



## **MINUTES OF MEETING** **ZONING BYLAW REVIEW COMMITTEE**

**Date:** December 21, 2011

**SCHEDULED TIME:** 7:30 p.m.

**Location:** SENIOR CENTER (Weyerhaeuser Room), 10 Mayflower Street

**Minutes Prepared By:** Martin Desmery

**Members Present:** Judi Barrett, Paul Boudreau, Freeman Boynton, Jr., Scott Casagrande, Fred Clifford, Martin Desmery, Robert Fitzpatrick, Nancy Johnson, Mary Steinke, George Wadsworth.

**Members Absent:** None.

**Also Present:** None.

TOWN CLERK  
12 JAN 19 AM 9:09  
DUXBURY, MASS.

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Meeting called to order by the Chair, Robert Fitzpatrick, at 7:36 pm.

### **MINUTES**

The minutes of the meeting held on December 7, 2011, were unanimously approved, with the following amendments: Paul Brogna should be described as a "resident" not a "citizen;" and the reference to "impervious" asphalt should be changed to "pervious."

### **DISCUSSION OF ARTICLE 300**

Marty Desmery presented his comments on the definitions of "Accessory Building" through "Town"

#### **Accessory Building**

Initial capitals should be used for all defined terms throughout the bylaws, which would change this definition to read:

"A Building devoted exclusively to an Accessory Use as herein defined."

Do we really need the phrase, "as herein defined?"

*The only reference to an "accessory building" in the bylaws is 425.1 5. on page 43:*

*"In a Neighborhood Business District, no accessory building or structure shall be located within the required front setback. Accessory structures may be appended to the principal building or to another accessory building."*

Is "accessory building" necessary - i.e., doesn't an "Accessory Structure" include an accessory building? Also, there is only one reference in the bylaws to an accessory building (p. 43, 425.1.5)

#### Accessory Structure

The second definition of "Accessory Structure" (p. 10) should be deleted.

In the definition of "Lot" (p. 8), the phrase "structures accessory thereto" should be changed to "Accessory Structures." (See also p. 14, 401.2.4.a)

In 401.2 4.a) on page 14, the phrase "structures accessory thereto" should be changed to "Accessory Structures."

The definition is confusing and should be clarified.

#### Accessory Use

Can this definition be clarified without changing its meaning?

Does the reference to "less land area" mean the footprint of an Accessory Building must be smaller than the principal building?

Delete "(1987)"

#### Structure

Should we recommend using the state building code definition: "A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fences over six feet high, sign, flagpole, recreational tramway, mast for radio antenna, or the like. The word 'structure' shall be construed, where the context requires, as though followed by the words, 'or part or parts thereof.'"

#### Principal Structure

The term "Principal Structure" is used only in Article 300 (Definitions). It is part of the definition of "Accessory Structure" (see above). Also, the definition of "Coverage/Site" refers to "principal building" when it should use "Principal Structure."

Nancy Johnson presented her comments on the definitions of "Use Restriction" through "Ways to the Water:"

## Use Restriction

Also defined in 725 (identical to 300) and 570.2 (specific to affordable housing). The last sentence in 570.2 does not belong in a definition.

Judi Barrett commented that a use restriction for the purposes of affordable housing is usually called an "Affordable Housing Restriction." The definition is unnecessary because Affordable Housing Restrictions are governed by federal law. It should be sufficient to cite the statute.

Way: The definition shows up again in 725 and some of the words are slightly different.

Ways to the Water: Only showed up in the definition and could be deleted.

## DISCUSSION OF ARTICLE 400

Judi Barrett & Paul Boudreau presented their comments on Section 401:

401.1 – Prohibited Uses - language generally needs to be updated, especially as it relates to farming.

401.2 – Nonconforming Uses & Structures – language is grammatically jumbled. People do not agree on the meaning. The language should be clarified. What does it mean when it says "a lot that does not conform?"

401.2.2 - Restoration – usually bylaws say that it should be "on the same footprint or more conforming." We should make it clear if we are making restrictions on how restorations or reconstructions should be handled.

401.2.3 - issues are largely matters of policy.

401.2.4 Alteration, Reconstruction, etc. Subsection (iii) – gets it backward. By stating this as "will not be entitled" the language can be construed as precluding the ZBA from granting a special permit. This interpretation is not consistent with the case law. The whole section needs to be rewritten.

Judi will help with bullets that will be illuminating to the reader when we get down to drafting our report on this section.

401.3 – Typically bylaws exempt public safety buildings from height limits. There should be an exception in the height limit, and then this section should cross-reference.

401.5 & .6 are duplicated in 410 and 906 – everything should be in one place.

401.7 – This doesn't need to be here, or else it should go with the dimensional requirements.

401.8 – statutory and doesn't need to be here.

401.9 – should be looked at for clarity and inconsistencies with other bylaws.

Freeman Boynton and Scott Casagrande presented their comments on Sections 402-405:

402 – Flood Hazard Area Overlay District – No particular issues jumped out. But the zoning purpose of 402 is not readily apparent.

403 – Dunes – Seems to be conservation regulations not zoning.

404 – WPOD – Is it necessary? Can it be dealt with by Conservation Comm'n? Predates the state wetlands protection act. Judi believes the special permit sections are confusing.

404.9.b – “All other requirements of the bylaw” is a big stumbling block.

404.9.d – ConCom “acting within the scope of its jurisdiction” does not make sense because ConComm doesn't regulate uses.

404.11 – Seems to exclude requirement of a special permit for a pier. This section was in the bylaw before the pier section. It should apply only to 404.1 to 404.10.

405 – ok

Fred Clifford presented his comments on Section 406, which are set forth on the attached handout.

Marty Desmery presented the following comments on Section 406:

#### 406.7 Density Regulations

Bylaw refers to “Residential dwellings ... as defined in Section 300....” All dwellings are “residential;” should simply say, “Dwellings.”

“... as defined in Section 300” is superfluous, not to mention erroneous (it's Article 300, Section 302).

Subsection 2 refers to “Best Management Practices” – What does that mean? Is it a defined term?

Subsection 2 is identical to 406.6(29). No reason to say it twice.

Bob Fitzpatrick and Nancy Johnson presented their comments on Section 410:

410.1 – Educational uses not defined. Reference to “service vehicle” in sub 6 – what is a service vehicle? Should it say, “commercial vehicle.”

410.2

#1 – what is a vehicle?

#5 – already covered in the umbrella standard on prohibited uses.

410.3 - #'s 3, 6, 10 & 11 are not well-drafted.

410.4 – Long list of definitions, which ties back to our Article 300 discussion.

Upland not defined anywhere. What is a “limited access highway?”

“Intensity” should be density.

Height – we need clarity on the measuring point for pre-construction grade.  
Limited to dwelling. What about other structures?

Are the words in bold-faced type definitions or standards?

Coverage – We’ve talked about 3% rule, etc.

410.5 – Unnecessary. Not clear how ZBA authority is triggered. Plot plan must be provided under 904.5.1.

410.6 – Site plan approval? Why refer back to 410.5? Very confusing.

410.6.2.(g) – site plan?

Mary Steinke and George Wadsworth presented their comments on Sections 420, 421, 422, 424, 425 & 430:

NB1 & NB2 format is very confusing.

The reference to video tape rentals and sales in 421.4 shows that the section needs updating.

On page 43, #5, the discussion of accessory structures being “appended” to a principal building is erroneous because, once appended, a structure is no longer accessory.

424.2 requires an applicant to submit 21 sets of plans.

425.1 – the reference to 10 linear feet for the front setback should be 40 linear feet.

Discussion Closed on Article 400

#### ADMINISTRATIVE MATTERS

The ZBRC confirmed the meeting dates next month: January 4 & 18.

Bob Fitzpatrick assigned the following sections to the members of the ZBRC for the next two meetings:

Barrett & Boudreau – 530 & 540 / 611

Boynton & Casagrande – 560 / 615

Clifford & Desmery – 570 / 616

Johnson & Fitzpatrick – 601, 603 & 403 / 701, 702, 705, 706

Wadsworth & Steinke – 609 & 610 / 707, 708, 709, 710

Meeting adjourned @ 10:03 pm.

**List of Documents and Other Exhibits Used at the Meeting:** Handout from Fred Clifford regarding Section 406.

# 406 AQUIFER PROTECTION OVERLAY DISTRICTS

## 406.2 Aquifer Protection Overlay Districts

There are hereby established within the Town certain groundwater protection areas consisting of aquifers or recharge areas and approved Zone I, Zone II and Zone III areas which are shown on a map entitled "Aquifer Protection Districts, Town of Duxbury dated March 24, 1993" being an amendment of the Aquifer Protection District Map dated December 4, 2002. This map is hereby made a part of the Duxbury Zoning Bylaw and is on file in the office of the Town Clerk. The Aquifer Protection Overlay Districts, as shown in the maps described above, as well as the above noted Zone I, II and III areas, shall be considered to be superimposed over any other district established in this Bylaw. (Underlining added)

### Comments:

- 1) I believe Aquifer Protection Overlay Districts (APOD) should also be in Sec. 406.5, Definitions for sure.
- 2) Zones I, II and III do not appear on my Aquifer Protection Map nor are they shown in the on-line version as suggested in the first sentence but not in the last sentence, both underlined. They may well be shown on the full map with the Town Clerk.
- 3) Zones I, II and III are defined in great detail in Sec. 406.5 but there is no differentiation between how each is treated anywhere in 406 (except for one reference to Zone II in Sec. 406.6.15 having to do with snow disposal ...and that prohibition doesn't make any sense to boot.) In fact, aquifers, recharge areas and Zones I, II and III are all treated exactly the same in Sec 406 as part of the APOD. So why the painfully detailed definitions, holdover from a prior bylaw maybe?
- 4) I believe the underlined dates should be reversed.

Fred Clifford, ZBRC  
December 21, 2011