



Town of Duxbury Massachusetts Planning Board

Approved 01/12/2015

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DUXBURY, MASS.

Minutes 11/10/14

The Planning Board met on Monday, November 10, 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, and David Uitti.

Absent: John Bear and Jennifer Turcotte.

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

Mr. Wadsworth called the meeting to order at 7:02 PM.

OPEN FORUM

Planning Department Intern: Mr. Broadrick announced that a local college student, Mr. Samuel Vanderwater, will serve as Planning Department intern for the month of December while he is on break from his studies at University of Capetown, South Africa, where he is in a graduate program for City and Regional Planning.

Appreciation of Walter Amory: Mr. Broadrick announced the recent passing of Mr. Walter Amory of Amory Engineers in Duxbury. Mr. Amory served as consulting engineer for the Planning Board for many years.

CONTINUED PUBLIC HEARING, DEFINITIVE SUBDIVISION: LITTLE TOWN WAY, 0 TREMONT STREET / NASS & ALFIERI

Mr. Wadsworth opened the continued public hearing for this two-lot Definitive Subdivision at 7:05 PM. Present were the applicant, Mr. Loren Nass, and the applicants' representatives, Mr. Daniel Orwig of Orwig Associates in Duxbury; and Atty. Lee Alfieri. Ms. Ladd Fiorini read the correspondence list to be added to the record:

- PB minutes of 09/22/14
- Mutual Extension form signed by the applicant and PB members on 09/22/14 and stamped with Town Clerk on 09/23/14
- Affidavit of Service signed by J. Turcotte and stamped with Town Clerk on 10/27/14
- Affidavit of Service signed by D. Uitti and stamped with Town Clerk on 10/27/14
- Revised plans and "Revisions and Additional Materials for Little town Way" dated 11/03/14
- Email from D. Grant to P. Brennan dated 11/03/14 re: Transmittal of revised plans and materials
- Letter from P. Brennan dated 11/04/14 re: Consulting engineer review letter
- Emails between J. Turcotte and D. Grant dated 11/10/14 re: Public hearing participation eligibility
- Email from T. Broadrick to G. Wadsworth et al dated 11/10/14 re: Issue with proposed subdivision plan
- Emails between T. Broadrick and P. Brennan dated 11/10/14 re: PB attendance

Mr. Broadrick noted that revised plans submitted on November 3, 2014 do not match the recorded lot lines shown on the most recent plan for this property as a result of an ANR application approved by the Planning

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Board in April 2014. Mr. Broadrick distributed a highlighted plan for board members to review. Mr. Broadrick advised the Planning Board to request that the applicants withdraw their current Definitive Subdivision application, submit a new ANR plan showing the revised lot lines, and then re-file a new Definitive Subdivision application.

Atty. Alfieri agreed with Mr. Broadrick that a new ANR plan is needed, noting that it was an oversight to submit the revised Definitive Subdivision plan without ANR approval of the new lot lines.

Mr. Wadsworth asked if the properties were owned by the same entity, and Atty. Alfieri confirmed that they were. Mr. Wadsworth noted that it appeared that the owners' names varied slightly. Atty. Alfieri stated that they were waiting until the plans were final prior to executing any deeds. He stated that 907 Tremont Street will remain under the ownership of the Estate of Priscilla Miles, and the two remaining parcels would be under the name of the Miles Nass Realty Trust, of which the Estate of Priscilla Miles is 80 percent owner. Mr. Wadsworth requested a letter indicating that all owners are in agreement with the subdivision filing. Mr. Uitti asked if Atty. Alfieri represented all parties, and Atty. Alfieri confirmed that he did.

Atty. Thomas Tucker, who was present to represent an abutter, stated that there was a litigation between the executor and beneficiaries of the Priscilla Miles estate. He stated that some of the beneficiaries are opposing the subdivision. Atty. Alfieri stated that the appeals court gave consent to the subdivision application.

Mr. Broadrick stated that the applicant needs clear direction from the Planning Board. Mr. Wadsworth stated that it is clear that a new ANR plan needs to be filed. Atty. Alfieri stated that an ANR plan would be filed by the end of the week. Ms. Grant stated that abutters may be confused because the public hearing notice they received would be for a plan with different lot lines than would be shown after the ANR. She also advised the board that the applicants had never submitted a certified abutters list. Mr. Casagrande stated that he does not want to make more work for the applicants, so he would recommend an ANR filing with no Definitive Subdivision withdrawal. Mr. Uitti agreed, and Mr. Glennon also agreed, noting that the Definitive Subdivision public hearing has been continued several times already.

Mr. Wadsworth directed the applicant to submit a certified abutters list, and directed the staff to publish another public hearing notice after the ANR has been approved. Ms. Grant noted that this would be the third public hearing notice abutters would receive. Mr. Orwig and Atty. Alfieri agreed to Mr. Wadsworth's plan.

Mr. Wadsworth invited Mr. Patrick Brennan of Amory Engineers, the town's consulting engineer, to review the most recently revised subdivision plan. Mr. Brennan highlighted issues raised in his letter dated November 4, 2014:

- Post-development drainage calculations do not include any impervious area from the proposed lots. Roof runoff should be incorporated into the drainage design.
- Grass cover in pre-development calculations should be shown as "good' grass cover" or "meadow."
- Details shown on the plan that do not pertain to this submittal should be removed.
- A detail showing riprap at the flared end section should be added.
- Additional cover over drain pipes should be added, or else a waiver should be requested. The current plans show less than two feet of cover and a minimum of 2 ½ feet is required.
- A nitrogen loading analysis needs to be submitted.
- Calculations need to be submitted showing that the detention pond will drain completely within 72 hours following a rain event. Construction details should show the depth of loam, surface treatment / planting and a stabilization schedule. Also trash racks/security grates are required on the flared end section.
- The current plans show a 7-foot deep ponds and Subdivision Rules and Regulations do not allow basins over four feet in depth.

15 JAN 15 11:09 AM
TOWN CLERK
DUXBURY MASS

- One of the catch basins and a gas main are located within the proposed driveway easement and easement language should include utilities.
- Erosion Control and Operation and Maintenance Plans should be revised to add locations and details of hay bales and silt fence. A stabilized construction entrance detail should be shown on plans. Maintenance schedule requirements for the catch basins and detention pond should be shown on the plans. Requirements for an underground detention system should be removed because none is proposed.
- Cape Cod berm should be placed with both binder and wearing courses of pavement.
- Feasibility/necessity to relocate two utility poles and a fire hydrant for "clear line of sight construction" is questioned.
- Plans show two-inch water service for the lots, and one-inch pipes are adequate.
- Enforceability of maintaining the land outside the two driveways and the detention pond as an "open meadow" as stated in the Environmental Impact Plan is questioned.

15 JAN 15 AM 9:50
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 TOWN CLERK

Mr. Orwig responded to these comments by noting that most of them are housekeeping items except for the drainage. He stated that he designed the detention pond to run long and narrow parallel to Tremont Street in order to avoid clearing large oaks that provide tree cover. He stated that he would like to keep as much cover along Tremont Street as possible. He stated that there is a ten-foot flat area that would provide easy access in and out of the property and a two-foot deep detention pond, not seven feet deep.

Mr. Glennon stated that he had never seen a road shaped like a lot, noting that it appears to be more of a "blob" than a road. Mr. Orwig noted that the right-of-way was designed to meet Subdivision Rules and Regulations.

Mr. Glennon asked if the subdivision would be subject to a Homeowners' Association (HOA), and Atty. Alfieri confirmed that it would. Mr. Orwig added that there would be a common easement for access to both lots which would be included in the HOA.

Mr. Broadrick noted that although access would be over the easement, they would still need to provide legal access off the frontage for both lots. He also suggested that at least a 9' x 20' pull-off should be added so that one vehicle can pull over when another vehicle is approaching. Mr. Casagrande noted that it could be paved or gravel.

Mr. Wadsworth stated that subdivision plans usually are prepared, signed and stamped by a registered professional engineer, noting that these subdivision plans appear to be prepared by Mr. Orwig, who is a registered landscape architect. Mr. Orwig stated that the plans were stamped by Neil Murphy, a registered professional engineer, and they worked together on the plans.

Mr. Wadsworth noted Zoning Bylaw (ZBL) Section 406.4 that "Properties located such that the site lies within one zone as reflected on the Aquifer Protection Overlay District (APOD) maps shall be governed by the restrictions applicable to the zone in which the activity, structure or sewage disposal system is located." He also noted that Lot A on the subdivision plan is largely located in the APOD, although it is not known exactly where the dwelling or septic structure will be located. Mr. Uitti pointed out that Note 12 on the plan states that, "Spetic systems to be located outside the APOD. Structures to be located outside APOD or within 30' allowable use zone."

Mr. Wadsworth noted ZBL Section 202.2 states that, "Where a boundary line other than a WPOD boundary line divides a lot, a use permitted as a matter of right or by special permit in the less restricted district may be extended not more than thirty feet into the more restricted portion of the lot." He asked if there are any width requirements for general acreage. Mr. Broadrick responded that the applicants appear to have configured the lot frontage to address minimum requirements. He noted that Lot B on the subdivision plan appears to just fit

in the required 150-foot circle within the allowable use zone. He stated that the circle and the frontage are both within the APOD. Atty. Alfieri stated that the structure will be built outside the APOD and therefore Residential Compatibility guidelines apply. Mr. Casagrande noted that the "Schedule of Lot Areas" on sheet 1 show that Lot A contains a total of 45,565.76 square feet, and Lot B contains 44,868.81 square feet.

Atty. Thomas Tucker, who represents Mr. Joel Stein and Ms. Cathy Stein, abutters to the proposed subdivision, stated that he has a letter dated November 10, 2014 regarding lot area that he would like to submit to the Planning Board, which he distributed. He stated that ZBL Section 406.7 states that "Residential dwellings shall be permitted at a density not to exceed one dwelling unit per 60,000 square feet of upland..." He stated that the purpose of the bylaw is clear: protection of groundwater, and it is not be waived, overlooked or diminished in any way. He stated that land partially in the APOD and partially in the RC district must meet the requirements of the more restrictive district. He referenced two court cases mentioned in his letter that show that land in a more restricted zone cannot be used in conjunction with a project to be built on the less restricted portion of the lot, where the use of the more restricted portion of the lot is prohibited by the zoning bylaw for that type of lot.

Mr. Wadsworth suggested consulting Town Counsel regarding the question of which zoning district requirements would apply to this subdivision application. Atty. Alfieri stated that he has no objection as long as he is informed of Town Counsel's response. Atty. Alfieri requested Town Counsel's contact information, and Mr. Wadsworth provided it. Mr. Broadrick requested that Atty. Alfieri not contact Town Counsel until staff has had an opportunity to initiate the discussion with them.

Mr. Joel Stein of 879 Tremont Street stated that three households use the right-of-way shown on the subdivision plan, including his. He stated that he objects to three more households accessing property very close to where their access is located. Mr. Glennon agreed that it does appear to be an issue because the new driveway would be located next to an existing driveway which is directly across from the Department of Public Works maintenance facility access.

Mr. Wadsworth suggested that the Planning Board members schedule a site visit to view the properties.

Mr. Stein submitted an undated letter with two attachments stating four objections to the proposed subdivision, and also pointing out that their dwelling is incorrectly shown on the subdivision plan, and is between 10-15 feet from the property line, as shown on a plan submitted with his letter.

Mr. Wadsworth stated that he would like to see Neil Murphy's address shown on revised plans. He would also like any reference to an ANR removed until the ANR has been approved by the Planning Board. He would like revised plans to remove the statement that "Planning Board endorsement does not certify compliance with Zoning Bylaws."

Atty. Alfieri agreed to continue the public hearing to January 26, 2015.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Casagrande provided a second, to continue the public hearing for the Littleton Way Definitive Subdivision / Nass & Alfieri to Monday, January 26, 2015 at 7:05 PM, with revised plans and materials due by January 12, 2015.

VOTE: The motion carried unanimously, 5-0.

Mr. Wadsworth noted that the ANR plan would be added to the Planning Board's December 8, 2014 agenda, with the ANR application due by December 1, 2014. Mr. Alfieri and the Planning Board signed the Public Hearing Extension form.

TOWN CLERK
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DUXBURY MASS.

**DISCUSSION REGARDING POTENTIAL ANNUAL TOWN MEETING ARTICLE:
NEW RESIDENTIAL SOLAR ENERGY SYSTEMS ZONING BYLAW**

Mr. Glennon stated that he originally brought this topic to the Planning Board's attention because in reviewing Construction Cost reports from the Building Department, they had seen numerous building permits for solar structures on rooftops. Mr. Glennon commented that it may be a matter of time before someone applies for a ground-mounted solar facility. He asked if ground-mounted solar arrays ought to be regulated in Duxbury. Board members reviewed two model zoning bylaws that had been included in their October packets but discussion had been deferred. One was a model bylaw created by Horsley Witten Group for the Massachusetts Department of Energy Resources, and the other is a Town of Kingston zoning bylaw.

Mr. Broadrick noted that the Director of Municipal Services, Mr. Scott Lambiase, has said that he would treat a solar structure as he would any other structure. Potential issues might be solar glare and front yard setbacks. He asked for the board's direction regarding a bylaw for solar structures.

Mr. Casagrande asked if solar structures would count toward lot coverage, and Mr. Broadrick responded that the supports are anchored on a concrete pad and they are hooked up to wires. He said that he is not sure whether it would count toward coverage or not.

Mr. Casagrande stated that solar facilities on a cranberry bog could become a business. He said that he is not in favor of ground-mounted solar structures because "everyone has a roof." Ms. Ladd Fiorini stated that it is difficult to regulate aesthetics. She agreed that solar glare may be a potential issue, and she stated that she is not sure the town would have the ability to regulate any further due to MGL Chapter 40A Section 3.

Mr. Wadsworth stated that his brother installed a ground-mounted solar array in another town, and noted that the pitch can be adjusted to improve efficiency. He stated that a fairly large array can be placed on any parcel of land, and they act as a roof because they do not allow rainwater underneath. He said that he is inclined to agree with Mr. Casagrande to allow solar structures on roofs only.

Mr. Uitti also pointed to MGL Chapter 40A Section 3, noting that the Massachusetts General Law does not allow a town to prohibit or unreasonably regulate unless except to protect the public safety and welfare.

Mr. Glennon stated that Town Meeting could decide. Mr. Broadrick suggested that it may be better to propose a more restrictive bylaw, and then Town Meeting could choose to make it less restrictive. Town Meeting would not be able to make a bylaw more restrictive than proposed due to Massachusetts General Law.

Board members reviewed the Horsley Witten (HW) model bylaw. Mr. Broadrick noted that in that bylaw small scale solar facilities would not require a special permit or Administrative Site Plan Review, but medium or large solar structures would. He stated that "small scale" would need to be defined. He offered to check with the Department of Energy and Resources and other towns' bylaws for comparisons. Mr. Glennon noted that in the HW model bylaw "small-scale" is defined as up to 1,750 square feet, which he said seemed large to him.

Ms. Karen Goldberg of 40 Torrey Lane asked if the size could be tied to economics.

Mr. Wayne Dennison of 320 Standish Street, who also serves as chairman of the Zoning Board of Appeals, stated that he does not advocate starting with the most restrictive bylaw. Mr. Broadrick stated that he was trying to get the conversation started but he would concentrate on small-scale solar structures in writing a proposed bylaw. Ms. Ladd Fiorini stated that larger ones would require a special permit. Mr. Casagrande suggested that in the Residential Compatibility District, it should be more restrictive.

**DISCUSSION REGARDING POTENTIAL ANNUAL TOWN MEETING ARTICLE:
NEW TREE PROTECTION AND PRESERVATION ZONING BYLAW**

Mr. Broadrick reported that he had met with Ms. Kathy Cross and Ms. Lorrie Hall from the Open Space Committee, the proponents, regarding the Tree Protection Bylaw as a general town bylaw rather than a zoning bylaw. They discussed "tree yard" versus working within setbacks, and they defined the diameter of a tree that would be subject to the bylaw. He stated that he hoped to get a proposed bylaw to the Board of Selectmen by the December 2, 2014 deadline when Town Meeting articles are due.

Mr. Broadrick stated that the Planning Board does not need to sponsor this bylaw, and the Board of Selectmen may or may not want to sponsor it. Mr. Wadsworth commented that it may be difficult to get Town Meeting approval for this bylaw.

Ms. Hall recommended that the bylaw be called the "Tree Protection and Preservation Bylaw" and requested Planning Board minutes reflect that title. She stated that the bylaw would preserve the viewscape along roads. She said that although the Planning Board had recommended a 25 foot setback, the Open Space Committee is willing to compromise with a 40-foot exemption for front setbacks. Trees of 8-inch diameter or larger within this setback would be protected and if cut down a new tree would be required to be planted or else a payment would be made.

Ms. Hall said that she is not sure how this would work for lots under 5,000 square feet in size, and Mr. Broadrick offered to work with her on getting that information.

Ms. Hall said that the idea is not to be punitive but to save large trees on residential lots and avoid clearing to the edge. An arborist would work with the homeowner's contractor to preserve the tree root system. Ms. Cross stated that they are proposing scalable tree yards and are working with Mr. Broadrick to set guidelines. Mr. Broadrick stated that he would like the Planning Board to review the proposed Tree Protection and Preservation Bylaw at a future meeting, not as a public hearing but for discussion. He will continue to work with the Open Space Committee on creating a bylaw.

Mr. Paul Driscoll of 232 Crescent Street expressed his concern with the restriction of people's property rights. He asked "Why would the town restrict residents cutting trees on their own properties?" Mr. Wadsworth noted that there is a zoning bylaw that requires a special permit for clearing over 30,000 square feet, but this Tree Protection and Preservation Bylaw is different. Mr. Wadsworth stated that it may be a "tough sell" at Town Meeting precisely because of concerns like Mr. Driscoll's. Mr. Wadsworth also noted that the town's general attitude has been benevolent toward trees because residents have liked having tree-lined public ways and the town has been named a "Tree City USA." He stated that this proposed bylaw would be a different matter.

Ms. Hall stated that the proposed bylaw would only affect residents doing construction or demolition, and the bylaw would not be applicable to pine trees. She stated that abuse tends to occur during those situations.

**DISCUSSION RE: ZBA SUMMERHOUSE LANE APPEAL OF BUILDING
INSPECTOR'S DETERMINATION**

Mr. Wadsworth stated that he had requested the packet materials be distributed to the Planning Board members, including:

- Minutes from the Planning Board meeting of July 14, 2014
- Letter from Town Counsel to R. Serkey dated June 11, 2014 re: Town Counsel opinion
- Draft minutes from the Planning Board meeting of October 27, 2014
- Zoning Board of Appeals (ZBA) decision dated October 28, 2014
- Letter from S. Curtis to H&K Goldberg dated July 12, 2014.

TOWN CLERK
 15 JAN 15 AM 9:29
 DUXBURY, MASS.

Mr. Wadsworth stated that since the last Planning Board meeting, he met with Town Manager, Mr. René Read, and Mr. Broadrick to determine the Town Manager and Board of Selectmen's positions if the Planning Board were to take action on appealing the ZBA decision to overturn the Building Inspector's determination that the lot was unbuildable. Mr. Wadsworth stated that he was told that the Board of Selectmen does not like one board versus another, and that the Board of Selectmen would like to save on their legal fee budget. If the Planning Board were to go forward with an appeal, special counsel would be needed for both the Planning Board and the ZBA. Mr. Wadsworth reported that Mr. Read is not supportive of the Planning Board taking action by itself, and Mr. Wadsworth stated that he came out of the meeting in agreement with Mr. Read.

Mr. Wadsworth stated that approximately 2,000 lots in town do not meet current zoning requirements, and some of them could be used to build affordable housing. He stated that there is a problem with the mechanics of doing anything to protect the density bylaw.

Mr. Wadsworth stated that he also met with an abutter who has standing to file an appeal and is very concerned with the ZBA's decision. Mr. Wadsworth stated that in the decision he sees findings but none appear to support the decision, and Town Counsel has also stated that the lot was created by the 2007 plan. Mr. Wadsworth invited the abutter, who wanted the opportunity to speak with the Planning Board, to present her viewpoint.

Ms. Karen Goldberg of 40 Torrey Lane stated that she was involved when Mr. Chafik Hamadeh, the previous landowner, was proposing to build a Chapter 40B project on the land. When the ANR was approved in 2007 for three buildable lots and one non-buildable lot, she was satisfied and thought it was fair. She was surprised when she received the public hearing notice from the ZBA this past year for an appeal on the non-buildable lot, and then she received a letter from the property owners with a "veiled threat of a 40B" which also got her attention. She stated that when she attended the public hearing she did not hear any evidence to support that the lot was buildable. She stated that the ZBA talked about a possible variance and even Town Counsel's representative had advised that it was not a buildable lot. She missed one of the public hearings but read the ZBA minutes and watched the ZBA meeting on PAC-TV and noted that there was not one legal argument that the lot was buildable.

Once the decision was issued, Ms. Goldberg stated that she met with the Town Manager to ask if Town Counsel agreed with the decision. She stated that the Town Manager had told her that it was a "bad decision" but that the town was trying to reduce its litigation costs. She stated that the town needs to be fair to everyone, and she felt harmed by the decision because it is not right. She urged the Planning Board as elected town officials to "step up and support that this is a bad decision." She stated that anyone now could use an old Assessor's map to determine a way.

Ms. Goldberg stated that she is looking into appealing the ZBA decision as an abutter; however with two kids in college and one at home she is looking for help. She stated that the Planning Board has a legal recorded document that would support its position if it were to appeal.

Mr. Michael Spellman of 24 Summerhouse Lane stated that he has more to lose in this situation. He stated that he attended the ZBA public hearings and his interpretation is that no one had been able to show that the road did not go through.

Mr. Peter Young stated that he was representing the new owner, and that people have been hurt because they relied on the Building Inspector's decision.

Mr. John Sager of 5 Torrey Lane stated that he is an abutter and also a licensed attorney in the state of New York. He stated that he was mystified by the ZBA decision because all the details appear to uphold the Building Inspector's determination that the lot is nonbuildable. He stated that in his judgment the ZBA

TOWN CLERK
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 DUXBURY, MASS
 5/15/15 AM 9:20
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decision was "arbitrary and capricious." He stated that he supports Ms. Goldberg's position and asked the Planning Board to consider litigation because they are obligated to protect the town.

Mr. Spellman stated that the Planning Board deferred judgment to the ZBA in its recommendation. Mr. Wadsworth stated that instead of deferring judgment, no opinion was offered in the Planning Board referral recommendation. Mr. Glennon added that the Planning Board had stated that they did not have enough information to make a recommendation.

Mr. Uitti then asked Atty. Paul Driscoll, the applicant's attorney, about facts of the public hearing. Atty. Driscoll stated that the 1944 Assessor's Map that showed Summerhouse Lane going all the way through is what established the way, and that the Planning Board should never have approved an ANR plan unless the way goes through.

Mr. Glennon stated that he was surprised in reading the decision because he does not see in the findings that there was a "way." He stated that all of the facts appeared to support the Building Inspector's determination. He stated that if anyone could point to a particular finding that might change his mind, he would feel more comfortable with the ZBA's decision. Atty. Driscoll stated that it may be inappropriate to ask him to comment on a decision that he may be defending. Atty. Driscoll asked if anyone on the Planning Board had reviewed the 20 exhibits submitted to the ZBA. Ms. Ladd Fiorini stated that the Planning Board would rely on the Zoning Board's decision. She stated that regardless of the evidence provided in the hearing, the ZBA findings appear to be contrary to its own decision, adding that it is difficult to fathom how that happened.

Mr. James Gibbons of 25 Torrey Lane stated that he was part of a group that opposed the "friendly 40B." He stated that at that time engineers were hired to design a road from Bay Road to Summerhouse Lane and that engineers had said it was too dangerous. The owner at the time, Mr. Hamadeh, removed trees and now there is runoff that washes down to Torrey Lane. He stated that Torrey Lane is now dangerous due to runoff debris and vehicles skid on sand frequently. He stated that although he feels sympathetic to the people who want to build at the lot on Summerhouse Lane, it may put other families at risk. He stated that the Planning Board has a duty to defend taxpayers and urged them to take a stand in order to protect the town.

Mr. Wadsworth stated that if the case went to court the judge would have "no skin in the game." He stated that the situation is such that if the Planning Board requests town support to litigate, the Board of Selectmen would not support it. However, there is one party with standing who may be willing to argue that it needs to go to someone with no skin in the game. He stated that he is not suggesting to litigate, but the Planning Board could join with her to urge the Board of Selectmen to fund legal representation. He stated that the town may pay legal fees in the end anyway. Mr. Uitti noted that the clock is running out on the appeal period. Mr. Glennon noted that the Board of Selectmen would not fund an abutter's appeal. Mr. Casagrande agreed that it would be the Planning Board's decision whether to appeal or not.

Ms. Goldberg asked the Planning Board to request that the Board of Selectmen fund an appeal of the ZBA decision, and she would support that request. She added that she would have to make her own decision on whether or not to appeal the decision herself.

Mr. Wadsworth noted that that the chairman of the ZBA was present, and Mr. Wayne Dennison, chairman of the Zoning Board of Appeals, stated that under no set of circumstances would he provide comment on the ZBA decision. Mr. Glennon noted that both the Planning Board and the Zoning Board of Appeals represent the town. Atty. Driscoll noted that the Board of Selectmen had said that special counsel would be required to represent both the Planning Board and the ZBA.

TOWN CLERK
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DUXBURY, MASS.

Ms. Ladd Fiorini suggested that the Planning Board could consult with the ZBA. Mr. Glennon suggested that the party could appeal, then the Planning Board could work toward a settlement with the ZBA outside the appeal. Mr. Uitti cautioned that Town Counsel should be engaged quickly to determine if the decision disclaimer is meritorious. Mr. Glennon noted that the Planning Board does not meet again until after the 20-day appeal period.

Mr. John Baldwin, the property owner, stated that he had given Mr. Lambiase all the information needed, including the 2006 ANR plan. He stated that the Planning Board has no zoning authority to require an applicant to note that a lot is non-buildable. He stated that the Planning Board cannot create roads, but in 2007 the Planning Board said that the road existed. Mr. Uitti asked where "Lot D" appeared on the 1944 Assessor's Map.

Mr. Gibbons stated that a major issue right now is the grading of the property, noting that a retaining wall may be needed to prevent further erosion.

Mr. Wadsworth polled Planning Board members.

Mr. Casagrande stated that in reading the decision he believes that the ZBA was very thoughtful in getting the facts. He stated that in his opinion the decision relied heavily on the 2007 ANR where the Planning Board "ratified" the road. He noted that Lot C could not exist without proper frontage. He noted that the ZBA had all the information and still voted 4-0-1 without even a split decision. Mr. Broadrick noted that he was not the Planning Director in 2007 but as shown of the ANR, the road did not go through.

Mr. Uitti acknowledged that everyone appears to be coming from a goodhearted place. He stated that he would need all of the information but does not believe he has enough information and therefore to appeal another board may not be appropriate. He stated that if he were to vote on appealing the ZBA decision it would be based on empathy versus facts of law. He stated that it must have been a tough call for the ZBA but it would be hard for him to second guess their opinion. He stated that he did not want to put the burden on an individual citizen but the ZBA appears to be in a better position. He stated that he could not back an appeal.

Mr. Glennon agreed that valid points have been raised on both sides. He stated that he would look at the decision based on the facts presented and the rulings, and to him one does not match the other. He stated that he is not seeing facts supported in the decision. He noted that the Planning Board needs to make sure it is right prior to proceeding with an appeal. He stated that the ZBA made a tough call given the findings, and said that he wondered if it is an invitation to appeal. He stated that he could support an appeal if only because he does not see findings that support the decision. He stated that he does not want to spend town money but it is an important issue.

Ms. Ladd Fiorini stated that she goes back and forth after listening to both sides. She stated that in the end she agrees with Mr. Glennon that the situation merits one more level of review. She stated that there may be a way out, referencing the decision that "This decision may be amended...on the motion of the Planning Board...after notice and hearing." She stated that the decision does not flow and one more level of review would be good. Mr. Wadsworth stated that he agreed with Mr. Glennon and Ms. Ladd Fiorini that the Planning Board should pursue appealing the ZBA decision.

MOTION: Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, for the Planning Board to seek support from the Board of Selectmen in order to pursue judicial review of ZBA Decision #2014-021, 29 Summerhouse Lane / Curtis dated October 27, 2014.

VOTE: The motion carried 3-2, with Mr. Casagrande and Mr. Uitti voting against.

TOWN CLERK
JAN 11 AM 9:20
DUXBURY, MASS

**ZBA REFERRAL: 136 SUMMER STREET / CHURCH OF THE NAZARENE
(NE JAME)**

Board members reviewed this special permit application to install two permanent, double-sided, lighted freestanding signs. Mr. Glennon asked if there might be any possibility of co-locating the signs. Ms. Ladd Fiorini stated that it may not be possible because the food bank is a separate entity from the church.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Casagrande provided a second, to recommend approval of ZBA Case #2014-0028, 136 Summer Street / NeJame.

VOTE: The motion carried 4-1, with Mr. Glennon voting against.

Mr. Glennon stated that he would have preferred deferring judgment to the Zoning Board of Appeals.

**ZBA REFERRAL: 1474 TREMONT STREET / DUXBURY MOTOR WORKS
(MILLBROOK ENTERPRISES, INC.)**

Board members reviewed this special permit application to install a permanent, double-sided, lighted freestanding sign.

MOTION: Mr. Casagrande made a motion, and Mr. Uitti provided a second, to defer judgment to the Zoning Board of Appeals regarding ZBA Case #2014-0029, 1474 Tremont Street / Duxbury Motor Works (Millbrook Enterprises, Inc.).

VOTE: The motion carried unanimously, 5-0.

ZBA REFERRAL: 57 JOSSELYN AVENUE / WALSH

Board members reviewed this special permit application to raze a pre-existing nonconforming accessory structure (garage) and to construct a larger garage, increasing the width by two feet, with setbacks remaining the same.

Mr. Casagrande noted that the proposed garage would be moved approximately two feet forward, with an additional 6-9 feet added to the nonconforming setback.

Ms. Ladd Fiorini noted that the owner is Valerie Loring and the applicants are Michael Skok and Stacy Walsh. Mr. Casagrande noted that the property had recently been sold.

MOTION: Mr. Casagrande made a motion, and Mr. Uitti provided a second, to recommend approval to the Zoning Board of Appeals regarding ZBA Case #2014-0027, 57 Josselyn Avenue / Walsh because there is no proposed increase of a nonconforming nature.

VOTE: The motion failed 2-3, with Mr. Wadsworth, Mr. Glennon and Ms. Ladd Fiorini voting against.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to defer judgment to the Zoning Board of Appeals regarding ZBA Case #2014-0027, 57 Josselyn Avenue / Walsh.

VOTE: The motion carried 4-1, with Mr. Casagrande voting against.

TOWN CLERK
15 JAN 15 AM 9:29
DUXBURY, MASS

ZBA REFERRAL: 31 JOSSELYN AVENUE / KENNELLY

Board members reviewed this special permit application to add a second floor to a pre-existing nonconforming garage which encroaches in the side setback. Ms. Ladd Fiorini questioned whether the applicants are proposing to add an apartment, noting that no floor plan was submitted. Mr. Casagrande noted that an in-law has a by-right as long as it is not a rental. Mr. Broadrick noted that the application states that the proposal is "to construct a bedroom." Ms. Ladd Fiorini noted that a bath is proposed also.

Mr. Wadsworth noted that the nonconformity would increase, and Ms. Ladd Fiorini agreed.

MOTION: Mr. Casagrande made a motion, and Mr. Glennon provided a second, to defer judgment to the Zoning Board of Appeals regarding ZBA Case #2014-0030, 31 Josselyn Avenue / Kennelly as to whether the proposed addition is more detrimental to the neighborhood.

VOTE: The motion carried unanimously, 5-0.

DISCUSSION REGARDING PLANNING BOARD MEETING LOCATION

Mr. Broadrick reported that the Library Conference Room at the new Duxbury High School / Middle School on Alden Street is available for Planning Board meetings. The Library Conference Room is located on the third floor and it does have a window. Mr. Glennon stated that he is interested in trying it as a meeting room.

Mr. Wadsworth stated that an alternative would be for the Planning Board to consider meeting on Wednesday evenings in the Mural Room at Town Hall. Mr. Uitti stated that he has a conflict on Wednesdays for the next several weeks. Board members agreed to try the Library Conference Room at the DHS/DMS on a trial basis from January through March 2015.

OTHER BUSINESS

Planning Board Minutes:

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

VOTE: The motion carried unanimously, 5-0.

ADJOURNMENT

The Planning Board meeting adjourned at 11:12 PM. The next Planning Board meeting will take place on Monday, December 8, 2014 at 7:00 PM at the Duxbury Town Hall.

MATERIALS REVIEWED

Continued Public Hearing, Definitive Subdivision: Littletown Way, 0 Tremont Street / Nass & Alfieri

- PB minutes 07/14/14
- PB minutes 09/22/14
- Revised plans dated 11/02/14 and submitted on 11/03/14
- Letter from P. Brennan dated 11/04/14 re: consulting engineer review

ZBA Referral: 57 Josselyn Avenue / Walsh

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

TOWN CLERK
15 JAN 15 AM 9:29
DUXBURY, MASS.

PLANNING BOARD MINUTES

Date: November 10, 2014

Page 12 of 12

Approved 01/12/2015

TOWN CLERK
15 JAN 15 AM 9:30
DUXBURY, MASS.

ZBA Referral: 136 Summer Street / Church of the Nazarene (NeJame).

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

ZBA Referral: 1474 Tremont Street / Duxbury Motorworks (Millbrook Enterprises, Inc.)

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

ZBA Referral: 31 Josselyn Avenue / Kennelly

- ZBA application and materials
- Vision Assessor's property card, and Pictometry orthophoto

Discussion Regarding Potential Annual Town Meeting Article: New Residential Solar Energy Systems Zoning Bylaw

- Model Zoning for the Regulation of Solar Energy Systems dated March 2014
- Green Communities Ground-Mounted Solar PV Overlay District By-law dated February 17, 2010

Discussion Regarding Potential Annual Town Meeting Article: New Tree Removal Bylaw

(no materials)

Discussion Regarding Planning Board Meeting Location

(no materials)

Discussion re: ZBA Summerhouse Lane Appeal of Building Inspector's Determination

- PB minutes of 07/14/14
- Letter from A. Kreiger to R. Serkey dated 06/11/14 and submitted to PB on 08/27/14 re: Town Counsel opinion
- PB draft minutes of 10/27/14
- ZBA decision dated 10/28/14
- Letter from S. Curtis to H&K Goldberg dated 07/12/14

Other Business

- Minutes of 10/27/14
- Hall's Corner Economic Development & Transportation Study, OCPC Final Report Executive Summary dated October 2014
- "Building Resilient Communities" Mass Audubon LID workshop 11/12/14
- Construction Cost Estimates for October 2014

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 5476; www.town.duxbury.ma.us/planning

The mission of the Town of Duxbury is to deliver excellent services to the community in the most fiscally responsible and innovative manner while endeavoring to broaden our sense of community and preserve the unique character of our town.