who resides in Duxbury.

Route 53 Corridor: Mr. Glennon stated that he is concerned with future commercial development that may change the current tree-lined residential character of the Route 53 corridor in Duxbury. He noted that every other town along Route 53 is heavily commercialized. Mr. Wadsworth noted that there is a fair amount of conservation land along that corridor in Duxbury. Mr. Broadrick stated that his predecessor, Mr. Paul Halkiotis, oversaw a Route 53 corridor study. Mr. Broadrick noted that the land is not zoned for commercial use. Mr. Glennon pointed out that while change in zoning use used to be considered rare, there have been several examples in recent years where owners' petitions to change zoning districts have passed fairly easily at Town Meeting. Mr. Broadrick offered to look into the matter with the Old Colony Planning Council and to provide copies of the corridor study and Community Development Plan for the next Board meeting on May 20, 2013. He stated that the Board could do a study and possibly suggest buffers along the road; however, this may open the subject up for discussion which may lead to unwanted changes.

## PLANNING DIRECTOR EVALUATION

Mr. Broadrick departed the meeting and Board members discussed an evaluation form provided by the Human Resources Department. Mr. Wadsworth will compile results and meet separately with Mr. Broadrick and the Town Manager by May 15, 2013. He directed staff to reach out to the two Board members not present for them to submit their evaluations to him as soon as possible.

## ADJOURNMENT

The Planning Board meeting adjourned at 9:08 PM. The next Planning Board meeting will take place on Monday, May 20, 2013 at 7:00 PM at the Duxbury Town Hall.

## MATERIALS REVIEWED

### ZBA Variance Referral: 520 Elm Street / Bednarz

- ZBA referral materials submitted 04/01/13
- Vision GIS map, aerial map, property card, and Pictometry orthophoto
- PB minutes of 09/27/10

### ZBA Special Permit Referral: 48 & 55 Hicks Point Road / Gilson & Quinlisk

- ZBA referral materials submitted 04/04/13
- Vision GIS map, aerial map, property card, and Pictometry orthophoto

### Discussion: Potential Meeting with Zoning Board of Appeals

- ZBA Referrals August 2012 – Present

### Planning Director Evaluation

- Memo to PB Chairman dated 04/01/13
- Planning Director's completed self-evaluation
- Blank Performance Evaluation Form

### Other Business

- Meeting minutes of 03/25/13
- Construction Cost Estimates for March 2013

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