



Town of Duxbury Massachusetts Planning Board

TOWN CLERK
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DUXBURY, MASS.

Minutes 08/24/16

The Planning Board met on Wednesday, August 24, 2016 at 7:00 PM at the Duxbury Town Hall, Mural Room.

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

Absent: Jennifer Turcotte and David Utti.

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

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

OPEN FORUM

Fences / Screening: Mr. Casagrande reported that he has heard from five or six residents now who are concerned with fences and fence heights and plantings along streets that block views. In one case the original screening along a street was removed and different plantings and a fence were placed. Mr. Wadsworth noted that fences over six feet in height do require a building permit.

Summer Drought: Mr. Wadsworth noted that although the area is suffering from a lack of rainfall this summer, a rainstorm of only one-quarter inch is equal to the amount of extra water used during the entire summer by every household for seasonal things like pools and irrigation. He stated that the town is not expected to meet the 58" of average rainfall for the year.

Downtown Revitalization: Ms. Massard announced that the Metropolitan Area Planning Council (MAPC) and Department of Housing & Community Development (DHCD) are partnering to provide a workshop on technical assistance for downtown revitalization. The workshop will take place Tuesday, October 25, 2016 at the Senior Center in Rockland.

ANR PLAN OF LAND: 69 & 105 SAINT GEORGE STREET / THORBAHN & COOK

Mr. Glennon noted that the applicant, Mr. Brian Cook, has requested to continue the discussion so that he can meet with his neighbors to sign the ANR application. Mr. Glennon noted that the extension form that the applicant and Planning Board signed at the last meeting extends the decision deadline to September 15, 2016, and requested staff to add the topic to the Planning Board agenda for the next meeting on September 14, 2016.

DISCUSSION WITH HISTORICAL COMMISSION: DEMOLITION DELAY BYLAW

Present for the discussion from the Historical Commission were Mr. Terry Vose, chair; Mr. Tag Carpenter, vice-chair; and Mr. Arthur Evans. Ms. Massard stated that she and the Building Department have been working closely with the Historical Commission and there are still a few issues remaining before the public hearing process begins. Tonight's discussion is a workshop to allow for public input. The plan is to bring the article to Annual Town Meeting in March 2017, with a public hearing to be held once final language is ready.

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Mr. Glennon invited the Historical Commission to present the changes proposed. Mr. Carpenter stated that he has been working on the Demolition Delay bylaw for about four years now. The current bylaw had been implemented in incremental ways, resulting in a lack of clarity. The Historical Commission would like to make it a quicker process for the applicant and to eliminate "work arounds" that the commission has been using. Mr. Carpenter reminded the board that an article was brought to Annual Town Meeting in March 2016 to revise the bylaw but that article was indefinitely postponed. Since then the commission has worked with the Planning Director and Town Manager and draft language is provided for discussion tonight.

For Annual Town Meeting 2017 the Historical Commission proposes two articles: one to define terms to clarify administrative processes, and the other to propose policy changes as follow:

- Owner of record must be the applicant and certification is non-transferrable without pre-approval
- "Substantial demolition" defined
- New sanction for non-compliance (preventing development for two years)
- Requirement for a new public hearing to rescind a demolition delay
- Increase in demolition delay from six to twelve months
- Change in the deadline for the commission to issue its final determination from "no less than ten days" to within thirty days after the public hearing closes.

Mr. Carpenter explained that the final policy change is a rewording that would allow the commission to make a determination right away at the close of a public hearing.

Mr. Glennon opened the floor to the Planning Board for questions or comments. Mr. Wadsworth noted that the Planning Board routinely sees applications where the property owner is not the applicant, although the Planning Board makes sure that the applicant is representing the intent of the owner and future owner. Mr. Vose, the chairman of the Historical Commission, stated that if the applicant is different than the owner they would like both present at the public hearing. He noted that Ms. Massard has been doing a good job of working with the Historical Commission to get the language right.

Mr. Bear asked about the intent in the timing of the final determination. Mr. Vose replied that the intent is to make a determination at the close of the public hearing. Currently they are required to wait for at least ten days. Mr. Bear asked if the commission would need more time to process the paperwork from time to time, and Mr. Carpenter responded that the language "within thirty days" makes it flexible. Ms. Massard noted that a time gap is included in order to allow time to process the paperwork, like all boards have. Mr. Casagrande stated that it should be made clear when the clock starts.

Mr. James Lampert of 148 Washington Street stated that from reading the draft language it appears that the demolition delay begins on the date of the final determination. Mr. Vose stated that the Historical Commission gets its decision to the Municipal Services Department, the Town Hall staff that processes the decisions, by the next day after the close of the public hearing. Ms. Massard noted that 10-14 days is more typical to process the paperwork than thirty days. She stated that the demolition delay begins on the date the decision is stamped with Town Clerk. Mr. Carpenter noted a recent case where a portion of an historic dwelling was to be moved to another location and coordinated with tree removal, the process of figuring out conditions of approval would not have been possible within 14 days.

Mr. Glennon asked if the proposed language had been vetted by Town Counsel, and Ms. Massard replied that it had, and now it is a question of policy for Annual Town Meeting voters to decide. Ms. Massard noted that the current language in the bylaw is difficult to follow and the Historical Commission is attempting to close gaps where possible. Mr. Glennon noted that it appears that the 30 day deadline is intended to provide flexibility if needed but in practice the Historical Commission would not wait 30 days.

Mr. Bear asked if the Historical Commission had considered separating the delay from six to twelve months on the Annual Town Meeting warrant. Mr. Carpenter stated that there could be three separate articles: one for the clarifications that do not represent policy changes, one for the change from six to twelve months, and another for the other policy changes. If one does not pass, then different language may be needed on the other articles. Mr. Casagrande commented that it is a good idea to separate the six to twelve month delay from the other proposed changes.

Mr. Casagrande stated that he does not see the value in non-transferability of a demolition delay permit. He stated that he does not see why the process has to start all over again with a new owner. He acknowledged that the Historical Commission may want to provide the new owner with a chance to change their mind, but otherwise it is difficult to understand why the Historical Commission would allow a demolition certification with one owner and not another owner on the same property.

Mr. Carpenter stated that although it appears to be a simple yes or no, it is actually more nuanced. He stated that there are circumstances where a demolition delay may not be imposed because it may not best serve the public interest. He stated that the former Town Counsel had advised that the demolition delay exists exclusively between the current owner and the Town of Duxbury. Mr. Casagrande stated that he could understand a situation where the new owner has a different plan, but if it is exactly the same proposal he does not understand why the process needs to begin again for the new owner. Mr. Carpenter referred to the proposed article language, noting that the proposed new owner must be reviewed, not that the entire process must be repeated.

Mr. Lampert stated his opinion that the article is likely to fail at Town Meeting if a demolition delay is not transferrable. Ms. Sarah McCormick, Design Review Board chair, agreed that the non-transferability may not be fair. Mr. Sherm Hoyt of 51 Abrams Hill asked for clarification on why the Historical Commission does not want to allow demolition delay permits to be transferrable.

Mr. Wadsworth commented that overall the proposed bylaw language is much improved over language that had been proposed for Annual Town Meeting 2016. He stated that he has not made up his mind on the transferability issue.

Mr. Fernando Guitart of the Duxbury Civic Association asked if the Historical Commission could help explain the thought process in its reasoning. Mr. Carpenter stated that the entire process is led by a gap between the bylaw and reality. He noted that the commission is not bound by law to apply the bylaw evenly to every applicant and sometimes facts change. Mr. Lampert asked if there had ever been a change in decision between the first applicant and the new owner, and Mr. Carpenter replied that he does not remember any time that has happened.

Mr. Lampert noted that he has a number of technical questions and offered to meet with the Historical Commission separately to discuss them. However he has a question tonight on the identification of historical properties 75 years old. He asked if structures constructed in the 1940s should really be considered historically significant in Duxbury because what Duxbury intends to preserve should be the goal, and suggested that the commission might want to consider a fixed date rather than rolling it back 75 years. Mr. Carpenter stated that there is widely varied housing in town and often there is not sufficient information on the actual date of construction. He noted that at times the commission has discovered a "diamond in the rough."

Mr. Hoyt asked if the Historical Commission takes into consideration if a person of historic significance had lived in a house when determining if the structure is historically significant, and Mr. Carpenter replied that they do take that into consideration.

Mr. Glennon summarized that the Historical Commission has gotten some good feedback to consider and asked what the next steps would be. Ms. Massard stated that the commission will decide how it wants to proceed. She noted that she supports separating questions because some are a matter of cleaning up the bylaw while others are more debatable. She noted that anyone with questions or comments can contact the Historical Commission or the Planning Office.

ZONING WORKSHOP

Stormwater Management: Ms. Massard noted that Cornell University has documented a change in rainfall patterns including a change in intensity of storms by 74 percent from historic patterns in New England, ten percent more than had previously been measured. Where rain used to fall more gently over a longer time frame, now there are shorter, more intense rainstorms that the infrastructure was not designed to handle. She noted that the area is experiencing a near-record drought this summer and the town is only a few inches shy of a record low groundwater level. Under these conditions rainfall can run off rather than soaking into the ground.

Ms. Massard noted that at the last Planning Board meeting she had provided draft language for the board's consideration to include in the Zoning Bylaws regarding containing stormwater on a property. Based on feedback during that meeting she is providing updated draft language which she distributed. She read the draft language and noted that it would mean that if you are building a house you now have to tell the Building Department how you will handle stormwater. She stated that she is proposing one single standard of design rather than the current practice of different standards from different boards.

Mr. Bear asked if that should already be part of a building permit, and Ms. Massard replied that it is not included in the State Building Code and is not part of the building permit process right now. Mr. Bear commented that there appear to be no implications if stormwater containment is not provided. Ms. Massard noted that currently there is no language and no requirement. Mr. Casagrande noted that it does provide the Building Inspector a way to put in writing what property owners should be doing already.

Mr. Wadsworth noted that during construction it may be fairly easy to control rainwater, silt and sand runoff, but after the building permit it may be a different story because amenities may be added over time that affect stormwater containment. Ms. Massard noted that the language proposed could apply even after a building permit is issued, and right now there is nothing that enables the Building Inspector to do anything about stormwater runoff. She stated that the proposed language could be a softer segue to regulating residential stormwater than a separate stormwater bylaw and permit altogether, as had been discussed previously in Duxbury.

Mr. Casagrande suggested that language regarding requirements for "applications for construction alteration of one acre or more of land..." should be changed so that it reads, "alteration *on* one acre or more..." so that property owners of large lots have to provide a Stormwater Pollution Prevention Plan (SWPPP) only when altering one acre or more of land.

Mr. James Lampert of 148 Washington Street noted that Zoning Bylaws Section 615, Administrative Site Plan Review (ASPR), uses much stronger language, including "shall" throughout, whereas the proposed stormwater language appears to be much looser. He asked if the proposed language provides the Building Inspector enough of a tool. Ms. Massard responded that the proposed language provides residential property owners an idea of what is expected. A stronger stormwater bylaw would require additional staff to handle all the building permits. She stated that she is trying to take a softer approach rather than a bylaw that would require enforcement. Mr. Lampert noted that the ASPR language does not require additional permitting, commenting that all kinds of standards are set in the town for other issues and he does not see why they cannot be set for stormwater runoff. Ms. Massard agreed that it could be up for discussion.

Aquifer Protection Overlay District (APOD): Ms. Massard stated that there was not enough time to prepare draft language following discussion at the last Planning Board meeting. Mr. James Lampert of 148 Washington Street stated that the Planning Board could start by making clear what is wrong with the current bylaw. Mr. Glennon added that they could approach it as what could be improved.

Residential Conservation Cluster (RCC): Ms. Massard showed a Power Point presentation showing the difference between a standard subdivision and a cluster subdivision. She noted that in researching developments in the Town of Duxbury during the past ten years, only one RCC development was built in Duxbury and not everyone is happy with the final design. She stated that development of large tracts of land has been done as a 40B or Planned Development. Ms. Massard noted that providing open space increases property values, is better for residents' health, and allows for connection of wildlife corridors.

Mr. Casagrande noted that even in what appears to be properties that could provide a prime opportunity for an RCC went with a 40B development instead. He noted that from the slide show, it appears that small properties were developed as standard subdivisions which also provide some open space. Ms. Massard asked if open space was preserved or were larger yards created.

Ms. Massard showed slides with an example of 5-6 acres of development and asked how the land could be best used versus what has actually been approved. She noted that due to the land available for development, funky layouts have been approved to meet frontage requirements. She noted that the Planning Board has been doing its best with the Subdivision Rules & Regulations available today. She asked the Planning Board to consider frontage waivers in order to create more usable space.

Ms. Massard showed a slide of the one RCC project within the past ten years, Fisher Ridge on Summer Street, noting that it also had an unusual configuration based on regulations that made the layout resemble a standard grid subdivision. The open space surrounding the development is intended to be donated to the Town of Duxbury. With more flexibility in frontage waivers the Planning Board would have more flexibility in negotiating the layout.

Mr. Bear noted that in the Duxbury Estates Planned Development some open space was saved. He asked if planning was done with developers in other communities. Ms. Massard responded that in practice it is better to design with the developer prior to filing.

Ms. Patricia Loring of 59 Beaverbrook Lane stated that she helped develop the cluster bylaw in Westford that Ms. Massard had used as a model in her presentation at the last Planning Board meeting. She stated that in Westford an added benefit of the cluster bylaw was that the clusters ultimately were connected and a great deal of open space was saved. She noted that it can take time before you are able to see the benefits of cluster designs. Ms. Loring also advised that it is very important to place a Conservation Restriction on the remaining open space to assure that the land would remain protected.

Ms. Sara Wilson of 120 Bay Road stated that she is a former Planning Board member and helped develop the previous cluster bylaw in 1973. She stated that by 1986 approximately 12 clusters were built, including Weston Farms. That cluster bylaw was highly flexible with no minimum lot size and minimal frontage requirements. She stated that it stopped as a result of the Planning Board and Zoning Board of Appeals doing a fiscal analysis and reducing the number of dwellings allowed so developers went back to standard subdivisions. She stated that a bonus density had been allowed in previous clusters because the roadway was not included in area calculations. She stated that the former cluster bylaw worked because of its flexibility and density bonuses.

Mr. James Lampert of 148 Washington Street noted from earlier comments on the RCC by the Zoning Bylaw Review Committee (ZBRC) consultant from Horsley Witten, the consultant was concerned with the Wall

Street case and asked if the Planning Board was considering offering some RCCs by right. Ms. Massard replied that no, currently RCCs are not proposed to be allowed by right although this has been a discussion point at ZBRC meetings. Mr. Lampert stated that although it is a good idea to make substantial changes to the RCC bylaw, they should not be allowed by right.

Ms. Massard reviewed an analysis in the Planning Board packet on "Bylaw Review of Local Land Use Standards in Relation to Low Impact Development Best Practices" originally prepared for the Blackstone River Valley during her former position with Mass Audubon. She suggested that Planning Board members consider what a new RCC bylaw could look like, such as encouraging low impact design. She stated that in practice she does not agree with the requirement for a special permit before a subdivision filing because it draws out the process. She also would recommend keeping the amount of submittal material to a reasonable level. She suggested making changes little by little rather than trying to change the bylaw all at once.

Aquifer Protection Overlay District (APOD): Ms. Massard noted that the letter distributed at the last Planning Board meeting with draft language from Horsley Witten addressed specific concerns from the Zoning Bylaw Review Committee. No draft language was intended. She stated that the goal of the Zoning Workshops is to expand on goals of policy and there may be more concise ways to handle it. She stated that eventually there will be a landing page on the town web site that provides proposed language. She stated that she will bring draft language for the Planning Board and public to review at a future meeting. Mr. Lampert suggested that it might be a good idea for the Horsley Witten consultant to attend that meeting.

OTHER BUSINESS

Annual Town Report: Planning Board members reviewed the Annual Report for 2016 prepared by staff.

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to approve the Planning Board Annual Report for fiscal year 2016 as written:

VOTE: The motion carried unanimously, 5-0.

Meeting Minutes:

MOTION: Mr. Wadsworth made a motion, and Mr. Casagrande provided a second, to approve the Planning Board minutes of November 13, 2014 (Executive Session with Board of Selectmen) as written.

DISCUSSION: Mr. Glennon requested that Board of Selectmen minutes attached to the Planning Board minutes for this joint meeting be removed because the Planning Board had no opportunity to review the Board of Selectmen minutes prior to their approval. Mr. Bear stated that nothing would be lost by including the Board of Selectmen minutes.

VOTE: The motion carried, 3-1-1, with Mr. Bear voting against and Ms. Ladd Fiorini abstaining.

MOTION: Mr. Wadsworth made a motion, and Mr. Casagrande provided a second, to approve the meeting minutes of August 2, 2016 as written.

VOTE: The motion carried, 4-0-1, with Ms. Ladd Fiorini abstaining.

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ADJOURNMENT

The Planning Board meeting adjourned at 9:15 PM. The next Planning Board meeting will take place on Wednesday, September 14, 2016 at 7:00 PM at Duxbury Town Hall, Mural Room, 878 Tremont Street.

MATERIALS REVIEWED

- Draft article: Demolition of Historically Significant Buildings (entire bylaw plus strikethrough version)
- "Bylaw Review of Local Land Use Standards in Relation to Low Impact Development Best Practices" prepared by Mass Audubon
- Draft Planning Board Annual Report, July 2015 – June 2016
- Planning Board executive session minutes 11/13/14 (joint meeting with BOS and ZBA)
- Draft Planning Board minutes of 08/10/16
- Draft Stormwater Bylaw (distributed at meeting)
- "Recent Development Summary" Power Point presentation by V. Massard

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