



Town of Duxbury Massachusetts Planning Board

TOWN CLERK
14 APR 18 AM 11:13
DUXBURY, MASS.

Minutes 03/24/14

The Planning Board met on Monday, March 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; Scott Casagrande, Jennifer Turcotte and David Utti.

Absent: John Bear.

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

Mr. Wadsworth called the meeting to order at 7:12 PM, after he had been sworn in by Town Clerk upon re-election at Town Elections on March 22, 2014. Mr. Utti had also been re-elected but was not able to attend the swearing in; therefore Mr. Utti participated in discussions but was not able to vote at tonight's meeting.

OPEN FORUM

Open Space Committee: Mr. Glennon reported that a scavenger hunt has been scheduled at Standish Monument on Sunday, May 18.

ZBA REFERRAL, COMPREHENSIVE PERMIT: 56 & 70 BOW STREET / MCLEAN'S WAY LLC, REINHALTER

Mr. Wadsworth addressed this agenda item out of order because approximately 20 members of the public were present. No one was present to represent the application. Board members had received a large packet of Zoning Board of Appeals (ZBA) materials for this 24 single-family, two-story freestanding unit 40B development proposed on 10.29 acres off of Bow Street. Mr. Wadsworth advised the public that the comprehensive permit granting authority is the ZBA, and the Planning Board will be offering its recommendations to the ZBA but will not be the decision-maker.

Mr. Broadrick described the project as 24 single family condominiums that are detached units with detached garages. Six units (25 percent) would be deed restricted as affordable housing. He reported that on March 11, 2013 the Duxbury Board of Selectmen submitted a letter to MassHousing regarding the Project Eligibility application for this proposed development. In this letter, which reflected input from the Planning Board, the Board of Selectmen mentioned that the project was 'poorly designed' and raised several issues that are addressed in the comprehensive permit application.

Mr. Broadrick stated that MassHousing responded to the Project Eligibility that the project was "generally eligible," (Tab 5 in the ZBA packet) and also raised some of the same issues that were brought up in the Board of Selectmen's letter of March 11, 2013.

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

Mr. James White of 53 Bow Street stated that he does not believe waivers should be granted for this project. Mr. Wadsworth advised Mr. White that the ZBA will determine whether waivers are granted or not.

Mr. Peter Settel of 4 Bowsprit Lane asked if the applicants are required to respond to MassHousing's recommendations. Mr. Broadrick replied that MassHousing is the subsidizing entity that approves the project's financing and therefore it is in the applicant's best interest to address any issues raised by MassHousing.

Mr. Thomas Burton of 54 West Street asked if the Planning Board is required to provide its recommendation after tonight's meeting, and Mr. Broadrick advised that the Planning Board may wish to review the ZBA consulting engineer's report once it has been issued. Mr. Settel stated that he does not believe the application is complete at this time and there are public safety and other important issues that need to be resolved.

Ms. Beverly Bartley of 50 Bow Street asked if finding a location for 40B projects is under the Planning Board's purview. Mr. Wadsworth responded that the Planning Board only looks at applications and how they comply with the Zoning Bylaws and does not find locations for 40B projects.

Mr. Robert Fallon of 98 Bow Street stated that he agreed with the Board of Selectmen's March 2013 letter, noting that there are infrastructure issues and the proposal would result in the destruction of the existing property and the town's character. He asked what is the definition of condominium. Mr. Uitti stated that condominiums are a form of ownership with common ownership of open areas.

Ms. Jessica Williams of 1243 Tremont Street asked about the process which resulted in the property owner filing a 40B application. Mr. Wadsworth stated that the property owner originally filed for a six-lot definitive subdivision until it was discovered that a Residential Conservation Cluster determination was required due to the land area and the number of lots proposed. The review by the Planning Board determined that the land was suitable for a Residential Conservation Cluster which would result in the same number of lots although the lots would be smaller and surrounded by open space. Mr. Broadrick stated that the applicant withdrew the application when it was determined that a Residential Conservation Cluster would be required.

Ms. Williams asked if it is possible for the Planning Board to reconsider a cluster, and Mr. Broadrick stated that the property owner withdrew his application so there is nothing for the Planning Board to reconsider. Ms. Williams asked if the Planning Board is able to revise its cluster bylaw, and Ms. Turcotte replied that the only way the Zoning Bylaws can be changed is by a vote at Town Meeting.

Ms. Williams asked if this would be an appropriate time for the Planning Board to recommend a change to the cluster bylaw, and Ms. Turcotte replied that changing a bylaw in response to a particular project is not good planning practice. Mr. Casagrande noted that the cluster bylaw was adopted in order to increase the amount of open space in the town. Ms. Williams stated that the cluster bylaw appears to be flawed and recommended that the Planning Board review it for the benefit of the entire town. Mr. Glennon noted that the Planning Board is obligated to apply the Zoning Bylaws as written.

Mr. Charles S. Willauer of 90 Bow Street asked why the town is allowing 24 units with six affordable units when there are houses on the market that would meet the affordable housing requirements. Mr. Broadrick stated that in the new Planned Production Plan approved by the Board of Selectmen and Planning Board in January 2014, it shows an affordability gap because houses are too expensive in Duxbury to qualify for affordable housing lotteries or mortgage buy-down programs.

Board members then addressed the tabbed comprehensive permit application form submitted by the applicant's representatives.

Mr. Glennon questioned the applicant's statement in the Narrative Description (Tab 2, page 7 of 8) that the proposed project would have no significant impact on traffic operations on Bow Street, Tremont Street, or West Street. Mr. Broadrick noted that a traffic study was submitted with the comprehensive permit application but a copy was not forwarded to the Planning Board.

Mr. Glennon noted that in Tab 5, Attachment 1, Part B, the applicant's response to the MassHousing letter of eligibility, the applicants state that the Town of Duxbury has no approved Planned Production Plan. Mr. Broadrick stated that although the Board of Selectmen and Planning Board approved the plan in January 2014 on behalf of the Town of Duxbury, it has not yet been approved by the state Department of Housing and Community Development.

Mr. Glennon noted that in Tab 7, Purchase & Sales agreement dated January 8, 2013, site control was scheduled for July 17, 2013 unless agreed upon otherwise. In Rider A that date was extended for one year to allow the applicant to obtain permits, which would expire on July 17, 2014. Mr. Glennon stated that because the process most likely will not be over by July 17, the ZBA should be mindful of the status of the applicant's site control.

Mr. Glennon noted in Tab 9, the State Energy and Environmental Affairs Environmental Notification Form dated February 21, 2014, it states that "the Proponent [Dr. Reinhalter] was advised to withdraw the seven-lot proposal." Mr. Glennon clarified that it was not the Planning Board that advised the property owner.

Mr. Brian Moriarty of 52 Bow Street stated that he was present for the earlier RCC/Subdivision hearings and it became clear to him that Dr. Reinhalter apparently did not want to build a cluster development and withdrew. Mr. Broadrick agreed, recalling that Dr. Reinhalter had said that he would not be able to sell cluster lots in Duxbury.

Mr. Glennon noted that the site plan submitted on Tab 16, Sheet 1, a 20-foot wide roadway is proposed. He stated that a 20-foot width seems narrow. He asked where off-street parking would go and how would a fire truck access the road. Ms. Turcotte stated that the travel lane may be 20 feet wide with a one-foot Cape Cod berm and a four-foot shoulder, for a total of 30 feet. Ms. Beverly Bartley of 50 Bow Street stated that there would be nowhere to put the snow.

Ms. Deb Fallon of 98 Bow Street stated that the corner of Bow Street and Tremont Street is a dangerous intersection and it is not safe for families. Mr. Broadrick noted that even for the six-lot subdivision traffic was a concern. Board members indicated that they would like to see a consulting engineer's review of the traffic study and input from the Fire Department as well. Mr. Broadrick noted that the Development Review Team (DRT) will meet on March 26 and the Fire Department and Police Department will be represented. Mr. Glennon stated that the Highway Safety Committee should also be consulted because they may have records on accident rates and other studies.

Mr. Glennon stated that looking at the documents submitted so far, it appears as though this is a preliminary application to be further negotiated over time. The number of units may decrease from the 24 units currently proposed. He noted that looking at the current plans it appears that the dwellings would be too close together, resulting in congestion. Especially along the Moriarty property line there appear to be topographical grading issues and two dwellings in that area that would prominently overlook the Moriarty property. He noted that grading issues may affect lots on Unit 3, 22, 21 and 2. Ms. Williams of 1243 Tremont Street noted that construction on a sloped lot adds to the expense of developing the lot.

Mr. Uitti stated that in Tab 5, page 4, #5, the MassHousing letter of August 27, 2013, it was pointed out that the Fire Department has concerns with the close proximity of the structures to one another. The applicant was advised to modify the project design to address these concerns.

Ms. Turcotte stated that although the Board of Health will review the project for Title 5, it appears that the leaching field has been placed at the corner of the entry to the development. She stated that plans show that the leaching fields are designed ten square feet greater than required; however most leaching fields are designed 100 feet greater than required. Mr. Wadsworth noted that the ZBA should ask its consulting engineer to look closely at the septic design to ensure it meets state leaching field requirements.

Board members discussed the approach of creating its referral memorandum to the ZBA. Mr. Wadsworth stated that the Planning Board would like the opportunity to review the consulting engineer's report and the traffic report. Mr. Casagrande stated that the Planning Board could provide initial comments.

Mr. Wadsworth asked if the Planning Board members would like to comment on requested waivers (Tab 15). He stated that Section 410.4, Side Yard Setback (page 4), where the applicant proposes a 14.52 side yard setback waiver, should not be granted. Mr. Wadsworth stated that there should be at least a 30 feet building-to-building separation.

Ms. Ladd Fiorini stated that in Section 1.(7), page 2, the applicant seeks a waiver from the requirement to file a Landscape Plan. She stated that a Landscape Plan should be filed and therefore a waiver should not be granted for this requirement.

Mr. Wadsworth stated that in Section 410.5 (page 5) the applicant seeks a waiver from the requirement to submit a plot plan for each building permit. He stated that a plot plan should be required for each building permit and therefore a waiver should not be granted for this requirement.

Ms. Turcotte noted that waivers are being requested for Sections 901 (Enforcement), 903.1 (Issuance of building permit), and 904.1 (Occupancy Permit). Since this is a comprehensive permit, she questioned whether these waivers apply.

Mr. Wadsworth asked about a proposed easement to a back drainage area, and Mr. Broadrick responded that the Planning Board has not seen the stormwater report. Ms. Turcotte stated that a stormwater report should be required if it has not been submitted yet.

Mr. Broadrick suggested that a referral memo to the ZBA should include the Board of Selectmen letter to MassHousing dated March 2013 that will reinforce that the proposed project is inconsistent with the town's planning goals.

MOTION: Mr. Glennon made a motion, and Ms. Turcotte provided a second, for the Planning Board to submit an initial referral memorandum to the Zoning Board of Appeals regarding McLean's Way comprehensive permit #2014-0017 (McLean's Way LLC, Emil Reinhalter, 56 & 70 Bow Street) that outlines initial general issues and responses to waivers, and to request more time and more information from the ZBA, with the next Planning Board review of the comprehensive permit scheduled for April 28, 2014 at the earliest.

VOTE: The motion carried unanimously, 5-0.

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ELECTION OF PLANNING BOARD OFFICERS AND COMMITTEE ASSIGNMENTS

Mr. Wadsworth opened the floor to nominations for Planning Board chairman.

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

DISCUSSION: Mr. Wadsworth asked if there were any other nominations, and there were none.

VOTE: The motion carried unanimously, 5-0.

Mr. Wadsworth opened the floor to nominations for Planning Board vice chairman.

MOTION: Mr. Casagrande made a motion, and Ms. Turcotte provided a second, to nominate Mr. Glennon as Planning Board vice chairman.

DISCUSSION: Mr. Wadsworth asked if there were any other nominations, and there were none.

VOTE: The motion carried unanimously, 5-0.

Mr. Wadsworth opened the floor to 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: Mr. Wadsworth asked if there were any other nominations, and there were none.

VOTE: The motion carried unanimously, 5-0.

Board members then addressed committee appointments:

- Duxbury Affordable Housing Trust - Mr. Wadsworth agreed to continue serving.
- Alternate Energy Committee – Mr. Uitti expressed an interest in serving.
- Community Preservation Committee – Ms. Ladd Fiorini will continue serving.
- Design Review Board – Mr. Casagrande expressed an interest in serving.
- Economic Advisory Committee – Mr. Bear will continue to serve.
- Metropolitan Area Planning Council (MAPC) – Mr. Broadrick will continue to serve.
- Old Colony Planning Council (OCPC) – Mr. Broadrick will continue to serve, and Mr. Wadsworth will continue as alternate.
- Open Space Committee – Mr. Glennon will continue to serve.
- South Shore Coalition / MAPC – Mr. Casagrande will continue to serve.
- Zoning Bylaw Review Committee – Mr. Wadsworth and Mr. Casagrande will continue to serve.

Mr. Wadsworth asked if any Planning Board members are interested in serving on the MBTA Advisory. Mr. Broadrick is currently serving because no one was available to serve last year. Ms. Turcotte offered to serve on this board.

MOTION: Mr. Glennon made a motion, and Mr. Casagrande provided a second, to recommend that the Board of Selectmen appoint Ms. Turcotte as Planning Board representative to the MBTA Advisory.

VOTE: The motion carried unanimously, 5-0.

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REQUEST FOR WAIVER OF ESCROW ACCOUNT, ASPR: DUXBURY FITNESS, 612 CONGRESS STREET / PAQUETTE

Board members reviewed a letter dated March 7, 2014 from Mr. Justin Paquette and Ms. Victoria Paquette, co-owners of Duxbury Fitness, requesting that the Planning Board waive the requirement for establishing an escrow account because there are no proposed changes to the site, only a change in use. Mr. Broadrick noted that they have filed for Administrative Site Plan Review (ASPR) and for a special permit for a change in use from a veterinary clinic to a personal training fitness center, and the first ASPR public meeting is scheduled for Monday, April 14, 2014. Mr. Broadrick also noted that the Development Review Team (DRT) would be reviewing the application at its meeting on March 26, 2014.

Ms. Turcotte stated that she would be hesitant to waive the escrow account requirement without first reviewing a site plan. Mr. Glennon agreed, stating that the Planning Board might want to reserve the right to waive the escrow account at the initial public meeting.

MOTION: Mr. Glennon made a motion, and Ms. Turcotte provided a second, that the Planning Board reserve the right to waive the applicants' request for establishment of an escrow account for Duxbury Fitness at 612 Congress Street / Paquette, until the initial public meeting with the Planning Board on April 14, 2014.

VOTE: The motion carried unanimously, 5-0.

REQUEST TO CLOSE ESCROW ACCOUNT: MACFARLANE FARMS / OLDE KINGS, LLC

Board members reviewed a letter from Mr. John Baldwin dated March 11, 2014 requesting to close the escrow account. Mr. Broadrick reminded the board members that another escrow account remains for the current owners, MacFarlane Farms Realty Trust.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Casagrande provided a second, to close an escrow account for MacFarlane Farms / Olde Kings, LLC and release all remaining funds including interest.

VOTE: The motion carried unanimously, 5-0.

ZBA REFERRAL, SPECIAL PERMIT: 39 JOSSELYN AVENUE / LAWSON

Board members reviewed special permit application materials for this proposal to install a new foundation under an existing porch and to construct a new second-level deck within a side setback on a pre-existing nonconforming lot of 10,890 square feet. Ms. Ladd Fiorini noted that the deck will overlook another house. Mr. Broadrick noted that the compass rose is upside-down on the plan.

Mr. Glennon noted that an existing roof becomes a floor. Ms. Ladd Fiorini stated that it may overlook someone's bedroom on the abutting property. Mr. Casagrande stated that it will overlook Duxbury Bay. Mr. Glennon stated that the issue appears to be that the structure is only 4.8 feet from the property line. He stated that it appears that the applicant is elevating the use to add an additional level, noting that any vertical increase in setback is an intensification of a nonconformity. He stated that the Planning Board has sent consistent messages to the Zoning Board of Appeals (ZBA) but the ZBA says it is not detrimental to the neighborhood. Mr. Casagrande stated that the applicant is adding a use, not adding a structure. Mr. Glennon noted that the allowed height in a setback is zero. Mr. Uitti asked if "use" is referenced in the Nonconforming Lot Bylaw, and Mr. Glennon responded that what used to be one level of activity is now two. He stated that one of the

purposes of the Zoning Bylaws is to protect residents from neighbors who are at variance with the intent of the Zoning Bylaws. Mr. Uitti stated that setback appears to be the only issue.

Ms. Turcotte recommended deferring to the ZBA regarding this application. Mr. Casagrande recommended deferring or approving. Ms. Ladd Fiorini recommended deferring judgment to the ZBA, noting that she drove by the site and understands Mr. Glennon's point of view. She added that the railing will be higher than the former roof visually.

MOTION: Ms. Turcotte made a motion, and Mr. Casagrande provided a second, to defer judgment to the Zoning Board of Appeals regarding special permit #2014-0014 for a proposal to install a new foundation under an existing porch and to construct a new second-level deck within a side setback on a pre-existing nonconforming lot of 10,890 square feet at 39 Josselyn Avenue / Lawson.

VOTE: The motion carried unanimously, 5-0.

OTHER BUSINESS

Mr. Wadsworth Anniversary of Service: Staff recognized that with his recent re-election, Mr. Wadsworth will be entering his 20th year of volunteer service to the Duxbury Planning Board. Board members applauded Mr. Wadsworth for his dedication to the town.

Meeting Minutes:

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Casagrande provided a second, to approve meeting minutes of February 10, 2014 and February 24, 2014 as amended.

VOTE: The motion carried unanimously, 5-0.

Signature Page for Registry of Deeds and Land Court: Board members signed these forms that the Registry of Deeds and Land Court will use to verify signatures when plans are recorded.

ADJOURNMENT

The Planning Board meeting adjourned at 10:32 PM. The next Planning Board meeting will take place on Monday, April 14, 2014 at 7:00 PM at the Duxbury Town Hall.

MATERIALS REVIEWED

Election of Planning Board Officers and Committee Assignments

- Planning Board Committee Appointments spreadsheet dated 03/07/14

Request for Waiver of Escrow Account, ASPR: Duxbury Fitness, 612 Congress Street / Paquette

- Letter from J&V Paquette dated 03/07/14

Request to Close Escrow Account: MacFarlane Farms / Olde Kings, LLC

- Letter from J. Baldwin dated 03/11/14

ZBA Referral, Comprehensive Permit: 56 & 70 Bow Street / McLean's Way LLC, Reinhalter

- ZBA Comprehensive Permit application and materials submitted on 03/10/14
- Vision GIS map, aerial photo, Assessor's property card, and Pictometry orthophoto

ZBA Referral, Special Permit: 39 Josselyn Avenue / Lawson

- ZBA application and materials submitted on 03/07/14
- Vision GIS map, aerial photo, Assessor's property card, and Pictometry orthophoto
- View Easement Agreement recorded at Land Court

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Other Business

- Meeting minutes of 02/10/14
- Meeting minutes of 02/24/14
- HW Group memorandum dated 03/11/14 re: ZBRC preliminary findings for 03/12/14 meeting
- Construction Cost Estimates for February 2014

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