



Town of Duxbury Massachusetts Planning Board

Approved 06/24/13

TOWN CLERK
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DUXBURY, MASS.

Minutes 06/03/13

The Planning Board met at the Duxbury Town Hall, Small Conference Room, on Monday, June 3, 2013 at 7:00 PM.

Present: George Wadsworth, Chairman; Brian Glennon, Vice Chairman; John Bear, Scott Casagrande, and Jennifer Turcotte.

Absent: Cynthia Ladd Fiorini, Clerk.

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

CALL MEETING TO ORDER / JOINT MEETING WITH BOARD OF SELECTMEN IN MURAL ROOM: PLANNING BOARD APPOINTMENT

Mr. Wadsworth called the meeting to order at 7:00 PM. He read a letter from Mr. Terry Vose, chairman of the Historical Commission, in support of Planning Board candidate Mr. David Uitti, who also serves on the Historical Commission. Mr. Wadsworth called for a motion to recess in order for the Planning Board to join the Board of Selectmen for the selection of a Planning Board member to fill the vacancy left by the resignation of Mr. Josh Cutler, who is now State Representative.

MOTION: Mr. Glennon made a motion, and Mr. Casagrande provided a second, for the Planning Board to recess to the Mural Room in order to meet with the Board of Selectmen, with the Planning Board meeting to resume following the vote on the Planning Board appointment.

VOTE: The motion carried unanimously, 5-0.

Therefore the Planning Board meeting was recessed at 7:04 PM and the Planning Board members moved to the Mural Room for the Board of Selectmen's meeting.

RETURN TO OPEN SESSION IN SMALL CONFERENCE ROOM / OPEN FORUM

The Planning Board meeting re-convened in the Small Conference Room at 7:47 PM. Mr. Glennon thanked all the Planning Board candidates for their willingness to serve:

- Robb D'Ambruoso, Esq.
- Patrick Gagnon, MD
- Mr. T. Richard Quigley
- David Uitti, Esq.

Mr. Glennon and other Planning Board members congratulated Mr. Uitti as the appointed Planning Board member by unanimous vote of the Board of Selectmen and Planning Board. Mr. Uitti was invited to sit with the Planning Board although he cannot vote until sworn in. Mr. Wadsworth invited Open Forum comments.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

Zoning Bylaw Review Committee (ZBRC): Mr. Casagrande reported that this newly re-established group has begun discussions on a Request for Proposals (RFP) to hire a consultant to help guide the process of revising Zoning Bylaws for clarity and consistency. Mr. Wadsworth, who also serves on the ZBRC, noted that it will be a difficult process and the RFP will be critical. He reported that tasks have been divided among ZBRC members.

APPOINTMENT: MS. AMY MAC NAB REGARDING NSTAR TREE CLEARING

Mr. Broadrick reported that Ms. MacNab, former Planning Board chairman, cannot attend tonight's meeting because her daughter is receiving a school award tonight. Ms. MacNab has requested to be placed on the June 24 Planning Board agenda.

CONTINUED APPROVAL NOT REQUIRED PLAN OF LAND: 281 CONGRESS STREET / JOHNSON

Present for the discussion were the applicants, Mr. Paul Johnson and Ms. Susan Leigh-Johnson, along with their representatives: Atty. Robert W. Galvin and Mr. Brad McKenzie of McKenzie Engineering in Norwell. Mr. Wadsworth reported that he and Mr. Glennon had spoken with Town Counsel, Atty. Arthur Krieger, and were advised that the only requirement for an ANR plan is frontage and were advised that frontage for ANR plans may be in the water.

Mr. Glennon thanked Atty. Galvin for providing pertinent case law, noting that it was helpful in supporting the ANR. Mr. Glennon noted that this ANR posed some physical challenges and life-safety access; however, despite the existence of the guardrail and wetlands along the frontage, there appeared to be adequate access for life safety, but asked the applicant to describe it.

Atty. Galvin stated that the Planning Board had asked all the right questions at the initial discussion on May 20, 2013. Lot A on the proposed plan has over 40,000 square feet of upland and 200 feet of continuous frontage. Lot B has over 40,000 square feet of upland and 225 feet of continuous frontage.

Mr. McKenzie showed Board members a photograph of where the guardrail is located, noting that there is twelve feet of land between the guardrail and the pond. He also showed how the guardrail extends up to an existing fence and also showed where the fire hydrant is located. Mr. Glennon noted that from the street it is difficult to figure out the relative location of the guardrail, fence and pond.

Atty. Galvin stated that the Duxbury wetlands bylaw does allow access and that access is not illusory.

Mr. Wadsworth noted that frontage is the only factor in the ANR and the Planning Board's endorsement does not certify that the lots are buildable. He stated that he found it intriguing that frontage can be accrued over water.

MOTION: Mr. Glennon made a motion, and Ms. Turcotte provided a second, to endorse a plan of land entitled, "Plan of Land (Parcel I.D. 80 36 25), 281 Congress Street, Duxbury, Massachusetts," dated April 4, 2013, drawn by McKenzie Engineering Group, Inc., 150 Longwater Drive, Suite 101, Norwell, MA 02061, stamped and signed by James P. Toomey, RPLS as not requiring approval under Subdivision Control Law.

VOTE: The motion carried unanimously, 5-0.

Board members signed a mylar and Mr. McKenzie signed a mylar release and took the mylar with him.

CONTINUED DISCUSSION: POTENTIAL MEETING WITH ZONING BOARD OF APPEALS

Board members reviewed a list of topics prepared by staff based on discussions at the Board's May 20, 2013 meeting. Mr. Broadrick distributed a letter from Ms. Sarah McCormick, chair of the Design Review Board, stating that the Design Review Board also has some issues with recent Zoning Board of Appeals (ZBA) decisions and requesting to meet with the Planning Board to discuss these issues and other concerns.

Mr. Casagrande stated that it is interesting to read from Ms. McCormick's letter that the Design Review Board does not see some special permits for pre-existing nonconforming lots because they receive the same referral packets from the ZBA that the Planning Board does.

Mr. Broadrick pointed out correspondence in the Planning Board packet from Mr. Scott Zoltowski, chairman of the Zoning Board of Appeals, in response to an article in the Duxbury *Clipper* following the Board's May 20 discussion of a possible meeting. Mr. Broadrick reported that he had responded to Mr. Zoltowski that the Planning Board could only discuss a potential meeting during an open meeting.

Mr. Bear noted that the ZBA has an opportunity during the special permit process to correct nonconformities, citing Zoning Bylaws Section 401.2.3 (Alteration, Reconstruction, Extension or Structural Changes to Pre-Existing Nonconforming Single and Two-Family Residential Structures). Mr. Bear gave an example of a pre-existing nonconforming dwelling with a ten-foot front setback. Mr. Bear felt that a proposed addition that would extend the façade along the front setback would intensify the nonconformity and Mr. Casagrande was of the opinion that it is the same nonconformity so it would not be increased.

Mr. Broadrick pointed out that in Zoning Bylaws Section 401.2.3 (Changes of Use and Limitation on Intensity and Size of Use – Other than Single or Two-Family Residential Dwellings) it states that the ZBA "shall encourage extensions, alterations or changes to nonconforming structures and uses toward greater, if not complete, conformance with the provisions of the Zoning Bylaw and to reduce the degree of nonconformity." Mr. Casagrande stated that it makes sense for commercial properties. Mr. Bear pointed out that the cases under discussion are all dwellings not commercial projects.

Mr. Casagrande explained how the Zoning Board bases its appeals on interpretation of Zoning Bylaws, specifically ZBL 401.2.4.a.i-vi, guidelines for determining the meaning of the phrases 'increase the nonconforming nature' and 'substantially more detrimental to the neighborhood.' Mr. Broadrick cautioned that the ZBA should see its task as granting relief rather than interpreting Zoning Bylaws.

Mr. Wadsworth asked if the Zoning Board of Appeals should be given a list of discussion topics, and Mr. Glennon recommended that instead there should be a holistic discussion on the intent of the Zoning Bylaws and underlying expectations of what the goals are. He noted that there are many differing interpretations of the Zoning Bylaws and the revisions to be proposed by the Zoning Bylaw Review Committee cannot solve all zoning problems. He suggested that members of the Planning Board and Zoning Board of Appeals put their heads together on the Zoning Bylaw goals. He stated that there is value in discussion of how the ZBA sees the value of goals to protect the town.

Mr. Broadrick agreed that a philosophical discussion could be worthwhile because it appears that property owners of pre-existing nonconforming properties are "golden" because they can always get relief from Zoning Bylaws. Mr. Casagrande noted that the only 40,000 square-foot land areas remaining in the town of Duxbury are located on the west side of town. He stated that perhaps the Zoning Bylaws can change for smaller lots if that is what the town wants.

Mr. Wadsworth asked if the Planning Board should reach out to the Design Review Board in response to their letter. Mr. Bear noted that the Planning Board appears to have enough issues to discuss without adding the

Design Review Board's concerns to the list. Mr. Broadrick pointed out that the Planning Board will meet with the Zoning Board of Appeals during an open meeting so any public member or other committee/board member is welcome to attend.

Ms. Turcotte suggested that the Planning Board could ask to be placed on a future ZBA agenda. Mr. Broadrick offered to contact the Zoning Board of Appeals to schedule a meeting date. Mr. Casagrande noted that it would be ideal if the discussion was the only ZBA agenda item.

DISCUSSION: ROUTE 53 CORRIDOR STUDY

Mr. Glennon had requested this agenda item at the Board's April meeting. Board members reviewed a Route 53 Corridor Study issued by the Metropolitan Planning Organization's Central Transportation Planning Staff (CTPS) in 2002. Mr. Glennon noted an absence of development in Duxbury compared to towns like Hanover. However, he is concerned about creep, although he is not aware of any current plans to develop land in Duxbury.

Ms. Turcotte asked if there is a more recent traffic study, and Mr. Broadrick offered to contact the planning organization to find out if there is a more current study. He noted that the Board could apply for funding through the CTPS for an updated study. Mr. Wadsworth noted that Mr. Paul Halkiotis, a previous Planning Director for the Town of Duxbury, did some research on Route 53 during his tenure, and Mr. Broadrick offered to look for it.

Mr. Glennon asked if there were any objective studies to gauge the likelihood of commercial development along the Route 53 corridor in Duxbury. Mr. Wadsworth asked how much of the land has been set aside for open space. He noted that there are a fair amount of wetlands and the land may not be percable. Mr. Bear noted that west of Route 53 there are a lot of cranberry operations which would limit the potential for commercial development, and on the east side the town has purchased a lot of property. Mr. Broadrick offered to research the most recent Community Development Plan and Open Space Plan for pertinent information. Mr. Glennon stated that the goal would be to "get ahead of the curve" in preventing commercial creep.

DISCUSSION: BATTELLE PROPERTY, 397 WASHINGTON STREET

Mr. Bear, who had requested this agenda topic, asked about the current state of this property that is reportedly for sale. Mr. Broadrick replied that the property is a pre-existing nonconforming use. He stated that the land could be developed by-right into eight 40,000 square-foot dwelling lots with 200 feet of frontage with a creative subdivision plan, according to a local surveyor who is working with Battelle.

Mr. Broadrick noted that the asking price is reportedly \$10 million, and he has advised people to come up with a concept plan to bring to the Planning Board; the next step after that would be to go to Town Meeting for rezoning. The Planning Board would be involved in any rezoning of the property. He stated that another educational institution could purchase the property, and Mr. Bear agreed that if that were the case, marine research would be an automatic continued use.

Mr. Broadrick suggested that the Economic Advisory Committee, of which Mr. Bear is chairman, could propose a use for the land. Mr. Broadrick stated that he has been promoting for potential developers to bring concept plans to the Planning Board and/or Economic Advisory Committee.

Mr. Wadsworth noted that there are a lot of residential neighbors to the property, and there is a potential for the use to become more intensive. Mr. Casagrande noted that all current Neighborhood Business zoning districts in town abut residential neighborhoods. Mr. Bear noted that even any mixed use proposal would require rezoning. Mr. Broadrick stated that he would prefer to work with any developer so that a proposed rezoning could be supported by the Planning Board going into Town Meeting.

OTHER BUSINESS

FEMA Update: Mr. Broadrick reported that based on a letter from the Federal Emergency Management Agency (FEMA) dated May 16, 2013 new Flood Insurance Rate Maps (FIRMs) are in the works. He noted that the current FIRM maps made no elevation changes and only incorporated Duxbury into a Plymouth County FIRM map. Now FEMA is proposing more elevation zone changes. The public hearing for these changes will be run by FEMA, which will take public comment and then publish proposed maps.

Mr. Bear asked about the potential impact on residents, and Mr. Broadrick replied that some homeowners will need to start paying for flood insurance. Dwellings that are currently below a certain elevation may require additions to be raised. He noted that flood elevations may be changing due to a combination of sea level rise and the effects of storm surge. Adaptation planning may begin to prohibit future building on the waterfront where it was once allowed. Some seaside dwellings may need to be bought out by state or federal agencies.

ZBA Decision, 520 Bay Road / Hocking: Board members reviewed this special permit approval to construct an accessory apartment within existing second-floor space over an attached garage. Mr. Wadsworth stated that the applicant should have been asked to show where the additional parking area will be on the approved plan, and the Zoning Board of Appeals did not ask for this despite the Planning Board having noted that issue.

ADJOURNMENT

The Planning Board meeting adjourned at 9:04 PM. The next Planning Board meeting will take place on Monday, June 24, 2013 at 7:00 PM at the Duxbury Town Hall.

MATERIALS REVIEWED**Joint Meeting with Board of Selectmen in Mural Room: Planning Board Appointment**

- Letter of interest from Robb D'Ambuoso, Esq. submitted on 05/16/13
- Letter of interest from Patrick J. Gagnon, MD submitted on 05/10/13
- Letter of interest from T. Richard Quigley submitted on 04/29/13
- Letter of interest from David C. Uitti, Esq. submitted on 05/15/13

Appointment: Ms. Amy MacNab regarding NStar Tree Clearing

- Letter from NStar to R. MacDonald dated 03/14/13

Continued Approval Not Required Plan of Land: 281 Congress Street / Johnson

- Fax submitted by Atty. Robert E. Galvin on 05/28/13
- ANR Handbook selected case law
- Example of a similar ANR plan in Duxbury

Discussion: Potential Meeting with Zoning Board of Appeals

- Draft list of proposed topics for PB meeting with ZBA dated 05/28/13
- Emails between S. Zoltowski and T. Broadrick dated 05/22/13

Discussion: Route 53 Corridor Study

- CPTS Route 53 Corridor Study with cover letter dated 03/11/02

Discussion: Battelle Property, 397 Washington Street

- Vision GIS map, aerial map, property card, and Pictometry orthophoto

Other Business

- FEMA letter dated 05/16/13
- ZBA decision re: 520 Bay Road / Hocking

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