



Town of Duxbury Massachusetts Planning Board

TOWN CLERK
14 MAR 26 AM 10:30
DUXBURY, MASS.

Minutes 02/24/14

The Planning Board met on Monday, February 24, 2014 at 7:00 PM at the Duxbury Town Hall, 878 Tremont Street, Small Conference Room.

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

Absent: John Bear, Jennifer Turcotte and David Uitti.

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

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

OPEN FORUM

Annual Town Meeting 2014: Mr. Wadsworth reported that he will be out of town for Annual Town Meeting on Saturday, March 8, 2014, the first Town Meeting he will have missed in over twenty years. He stated that Mr. Glennon is expected to make the motion from Town Meeting floor to amend the article with the later expiration date for the medical marijuana moratorium.

Mr. Wadsworth also reported that there is a Special Town Meeting warrant article to change the Town Clerk office from an elected position to an appointed position. Mr. Broadrick noted that it would be one step closer to making the Planning Board an appointed body.

Hall's Corner Economic Development Study: Mr. Broadrick reported that the town has been provided a District Local Technical Assistance (DLTA) project award to produce a Development Strategy / Market Analysis for Hall's Corner from the Old Colony Planning Council. Board members congratulated Mr. Broadrick for his efforts in submitting a successful grant application.

ZBA REFERRAL, SPECIAL PERMIT AMENDMENT (CONTINUED): DUXBURY ESTATES, OFF SUMMER STREET / GIACCHETTO

No one was present to represent the application. Mr. Broadrick reported that Mr. Wadsworth had signed a memorandum to the Zoning Board of Appeals (ZBA) regarding the Planning Board's recommendation after the February 10, 2014 meeting. Board members reviewed that memorandum dated February 12, 2014. Mr. Broadrick stated that all of the documents required from the applicant had been submitted with the exception of the letter from Rockland Trust confirming the \$25,000.00 set-aside from the applicants' loan payment to be set aside for the payment of inclusionary fees.

Mr. Wadsworth requested a motion now that three out of four documents have been submitted. Mr. Glennon asked whether a motion would be required since the memorandum notes that the Planning Board

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 5476; Fax: 781-934-1137

recommendation was subject to those documents being submitted. Mr. Wadsworth stated that it is important for the minutes to reflect that these documents had been submitted, amended by Town Counsel, and reviewed by the Planning Board.

Mr. Broadrick noted that the applicants' attorney, Robert W. Galvin, had no comments other than changing the partial lot release closing deadline to seven days instead of the three days recommended by Town Counsel. He stated that it might be a good idea for the Planning Board to make a motion for approval.

Mr. Glennon noted that while the documents appear to be in order, he would like to defer final approval to legal authorities that work for the Town of Duxbury. He stated that his feeling is that the Planning Board's work is done. Mr. Wadsworth stated that he believes it should be made clear that the Planning Board has seen this version of the documents.

MOTION: Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to acknowledge receipt of the following negotiated agreements between the applicant and Town Counsel:

- Promissory note from Giacchetto Duxbury LLC to the Town of Duxbury in the amount of the Inclusionary Payment Schedule current balance due of \$1,215,000.00.
- Unit Release Request Form for use prior to conveyance of units beginning with the sale of the 21st unit through the 30th unit.
- Second mortgage to guarantee inclusionary payment funds for the Town of Duxbury in case of foreclosure of the property.
- Unit Release Request Form cover letter.

The Planning Board also acknowledges that the documents appear to be in conformity with the intent of the Planning Board's recommendation to the Zoning Board of Appeals dated February 12, 2014.

VOTE: The motion carried unanimously, 4-0.

Mr. Broadrick noted that a letter from Rockland Trust confirming the set-aside amount of \$25,000.00 per building permit to be paid to the Town of Duxbury upon the sale of each unit beginning with the 21st unit through the 30th unit has not been submitted to date. As of yesterday through email correspondence, the applicant has indicated that it is forthcoming.

Mr. James Sullivan of 13 Carriage Lane asked if the Rockland Trust letter exists, and Mr. Wadsworth responded that it has not yet been submitted but it is expected. Ms. Georgeann Blatterman of 47 Carriage Lane expressed concern with trusting the applicants' word that a letter is forthcoming.

ZBA REFERRAL, REVIEW OF PROPOSED COMPREHENSIVE PERMIT MODIFICATION: ISLAND CREEK VILLAGE NORTH, 30 TREMONT STREET / ISLAND CREEK VILLAGE NORTH LLC, KEITH PROPERTIES

No one was present to represent the application for this proposed modification to change an approved assisted living unit to an age-restricted 55+ unit. Mr. Wadsworth stated that the most glaring issue appears to be parking. A total of 94 parking spaces have been allotted for 94 units. Mr. Glennon noted that there was discussion during the unrelated Carriage Lane matter that 55+ developments are experiencing a "soft market." He expressed concern that the applicants for Island Creek may come back in a couple of years to remove the age restriction like some other 40B developments have. Ms. Ladd Fiorini noted that both Merry Village and Duxbury Woods have removed age restrictions.

Mr. James Sullivan of 13 Carriage Lane stated that he follows the real estate market and he believes that the market is improving. Mr. Wadsworth agreed.

Mr. Casagrande noted that the 94 units are age-restricted but the existing 120 units are not age restricted. He noted that the assisted living facility proposed 94 units and 56 parking spaces, and the current proposal is 94 units and 94 parking spaces. He stated that with 55+ rental units, there may be two cars per family.

Ms. Georgeann Blatterman of 47 Carriage Lane asked if visitor parking is provided in the proposed plan, and Mr. Broadrick noted that visitor parking is proposed at the new community center.

Mr. Broadrick noted that the traffic report does not indicate any increased traffic with the proposed plan. In fact, the trip generation study shows 131 trips approved and 112 trips proposed, and the fewer the trips the better. Mr. Casagrande asked if there are parking problems now, and Mr. Broadrick replied that there are none that he is aware of.

Ms. Ladd Fiorini noted that in the 55+ units a fair number of residents would need two vehicles. Mr. Wadsworth suggested taking the 94 units and adding another fifty percent for a 1.5 to 1 ratio of parking spaces per unit. Mr. Casagrande asked if the applicants designated an area for potential future parking spaces to be added, and Mr. Broadrick replied that the layout plan submitted shows the proposed parking configuration. He noted that the Town of Duxbury does not have a parking bylaw that requires 1.5 parking spaces per unit. Mr. Glennon noted that the traffic study shows that apartments generate less traffic than condominiums. Ms. Ladd Fiorini noted that it may be the case in larger urban areas where people take public transportation.

Board members also reviewed a red-lined comprehensive permit decision proposed by the applicants and Mr. Glennon suggested that Condition #19 that was already proposed to be deleted could add language that further parking amendments would require a formal modification. Mr. Casagrande asked if the applicants would not have to do that anyway, and Mr. Glennon responded that it would be a significant change.

Mr. Wadsworth asked if the applicant is Island Creek Villages North LLC, or is it Beacon, who wrote the cover letter. Mr. Broadrick responded that Beacon is the property manager.

Mr. Glennon noted that when the last modification was approved the Planning Board had issues with the height of the assisted living facility, the number of commercial parking spaces, and the placement of handicap accessible parking spaces. He asked if those concerns are still valid and should be raised. Mr. Broadrick responded that the only new building that is now proposed is the 55+ unit, and it is taking the place of the assisted living facility that was approved by the ZBA at four stories. Mr. Broadrick noted that any handicap-accessible parking must meet requirements of the Americans with Disabilities Act. He stated that if this facility is built the Subsidized Housing Inventory will go up because all of the 55+ units will be rentals and will count as affordable. He stated that if affordable housing is to be built in the town, this may be a good location for it.

Ms. Ladd Fiorini asked about plans for a traffic light in the area, which is located near the intersection of Route 3A and Route 3 at Exit 10. Mr. Broadrick responded that plans have been drawn for traffic ramps and a traffic signal, and the applicants' job is to design it, not build it. Mr. Glennon recommended that the Zoning Board of Appeals should endeavor to clarify exactly what portion of the traffic signal cost the applicant would be willing to pay. In the proposed redlined document, the amount is "conservatively projected to be at least seven percent." Mr. Glennon asked who pays the other 93 percent of the traffic signal costs, and Mr. Broadrick replied that the state provides funding.

MOTION: Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to make the following recommendations:

- The parking ratio for Building A, the 94-unit age-restricted building, should be amended to 1.5 spaces per unit because the proposed parking ratio of one space per unit does not allow for visitors and does not allow for more than one vehicle per unit.
- In the redlined Conditions of Approval submitted with the application materials, the proposed deletion of Condition #19 should be replaced with a new condition that the applicant is prohibited to alter the over 55 designation for Building A without a formal modification of the comprehensive permit.
- In the redlined Conditions of Approval submitted with the application materials, specifically the "Peer Review Reports," #3 "Traffic & Site Access" on Page 11, fourth bullet, third paragraph, the Zoning Board of Appeals should endeavor to clarify exactly what portion of the traffic signal cost the applicant would be willing to pay. In the proposed redlined document, the amount is "conservatively projected to be at least seven percent." The Planning Board suggests that the current modification provides an opportunity to clarify what that amount will be.

VOTE: The motion carried unanimously, 4-0.

ZBA REFERRAL, SPECIAL PERMIT: 30 POWDER POINT AVENUE / FOX & DALY

Board members reviewed this special permit application to construct a 20' x 24' post and beam barn, resulting in a site coverage increase from 16 percent to 19 percent on a pre-existing nonconforming lot of 23,087 square feet. Mr. Casagrande noted that lots over 20,000 square feet in area do not have the benefit of the "three percent rule." Mr. Broadrick noted that the application uses the lot across the street for which the owner has a one-ninth percent interest as part of the lot coverage. He stated that only land within the property lines should be considered for lot coverage.

Mr. Casagrande noted that there is an increase in the nonconformity, so now the question is, "Is it more detrimental to add more lot coverage?"

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to recommend denial to the Zoning Board of Appeals regarding a special permit application at 30 Powder Point Avenue / Fox & Daly because although the lot coverage of 16% is a pre-existing nonconformity, the lot size does not meet the requirements of ZBL Section 410.4. The Planning Board is concerned with allowing an increase in a pre-existing nonconforming lot coverage on lots greater than 20,000 square feet in area because it would be more detrimental to the neighborhood and the town overall in the long term.

DISCUSSION: Mr. Casagrande stated that he would prefer to defer judgment to the ZBA because it is up to the ZBA to determine if the lot coverage increase is more detrimental to the neighborhood.

Mr. Glennon stated that although he understands Mr. Casagrande's point of view that letters from neighbors are important, he prefers to take a long-range view because neighbors come and go, and a neighborhood sometimes evolves into something different than how it started. Mr. Glennon stated that the town has a responsibility not to increase coverage on a lot that already exceeds lot coverage requirements. He stated that he would like to avoid intensifying a nonconformity whenever possible.

He stated that what the applicant is proposing is clearly at variance with the Annual Town Meeting vote imposing 15 percent maximum lot coverage.

Mr. Casagrande stated that the "three percent rule" should not have cut off at 20,000 square feet. He noted that the lot size in this application is just over 20,000 square feet.

VOTE: The motion carried, 3-0-1, with Mr. Casagrande abstaining.

**ZBA REFERRAL, APPEAL OF BUILDING INSPECTOR'S DETERMINATION:
207 KING CAESAR ROAD / WALKEY & MCNAUGHT**

Board members reviewed this abutters' appeal of the Building Inspector / Zoning Enforcement Officer's decision to issue a building permit for a nonconforming detached accessory structure (garage) to be connected to the conforming principal structure (dwelling), resulting in a larger nonconforming principal structure. Mr. Wadsworth noted that the permit had been issued and construction had started when the applicants requested a stop-work order. He asked if the applicants stopped work, and Mr. Broadrick replied that there has been no stop work order issued. Mr. Broadrick noted that if you attach a nonconforming structure to a conforming structure, then the "whole kit and caboodle" becomes nonconforming. Mr. Wadsworth noted that the proposed structure is only 1.6 feet from the property sideline.

Mr. Glennon stated that this application appears to be similar to the special permit for 23 Harrison Street where a garage was converted to a garage with living space over it, which in this case adds living space within 1.6 feet of the property line. He stated that he believes this intensifies the nonconformity, and commended the applicants for clearly articulating the issues.

MOTION: Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to recommend approval of a request for zoning enforcement (ZBA case #2014-0012) at 207 King Caesar Road / Walkey & McNaught, specifically a request for the Zoning Enforcement Officer to issue a stop work order and to require the property owner to file a special permit through the Zoning Board of Appeals.

DISCUSSION: Mr. Casagrande noted that if the accessory structure remained disconnected from the dwelling it would be allowed. He noted that the ZBA has issued decisions time and again that increasing the height of a nonconforming structure does not necessarily increase the nonconformity. Ms. Ladd Fiorini stated that she does not agree that increasing the height is not an increase in nonconformity. Mr. Casagrande pointed out that there is no volume restriction. Mr. Broadrick noted that different communities have differing points of view. He noted that the abutters have every right to object to the proposed construction. Mr. Glennon agreed, stating that he sees pre-existing nonconformities as three-dimensional. He noted that although the Zoning Bylaws protect what is already built, he believes that the permitted height within a setback is zero, so any increase in height increases the nonconformity.

VOTE: The motion carried unanimously, 4-0.

ZBA REFERRAL, SPECIAL PERMIT: 5 SOUTH PASTURE LANE / HOFFMAN

Board members reviewed this application to provide a special permit for an existing accessory apartment within a single-family dwelling in a Planned Development. Mr. Broadrick pointed out that Zoning Bylaws clearly state that accessory apartments are not allowed within Planned Developments. Mr. Wadsworth pointed out that the number of bedrooms is already an issue in this Planned Development. Mr. Broadrick noted that the relief would be a variance, or at least a modification to the special permit for the Planned Development.

Ms. Ladd Fiorini stated that there appears to be nothing the Planning Board can do to help the situation. Mr. Glennon agreed that it appears to be a zoning enforcement issue. Mr. Casagrande noted that there is no "in-law apartment" bylaw. Mr. Wadsworth stated that it cannot be determined who might live there in the future.

MOTION: Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to recommend denial of special permit #2014-0013, 5 South Pasture Lane / Hoffman, based on Zoning Bylaws Section 410.6.1, which states that, "...single-family dwellings authorized under a special permit for a...Planned Development shall be ineligible for an accessory apartment." The Planning Board notes that Planned Developments are designed with a limited number of bedrooms and an accessory apartment within a single-family dwelling may violate the number of bedrooms permitted.

VOTE: The motion carried unanimously, 4-0.

NOTE: After the meeting a memorandum was submitted to the Zoning Board of Appeals, and subsequently it was discovered that the property is adjacent to a Planned Development but is not a part of the Planned Development. Therefore, the chairman withdrew the memorandum and the Planning Board was silent on this application.

OTHER BUSINESS

Meeting Minutes:

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Casagrande provided a second, to approve meeting minutes of January 27, 2014 as amended.

VOTE: The motion carried unanimously, 4-0.

ADJOURNMENT

The Planning Board meeting adjourned at 8:55 PM. The next Planning Board meeting will take place on Monday, March 24, 2014 at 7:00 PM at the Duxbury Town Hall.

MATERIALS REVIEWED

ZBA Referral, Special Permit Amendment (Continued): Duxbury Estates, off Summer Street / Giacchetto

- Memo from G. Wadsworth to S. Zoltowski dated 02/12/14

ZBA Referral, Review of Proposed Comprehensive Permit Modification: Island Creek Village North

- ZBA application and materials

ZBA Referral, Special Permit: 30 Powder Point Avenue / Fox & Daly

- ZBA application and materials
- Vision GIS map, aerial photo, Assessor's property card, and Pictometry orthophoto

ZBA Referral, Appeal of Building Inspector's Determination: 207 King Caesar Road / Walkey & McNaught

- ZBA application and materials
- Vision GIS map, aerial photo, Assessor's property card, and Pictometry orthophoto

ZBA Referral, Special Permit: 5 South Pasture Lane / Hoffman

- ZBA application and materials
- Vision GIS map, aerial photo, Assessor's property card, and Pictometry orthophoto

Other Business

- Meeting minutes of 01/27/14

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