



TOWN CLERK
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DUXBURY, MASS.
Town of Duxbury
Massachusetts
Planning Board

Minutes 11/25/13

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

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

Absent: Jennifer Turcotte.

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

Mr. Wadsworth called the meeting to order at 7:03 PM.

OPEN FORUM

Zoning Bylaw Review Committee (ZBRC): Mr. Casagrande reported that the ZBRC hosted a 'kick-off' meeting now that they have contracted with Town Counsel, Anderson & Kreiger of Cambridge, to review the Zoning Bylaws for clarity and consistency. Atty. George Hall of Anderson & Kreiger will work with a consulting planner, Mr. Nate Kelley of Horsley Witten Group in Sandwich. The kick-off meeting was lightly attended although all land use boards and committees had been invited. However, the ZBRC members are comprised of members from most land use boards and committees. At the next meeting in January, the consultants expect to have completed their first read-through of the current Zoning Bylaws and the ZBRC's final report to the Board of Selectmen from last year.

Mr. Wadsworth, who also serves on the ZBRC, stated that public hearings may be held as early as next fall. Mr. Broadrick added that the vote on amended Zoning Bylaws may be scheduled as a separate Special Town Meeting, or could be scheduled as part of Annual Town Meeting 2015. Mr. Broadrick recommends a Special Town Meeting in the spring of 2015, separate from Annual Town Meeting.

Community Preservation Committee (CPC): Ms. Ladd Fiorini announced that the town has withdrawn its proposal to utilize Community Preservation Act funds to construct a parking lot at the new Howland's Landing (Blairhaven) conservation area. They may bring it back in the future when the need for a parking lot becomes more obvious. Also, a housing consultant article has been withdrawn because it is not quite ready. Ms. Ladd Fiorini reported that the state has increased matching funds up to \$750,000.00. With the town's contribution reduced from three percent to one percent at last year's Annual Town Meeting, the amount available could have been more substantial.

Ms. Ladd Fiorini stated that the CPC is considering whether to propose funding a consultant to update the 1999 Comprehensive Plan because it is something that they really need. Mr. Broadrick noted that this is forward-thinking on the part of the CPC. He is updating a Comprehensive Plan Statement only. Ms. Ladd Fiorini stated that the CPC feels that the overall plan needs to be updated. Mr. Bear noted that the CPC may need to confirm that this would be a legitimate use of CPC funds. Mr. Broadrick noted that the Open Space

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Plan is also due for an update. Mr. Paul Costello, chairman of the Open Space Committee, who was present, stated that the Open Space Committee has been granted an extension to 2014 on the update. Mr. Wadsworth noted that the Duxbury Affordable Housing Trust is finalizing an update to its Planned Production Plan which will include updated data and projections using the 2010 U.S. Census, and is expected to be released next month. Much of this data could be incorporated into an updated Comprehensive Plan.

Annual Town Meeting 2014 Articles: Mr. Broadrick stated that he will be looking for direction from the Planning Board tonight on potential articles regarding a Medical Marijuana Moratorium and updated Flood Maps. These items will be discussed during Other Business on tonight's agenda.

ZBA SPECIAL PERMIT AMENDMENT REFERRAL: DUXBURY ESTATES, CARRIAGE LANE / GIACHETTO

No one was present to represent the application. Present for the discussion were approximately seven members of the public. Mr. Wadsworth noted that the Zoning Board of Appeals (ZBA) is looking for the Planning Board's recommendation, and the Zoning Board of Appeals is the decision-maker for the special permit amendment. A two-part amendment to the special permit is requested: to convert one triplex into one duplex and one single-family dwelling; and to eliminate the inclusionary (fee-in-lieu of affordable housing) payments agreed in 2007 and instead to provide affordable units.

Mr. Broadrick provided an overview of the special permit amendment application, noting that the project is on a 20-acre site and 44 units of mixed dwelling type units. The original special permit was granted in 2007, and amended in 2009 with a unit configuration as follows:

	Single Family	Duplex	Triplex
2007	8	30	6
2009	16	22	6
2013 proposed	17	24	3

With this special permit, the applicant is proposing to convert one triplex into one duplex and one single-family dwelling. Mr. Broadrick stated that while the applicants have met minimum dwelling unit types required in Zoning Bylaws, they have been granted a greater intensity of use than a subdivision without an equivalent benefit to the town. A fee-in-lieu schedule was agreed by the applicant in 2007, but now the applicant wants to eliminate the payment schedule after the development is nearly half-built. According to ZBL Section 560.6, if no fee-in-lieu schedule is in place, then an applicant would need to provide five units of affordable housing, either on-site or at another location to be approved by the Planning Board. He noted that the application does not state the applicant's intent for affordable housing so it is unclear what the request is.

Mr. Casagrande agreed that the intent is unclear, with the application only referencing a "customary provision of affordable units." He noted that the proposed new units have a lower square footage and speculated that the applicants may be offering those lower-square footage units as affordable. Mr. Broadrick pointed out that current residents bought into the development as market-rate units. If affordable housing is constructed on site, it cannot vary in square footage. Mr. Bear and Ms. Ladd Fiorini agreed that there is no indication of intent from the application, so there is not enough information to make a recommendation. Mr. Casagrande noted that the ZBA should require the applicant to provide that information.

Mr. Bear stated that the fee-in-lieu of affordable housing schedule should not be changed. The current schedule balloons at the end of the building permit schedule. The applicant has not paid nearly enough to meet the current affordable housing requirements. Currently the applicant has paid only \$135,000.00 and has received 21 building permits. With the next building permit, another payment of \$270,000.00 would be required. He

stated that the applicant should be required to keep to that fee schedule which he agreed to in 2007. If any re-negotiations are allowed, they should be handled by the Planning Board according to ZBL Section 560.11. He recommended that the applicant should be asked to re-apply with a clear statement of what he wants to do and work it out with the Planning Board.

Mr. Broadrick stated that if the ZBA allows the applicant to build affordable housing, the fees paid to date should be forfeited. The applicant should be asked to construct five affordable housing units. The applicant is straying from the original special permit which allowed 44 units with a fee-in-lieu schedule. Mr. Bear agreed that this is what the current residents bought into. He pointed out that the ZBA cannot make decisions based on the applicant's financial hardship. Mr. Broadrick stated that an agreement has been signed and the only way to amend it is through the Planning Board. Mr. Bear stated that he sees no way for the applicant to be relieved of the fee schedule at this point.

Mr. Wadsworth noted that the fee structure was set up on a schedule and affordable housing has a schedule also. He stated that if affordable housing provisions had been agreed upon, they would have needed to be provided much sooner than after 20 building permits. Mr. Bear stated that the fee-in-lieu schedule cannot be undone at this point.

Mr. Wadsworth opened the floor to public comment.

Mr. Frank Daly of 47 Carriage Lane introduced himself as an original resident of Duxbury Estates. He stated that when he purchased his home it was presented as a 38-unit development with each unit at 2,300 square feet, two bedrooms and 2.5 baths, with six units offered in a triplex format. He stated that somewhere along the line the developer went to the ZBA and had the permit amended based on market issues to change the master deed to allow 1,600 square-foot units rather than 2,300 square feet. He stated that now half of the units pay less in homeowner association fees due to their lower square footage. He stated that this was a major change to the master deed without input from the current residents. He said that the master deed was changed administratively through the ZBA without notification to residents or abutters. He said that he is concerned that the developer is playing games with the town.

Mr. Broadrick asked if the current homeowners would be required to vote on any change to the master deed, and Mr. James Sullivan of 13 Carriage Lane responded that the developer has control of the master deed.

Mr. Sullivan noted that the plans submitted with the application do not specify whether the proposed units are one-story or two-story. He stated that half of the units are built and current owners purchased under certain understandings. He said that approximately 1 ½ months ago the developer explained to him that he had approached the town because the economy has changed and different numbers need to be used compared to the numbers used in determining the original fee-in-lieu schedule. He said that the developer explained that if the fee-in-lieu schedule could not be re-negotiated, then the developer would provide affordable units off-site instead. If that did not happen, then the developer said that he would need to provide affordable housing within the development.

Mr. Wadsworth stated that he had worked with Ms. Christine Stickney, former Planning Director, and the ZBA to create the original fee-in-lieu of affordable housing schedule that the developer agreed to in 2007. He agreed that the market changed and has rebounded to some extent. He stated that any re-calculation of fees today may use different numbers. The fee-in-lieu schedule is generated by Town Hall, not by the developer.

Mr. Sullivan asked why the applicant was not present at tonight's meeting, and Mr. Casagrande responded that the applicant will be attending the ZBA public hearing.

Mr. Casagrande stated that it appears that the applicant may not be interesting in re-negotiating fees because the special permit is requesting to remove the fee-in-lieu schedule and instead to provide affordable housing. Mr. Sullivan asked if it was within the applicant's legal rights to construct affordable housing in a development that is half-built under the assumption of market rate units, and Mr. Casagrande replied that the application is silent on where the affordable units would be located. Mr. Casagrande stated that it will be up to the ZBA to decide what the applicant can or cannot do, and recommended that residents communicate their concerns with the ZBA, noting that the ZBA will take the residents' input strongly into consideration.

Mr. Broadrick summarized that a Planning Board memorandum to the ZBA should recommend that the fee-in-lieu schedule should remain; however, if it is determined that affordable housing is to be provided, the condition and type should be determined with guidance from the Duxbury Affordable Housing Trust. Mr. Bear added that the original fees-in-lieu were not pro-rated on a one-to-one basis. In addition, the ZBA should take into consideration the impact of any changes on existing residents of the development. Mr. Glennon added that any change in the cash payments should be negotiated through the Planning Board.

Mr. Sullivan suggested that someone should look at the numbers to determine if the fee-in-lieu schedule should be revised. He stated that he does not want to see the developer walking away before the development is completed. Mr. Wadsworth stated that the special permit is to change from a fee-in-lieu schedule to five affordable units to be built somewhere. Mr. Sullivan asked if the developer's profits were considered during the fee-in-lieu negotiations, and Mr. Wadsworth responded that they were not considered because this is not a 40B project. Mr. Bear explained that in the 40B process the town is interested in the developer's profits, but in all other applications the town cannot consider the developer's profits.

Mr. Paul Costello of 91 Delorenzo Drive stated that he has lived at that address for 35 years and is an abutter to Duxbury Estates. He complained that street lights at the development are kept on all night. He stated that he had worked with the Planning Board to move the clubhouse away from his neighborhood but the ZBA allowed it to be moved back. He objected to the noise level of the construction during the past six years. He stated that now NStar has come in and cut back a 20-yard swath in the neighborhood's back yards, and overall it is a disaster. He stated that the developers were supposed to provide a 40-foot buffer zone of trees and shrubs to shield the development from his neighborhood, but instead the developer has placed four arborvitaes about ten feet apart. He stated that the developer is not doing his job.

Mr. Daley stated that the ZBA should look at the landscaping plan and make sure it is being completed. Mr. Broadrick stated that the Building Inspector could make sure that landscaping is taken care of, and that a performance bond could be required to ensure that all landscaping is completed.

Mr. Wadsworth offered to work with the Planning Director to draft the memorandum to the ZBA.

ZBA SPECIAL PERMIT REFERRAL: 302 WASHINGTON STREET / BEAVER & BRIERE

Board members reviewed this special permit application to raze a portion of an existing dwelling and construct an addition with a slightly larger footprint on a pre-existing nonconforming lot. Mr. Broadrick noted that for lots under 20,000 square feet in size a homeowner can apply for a special permit to allow three percent of the difference between 20,000 and the lot size. In this case the lot is 10,891 square feet.

Mr. Casagrande noted that the existing dwelling is already way over the nonconforming lot coverage allowed, and lot coverage is the nonconformity. Therefore the applicant should not be allowed to increase the coverage. He stated that only Chapter 40A, Section 6 should be considered: Is there a substantial increase in the nonconformity, and whether the proposal is more detrimental to the neighborhood. Mr. Casagrande stated that

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the dwelling already exceeds the lot coverage allowed but is asking for more because the application appears to meet the Section 6 requirements. Mr. Broadrick agreed that no one in this situation should be applying under ZBL Section 410.4 (the "three-percent rule").

Mr. Bear pointed out that in the past the Zoning Board of Appeals (ZBA) would allow a "three percent rule" on any pre-existing nonconforming lot. Mr. Casagrande noted that if this were the case, then a homeowner could come back every year with a slight increase. Mr. Glennon stated that 'pre-existing' refers to what was on the lot at the time of the bylaw change that created the nonconformity. He agreed that a property owner cannot keep coming back to increase a nonconformity.

MOTION: Mr. Casagrande made a motion, and Mr. Glennon provided a second, to DEFER JUDGMENT to the Zoning Board of Appeals regarding Special Permit 2013-0016, 302 Washington Street / Beaver & Briere, noting the following:

- Zoning Bylaw Section 410.4 (Definition of Coverage) does not apply because lot coverage is a pre-existing nonconformity, so a Section 6 finding is necessary.
- This application proposes to increase the lot coverage nonconformity, and slightly increases the side setback encroachment nonconformity.

VOTE: The motion carried unanimously, 6-0.

ZBA SPECIAL PERMIT REFERRAL: 143 GURNET ROAD / CABLE HILL REALTY TRUST (SHEEHAN)

Board members reviewed this special permit application to move an existing dwelling away from the coastline and place it on an open pile foundation. In addition, the second floor would be enlarged and a new deck would be constructed. The dwelling and lot are pre-existing nonconforming and the lot contains two dwellings on an 8,250 square-foot lot.

Mr. Broadrick noted that the property is within the Velocity Zone on FEMA Flood Insurance Rate Maps, and the application needs to go through the Conservation Commission. He stated that Mr. Joseph Grady, Conservation Administrator, recommends denial of the proposed project because the Conservation Commission does not allow expansion within a Velocity Zone.

Board members agreed to remain silent on this ZBA referral until the Conservation Commission application is approved.

DISCUSSION: SCOPE OF CONDITIONS IN VARIOUS PLANNING BOARD DOCUMENTS

Mr. Bear stated that he requested this agenda topic because it appears that the Planning Board may be requiring conditions outside the scope of its purview, which puts it at risk for appeal. For instance, he stated that the Planning Board has no business changing a Homeowners' Association outside the Planning Board's jurisdiction. A condition on drainage may be appropriate but a condition on fences is not.

Mr. Glennon stated that he agrees in principle that the Planning Board should not "micro-manage." However, from time to time it may be appropriate to apply conditions that are in the town's best interest toward maintaining its character. He stated that he believes the Planning Board should vet decisions and homeowners' association documents because the town has to deal with the fallout of what may be the developer's best

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intentions. He stated that while the Planning Board needs to be mindful of going too far over the "line in the sand," the Planning Board also needs to consider the intent of the Zoning Bylaws and the look and feel of the town to advance those goals.

OTHER BUSINESS

Minutes:

MOTION: Mr. Casagrande made a motion, and Ms. Ladd Fiorini provided a second, to approve meeting minutes of October 28, 2013 as amended and minutes of November 6, 2013 as written.

VOTE: The motion carried 5-0-1, with Mr. Uitti abstaining.

Town Appeal of FEMA Floodplain Maps: Mr. Broadrick updated Board members that FEMA has acknowledged the town's appeal of proposed flood maps dated May 1, 2013; however, no response is expected from FEMA until March 2014. He stated that an Annual Town Meeting article may be required in case the appeal goes forward so that the town will remain a part of the National Flood Insurance Program and residents with flood insurance can keep their policies. Board members agreed that Mr. Broadrick should submit an article for Annual Town Meeting 2014.

Weekend Rail Restoration: Board members reviewed a letter dated November 19, 2013 from Mr. Broadrick and Mr. Richard Prone, a Duxbury resident and MBTA activist, to MassDOT Board of Directors urging them to consider restoring commuter rail service to the South Shore.

Medical Marijuana Moratorium: Mr. Broadrick stated that he intends to submit an Annual Town Meeting article to establish a medical marijuana moratorium in the Town of Duxbury. Mr. Uitti stated that he recently moderated a panel on this subject and a number of regulated medical marijuana dispensaries (RMDs) are proposed, mostly in towns with available vacant industrial areas. Mr. Glennon noted that a moratorium buys the town time to put together a zoning bylaw, and would presumably identify the town as one that is not friendly toward RMDs. Mr. Broadrick noted that an article can always be withdrawn or indefinitely postponed if need be.

ADJOURNMENT

The Planning Board meeting adjourned at 9:55 PM. The next Planning Board meeting will take place on Monday, December 9, 2013 at 7:00 PM at the Duxbury Town Hall.

MATERIALS REVIEWED

ZBA Special Permit Amendment Referral: Duxbury Estates, Carriage Lane, / Giachetto

- ZBA special permit amendment materials submitted to Planning Office on 10/16/13
- Vision GIS map, aerial photo, and Pictometry orthophoto
- Original ZBA decision dated 02/09/07
- Inclusionary Payment Schedule signed 10/01/07 and worksheet
- Special permit amendment dated 01/19/10
- PB minutes of 02/25/13
- Duxbury Estates Sales History Through 06/30/13 from Assessor's Department
- Duxbury Estates Unit Configuration Worksheet dated 10/18/13
- Real estate ad from Duxbury Clipper dated 10/16/13

ZBA Special Permit Referral: 302 Washington Street / Beaver & Briere

- ZBA materials submitted 10/29/13
- Vision GIS map, aerial photo, Assessor's property card, and Pictometry orthophoto

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ZBA Special Permit Referral: 143 Gurnet Road / Cable Hill Realty Trust (Sheehan)

- ZBA materials submitted 11/07/13
- Vision GIS map, aerial photo, Assessor's property card, and Pictometry orthophoto

Discussion: Scope of Conditions in Various Planning Board Documents

- Memo from T. Broadrick dated 11/13/13 re: Staff research on conditions in ZBL

Other Business

- Meeting minutes of 10/28/13
- Meeting minutes of 11/06/13
- Proposed PB meeting schedule for 2014
- FEMA letter dated 10/31/13 re: acknowledgment of town appeal along with email from C. Bailey dated 10/16/13
- Letter dated 11/19/13 from T. Broadrick & R. Prone to MassDOT Board of Directors re: weekend rail restoration
- OCPC letter dated 10/25/13 re: South Coast rail project Final Environmental Impact Statement/Report (FEIS/FEIR)
- Construction Cost Estimates for September 2013
- Minutes and misc info on Medical Marijuana

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