



# Town of Duxbury Massachusetts Planning Board

Approved 12/14/15

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DUXBURY, MASS.

## Minutes 11/09/15

The Planning Board met on Monday, November 09, 2015 at 7:00 PM at the Duxbury Town Hall, Small Conference Room.

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

Absent: Cynthia Ladd Fiorini, Clerk; Jennifer Turcotte and David Uitti.

Staff: Valerie Massard, Planning Director; and Diane Grant, Administrative Assistant.

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

### OPEN FORUM

Ms. Massard introduced Town Clerk, Ms. Susan Kelley, who was present in order to notarize a document for Littleton Way Definitive Subdivision. Therefore, Mr. Wadsworth deferred both Open Forum and the first agenda topic in order to address the Littleton Way documents first.

### ENDORSEMENT OF MYLARS, PLANNING BOARD COVENANT, AND OPERATION & MAINTENANCE PLAN: LITTLETOWN WAY DEFINITIVE SUBDIVISION / ALFIERI & NASS

Present for the discussion were the applicant, Atty. Lee Alfieri, and his representative, Mr. Daniel Orwig of Orwig Associates. Ms. Massard stated that she had reviewed wet-stamped mylars and they are ready for endorsement. Board members endorsed the ten sheets of original mylars for release to Mr. Orwig, who will record the plans and provide paper copies for the Planning Department files.

Board members reviewed a Planning Board Covenant provided by Atty. Alfieri and edited by the Planning Department staff. They also reviewed an Operations & Maintenance Plan provided by Atty. Alfieri with suggested edits by Ms. Massard.

**MOTION:** Mr. Bear made a motion, and Mr. Casagrande provided a second, to approve a Planning Board Covenant for Littleton Way Definitive Subdivision / Alfieri & Nass as presented, and also to approve an Operations & Maintenance Plan for Littleton Way as presented, with both documents to be recorded at the Plymouth County Registry of Deeds and proof of recording to be submitted to the Planning Department.

**VOTE:** The motion carried unanimously, 4-0.

Planning Board members endorsed three originals of the Planning Board Covenant and Ms. Kelley notarized the Planning Board signatures. Two originals were released to Mr. Orwig: one for his files and one for him to

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record at the Plymouth County Registry of Deeds. The Operation & Maintenance plan with staff edits was provided to Atty. Alfieri for him to update and record with the other documents and plans at the Registry of Deeds. Mr. Wadsworth and board members thanked Ms. Kelley for attending the meeting in order to provide notary services.

## OPEN FORUM

Zoning Bylaw Review Committee (ZBRC): Mr. Casagrande reported that the ZBRC expects 3-4 zoning articles for Annual Town Meeting.

Revised FEMA Maps: Ms. Massard reported that newly proposed FEMA maps as a result of the appeal of the 2013 FEMA map revisions are being forwarded by the Town Manager's office to the Town of Duxbury's consultant for evaluation.

## ANR PLAN OF LAND: 52 & 56 BOW STREET / MORIARTY & BAYSIDE PROPERTIES

Present for the discussion were the applicants, Mr. Brian Moriarty and Ms. Linda Moriarty, and their representative, Mr. Joseph Webby III of J. Webby Consulting LLC in Kingston. Mr. Webby stated that the Moriartys discovered that they did not own land that they previously thought they had owned. He noted that the land will be conveyed and bounds will be placed, and other rights will not be extinguished.

Mr. Glennon noted that no new lots would be created with this ANR. He asked if a 20-foot right-of-way shown on the plan extending from the property to Bow Street had existed prior to another right of way directly in front of the Moriarty dwelling, and Mr. Webby explained that the driveway now accesses the 20-foot right-of-way and the change in lot lines will clear up any issues.

**MOTION**: Mr. Glennon made a motion, and Mr. Casagrande provided a second, to approve a plan of land entitled, "Plan of Land in Duxbury, Mass. Prepared for Brian & Linda Moriarty" dated October 26, 2015; drawn J Webby Consulting LLC, 6 Pine Hill Road, Kingston, MA 02364; stamped and signed by Joseph E. Webby III on October 26, 2015; scale 1" = 20,' one sheet, as not requiring approval under Subdivision Control Law.

**VOTE**: The motion carried unanimously, 4-0.

Planning Board members endorsed the mylar and two paper copies of the plan, and the mylar was released to Mr. Webby.

## ZBA REFERRAL, SPECIAL PERMIT: 879 TREMONT STREET / STEIN

Board members reviewed this special permit application to reconstruct and expand an existing kitchen and bedroom, extending the pre-existing nonconforming encroachment in the side setback. They also reviewed a staff report submitted by Ms. Massard.

Ms. Massard pointed out that there is a nonconformity in the side yard setback. Mr. Glennon pointed out that the nonconformity is on the side of the property nearest to the recently approved Littleton Way Definitive Subdivision.

Mr. Bear noted that the applicant's representative is not an engineer or architect, and Ms. Massard responded that the application does include a stamped plan. Mr. Bear noted that the lot has no frontage on a way. Mr. Casagrande noted that the access is over a shared driveway, and Ms. Massard added that it is grandfathered access.

Ms. Massard noted that the 1.2 and 1.3% increases in the square footage, volume and length of the extended wall are very small and would otherwise not be necessary had the existing dwelling been built exactly parallel to the property line.

**MOTION:** Mr. Casagrande made a motion, and Mr. Bear provided a second, to recommend APPROVAL to the Zoning Board of Appeals for special permit #2015-15, 879 Tremont Street / Stein (Williams), a proposal to expand and reconstruct an existing kitchen and bedroom, extending the pre-existing nonconforming encroachment of the side setback.

**DISCUSSION:** Ms. Massard read the findings from her staff report, suggesting that it be added so that the ZBA's decision would be more defensible. Mr. Bear asked if Ms. Massard had been asked to help write ZBA decisions, and Ms. Massard replied that she had offered to write draft decisions in order to expedite the process for ZBA applications. Mr. Casagrande stated that he is fine with including Ms. Massard's report in the Planning Board's recommendation to the ZBA.

**VOTE:** The motion carried unanimously, 4-0.

### **ZBA REFERRAL, SPECIAL PERMIT: 14 WINTHROP AVENUE / COOKE & HIGGINS COOKE**

Board members reviewed this special permit application to raze and reconstruct a pre-existing nonconforming dwelling that encroaches in the side setbacks on a lot of 11,250 square feet. Board members also reviewed a staff report. Ms. Massard stated that the new dwelling will be constructed essentially on the same footprint. The side setback will improve from 4.5 feet to 6 feet, and will remain 20 feet on the other side (15 is the minimum setback). The front setback will improve from 8.6 to 10.5 feet.

Ms. Massard noted that massing is a potential issue because the applicants propose to add a story along the nonconforming setbacks. Mr. Bear noted that volume is not referenced in Zoning Bylaws. Mr. Casagrande noted that the Zoning Board of Appeals (ZBA) discusses volume and massing in its deliberations.

Mr. Casagrande stated that he had done some calculations for lot coverage and noted that it appears that the square footage of sheds shown on the special permit application are different than the square footage provided on the Assessor's property card. He stated that if the Assessor's records are accurate, then the application appears to require the "3 percent rule."

Mr. Casagrande asked if the application includes a three-foot overhang on the front porch. Ms. Massard responded that certain projections and other considerations do not count toward lot coverage. Mr. Casagrande stated that overhangs do count, but uncovered decks do not count.

Ms. Massard stated that she would notify the Building Inspector, Mr. Scott Lambiase, about the potential inconsistencies in lot coverage calculations.

Mr. Glennon stated that the zoning setback table in the special permit application may be misleading because if the structure is considered in three dimensions, accounting for the addition of the second story, the structure becomes very large and has dwellings abutting on both sides. He stated that the dwelling appears to be changing from a 50-foot height to a 62-foot length only six feet from the property line with a second floor deck. He stated that this proposal may be more detrimental to the neighborhood.

Ms. Massard stated that the Planning Board could suggest that the applicants arrange plantings and landscape design in order to provide a buffer between abutting properties. Mr. Casagrande stated the ZBA takes into

consideration any issues raised by abutters, but if the abutters do not attend the public hearing then the ZBA assumes there are no issues. Mr. Glennon stated that the abutters may not be able to attend the public hearing and therefore the Planning Board can raise potential issues on behalf of abutters. Mr. Casagrande noted that without the proposed sheds it appears that the raze-and-rebuild could be permitted by right.

Mr. Bear recommended that the Planning Board notify the ZBA that the proposed application is incomplete because it contains too many inconsistencies. Mr. Glennon noted that the proposed deck is not included on the 3D model architectural visualization plan although it is on the site plan. Mr. Casagrande noted that the applicants might need to apply the "3% Rule" in order to get what they want. Mr. Wadsworth noted that a 60 percent increase in volume is substantial.

Mr. Glennon noted that the proposal may be accurate but misleading because while they state that the structure has moved two feet away from nonconformity, it is really improving for only the length of the bumpout. Mr. Casagrande noted that although it will remain two stories, the new structure will be taller. Mr. Bear noted that it appears that the applicants are not including the sheds in the lot coverage calculations.

**MOTION:** Mr. Casagrande made a motion, and Mr. Bear provided a second, to DEFER JUDGEMENT to the Board of Appeals regarding Case #2015-16, a proposal to demolish and rebuild a pre-existing nonconforming structure that encroaches in setbacks, noting the following:

- There may be a need to clarify the calculations with respect to the 3% coverage. The Town's Assessor records appear to have a larger shed footprint(s) than is used in the petition, and the Planning Board questions if overhangs are appropriately accounted for in the Petitioner's filing;
- The site plan appears to reverse the left and right side yard setbacks on the table describing existing conditions/proposed conditions;
- The third story results in a 60% volume increase in the side yard, and massing should be considered in the decision. The Planning Board recommends that screening the deck(s) is desirable given the proximity of the abutting residences.

**VOTE:** The motion carried unanimously, 4-0.

#### POTENTIAL PLANNING BOARD ARTICLES FOR ANNUAL TOWN MEETING

Planning Board members reviewed a list of potential zoning articles and other articles that may be submitted for the Annual Town Meeting (ATM) 2016 warrant. Mr. Casagrande noted that the Zoning Bylaw Review Committee will find out this week if any proposed articles will be ready to submit. Ms. Massard noted that any potential articles should be sent to her so she can ask Town Counsel to review them.

**Solar:** Board members reviewed the ground mounted solar article from ATM 2015 that was withdrawn. Mr. Wadsworth stated that the Planning Board does not want to see ground mounted solar structures in a residential front yard. Mr. Casagrande stated that he would like to see ground mounted solar structures banned in a Residential Compatibility district because they would constitute a business. Mr. Glennon stated that Massachusetts General Law Chapter 40A, Section 3 may not allow the prohibition of solar structures in a Residential Compatibility District.

Mr. Wadsworth stated that another possibility would be to limit the capacity to serve only the household. Mr. Glennon noted that as technology advances, solar panels may become smaller or more powerful. He stated that his concern is less with economics and more about the aesthetics and location on the ground, suggesting that perhaps setbacks could be established.

Mr. Wadsworth asked Ms. Massard if it would be realistic for her to prepare draft language for the November 23 Planning Board meeting with the goal of submitting it for Town Counsel review and submitting by the ATM deadline of December 1, and Ms. Massard replied that she could make an attempt but timing is very tight. Mr. Glennon suggested that Ms. Massard write language that would prohibit ground mounted solar structures in the Residential Compatibility District. If it passes at ATM, then the Planning Board could focus on regulating where they would be allowed. Mr. Casagrande noted that the Planning Board has no issue with roof-mounted solar structures.

Mr. Casagrande asked if a moratorium could be placed on ground-mounted solar structures until more research is done. Ms. Massard offered to find out what other communities are doing, and whether a moratorium on ground-mounted solar uses is consistent with state requirements and Attorney General reviews. Mr. Bear asked if it might be useful to invite members of the Alternative Energy Committee for their input. Mr. Wadsworth deferred further discussion to the November 23 Planning Board meeting.

Hall's Corner Zoning Overlay District: Mr. Bear stated that the Economic Advisory Committee (EAC) is considering requesting funding for a consultant to guide revitalization efforts at Hall's Corner.

Comprehensive Plan Update: Mr. Wadsworth stated that he would like to see an article on this year's ATM warrant that would provide funding for a consultant to update the Comprehensive Plan. He stated that he had requested that Ms. Massard do some research on how other comparable communities have funded such work. Mr. Bear stated that the update should be simple because the town's character has not changed but the impact to the coast has changed. Mr. Casagrande stated that a new buildout analysis is needed. He stated that he would like to determine the number of acres available for development using GIS. Ms. Massard stated that GIS is not available at the Town level currently although it could be a valuable tool and a consultant would be needed to assist with this request.

Affordable Housing Bylaw: Ms. Massard stated that the Duxbury Affordable Housing Trust (DAHT) is proposing changes to the Odd Lot Bylaw and if submitted there would be a public hearing with the Planning Board because it is a zoning bylaw. Mr. Wadsworth stated that the DAHT is proposing to change the minimum lot size from 10,000 square feet to 5,000 square feet. He noted that although he serves on the DAHT he does not support this change because it would be impossible to for a property owner to develop a lot profitably using the bylaw. He also noted that he does not like the concept of a 5,000 square foot lot in Duxbury. Ms. Massard noted that the same article was withdrawn at last year's ATM due to lack of support.

## PLANNING STAFF UPDATE

Ms. Massard had provided the Planning Board members with an Executive Summary dated April 2015 regarding impacts of decommissioning the Pilgrim Nuclear Power Station. She noted that 16 Duxbury residents are employed at the plant. She reported that the Old Colony Planning Council is trying to obtain federal funding directed toward addressing losses to Plymouth and surrounding communities. She stated that it will take years to decommission the plant and more years to remove the nuclear waste and there is no plan in place to dispose of it. Mr. Wadsworth stated that a large amount of funding will be needed in order to close the facility.

## ADJOURNMENT

Planning Board meeting adjourned at 9:47 PM. The next Planning Board meeting will take place on Monday, November 23, 2015 at 7:00 PM at Duxbury Town Hall, Small Conference Room, 878 Tremont Street.

## MATERIALS REVIEWED

### ANR Plan of Land: 52 & 56 Bow Street / Moriarty & Bayside Properties

- ANR application and plan submitted on 10/30/15
- Vision GIS map, aerial photo and Assessor's property card
- Highlighted pdf of proposed plan

### Endorsement of Mylars, Planning Board Covenant, and Operation & Maintenance Plan: Littleton Way Definitive Subdivision / Alfieri & Nass

- Planning Board Covenant submitted 10/20/15 with staff edits
- Operation & Maintenance Plan revised 09/18/15 with staff edits
- Staff report

### ZBA Referral, Special Permit: 879 Tremont Street / Stein

- ZBA application and materials submitted to the Planning Office on 10/29/15
- Vision GIS map, aerial photo and Assessor's property card
- Staff report (distributed at meeting)

### ZBA Referral, Special Permit: 14 Winthrop Avenue / Cooke

- ZBA application and materials submitted to the Planning Office on 11/04/15
- Vision GIS map, aerial photo and Assessor's property card
- Staff report (distributed at meeting)

### Potential Planning Board Articles for Annual Town Meeting

- Email from J. Barrett dated 11/02/15 re: No ZBRC articles yet
- Staff memo re: Ground mounted residential solar panels
- Proposed ground mounted solar article from ATM2015
- Mass Clean Energy Center materials
- Photograph of residential ground mounted solar panel submitted by S. Casagrande (as discussed at PB meeting on 10/26/15)
- Email from J. Bear dated 11/02/15 re: EAC potential zoning articles
- Proposed comprehensive plan update funding article from ATM2015 (distributed at meeting)

### Planning Staff Update

- Planning Board Agenda Working Calendar dated 11/04/15
- Pilgrim Nuclear Power Station Study dated April 2015

### Other Business

- OCPC Upcoming Events
- Construction Cost Estimates for October 2015
- Updated PB Contact List dated 11/04/15

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