



MINUTES OF MEETING **ZONING BYLAW REVIEW COMMITTEE**

Date: March 12, 2014

SCHEDULED TIME: 7:30 p.m.

Location: TOWN HALL (Mural Room), 878 Tremont St.

Minutes Prepared By: Nancy Johnson

Members Present: Judi Barrett, Kathy Muncey, Scott Casagrande, Nancy Johnson, George Wadsworth, Freeman Boynton, Jr.

Members Absent: Mary Steinke

Also Present: George Hall, Nathan Kelly, Shawn Dahlen, Sarah McCormick, Steve Williams, and other members of the public

Meeting was called to order at 7:30 by the Chair, Judi Barrett.

Minutes

The minutes from November 20th were approved as written.

Discussion of Preliminary Findings

Nathan Kelly sent a memorandum, dated March 11, 2014, to Judi Barrett, outlining early findings from Horsley Witten Group, Inc. and Anderson & Kreiger from their initial reading of the bylaw. The memo was distributed to the committee before the meeting and served as the basis of discussion.

George Hall addressed the consistency of Special Permit criteria. He said that overall, the bylaw is well written and clear; however, confusion comes from the way it is organized. The remedies include some low impact and some high impact. We can try to harmonize things without changing too much, or we can do an aggressive reorganization of the bylaw. Currently, things are repeated in each section. We could come up with a clearer application process. One issue we did not identify is special permit procedures for larger developments. He sees this as a vulnerability. What incentives can we use to promote cluster and inclusionary development?

Nathan Kelly spoke of a need for clarity on policy issues concerning the Design Review Board. He then proceeded to discuss the items listed on the memo.

TOWN CLERK
14 APR 25 AM 8:46
DUXBURY, MASS.

1. Wall St. v. Westwood – Subdivision control law is violated with the special permit process. For natural resource protection zoning “by right” attitude is open space design. The other way is to use incentives such as density bonus or increased yield. Attleboro – conventional or open space is by right. Inclusionary gives additional unit. Ipswich – special permit for lower lot size. Belmont and Brookline – Easier to apply inclusionary bylaw with multifamily units. He will provide options for us to deal with this issue.

2. Special permits and agencies to review. Site plan review (SPR) is nested within the special permit process. Is that good or bad? In practice, he thinks it works better to separate site plan review and special permit. SPR is not enabled by statute. Was tested in courts and deemed to be appropriate. 2 key differences: SPR is a means to show a greater depth of information to ensure a greater application with the bylaw. This is an administrative issue, to demonstrate “by right” compliance. This gives some design control over “by right” uses. If there is a special permit, it is a discretionary venue. It should not need a separate SPR, because it is already part of the process. He recommends untangling special permits and SPR, but cautions it will not be a completely clean process.

3. Non-conformity.

It was suggested we review: “A structure that is otherwise conforming is not deemed to be nonconforming solely by reason of the fact that it is on a lot that does not meet current dimensional requirements.” This limits control. We could exempt a large number of expansion cases, but we could capture the added 2 % or so that we should see. George Hall has a couple of ideas.

Do we want voluntary teardowns? This was flagged, but no policy recommendations were given.

For other than single and two family residents, the bylaw states the ZBA should encourage or not encourage certain kinds of changes. “Encourage” is a little muddy. Single and two family structures – allows ZEO to determine if nonconformity is intensified. Other bylaws have specific standards on what is an intensification of the nonconformity. We need to articulate some standards.

George Wadsworth said that the special permit is designed to allow neighbors to be informed. George Hall is not in favor of this as a policy issue.

4. Organization, or housekeeping issues. Sections need to be rounded out.

5. To what extent are you using the Boards, Regulations, checklists? The consultants would like to look at them, but will not be doing a regulatory overhaul.

6. SPR. Certain special permits could go away if things can be better articulated.

7. Standards for application requirements need to provide sufficient information for judgment and approval. This is one of the most common flaws. Decision making criteria belong in the Bylaw. Application requirements can go in Rules & Regs.

8. Definitions will be clarified.

APOD – Nate Kelly recommends that the town stick with nitrate in the zoning bylaw. Phosphorus does not migrate except over a period of time. Failed septic systems and shallow ground water are biggest issues. BOH usually takes care of these.

9. Will need to dig deeper. The intent of WPOD – anything that disturbs soil and affects water quality – Many things, including piers, would be prohibited.

Scott Casagrande asked if WPOD is outdated. George Hall has found a lack of consensus on this issue. WPOD can play a complementary role in protection.

TOWN CLERK
APR 25 PM 3:17
DORCHESTER MASS.

Performance standards based criteria. Zoning is a tool in which we can specify uses allowed. Our bylaw is not clear. If it stays, the goal is to include greater clarity as to what is allowed. These are things a Conservation Commission cannot do. Judi Barrett said the intent of this bylaw is not clear. Nate Kelly - If there is an opportunity to draw a better map. George Hall - Important to understand the criteria on which those lines are drawn.

Regulatory objectives are not specified by the government. Judi said the process of 404.9 does not work. (Catch 22) The procedure was changed. Now people need to get the map changed by Town Meeting if the lot is not wet. George Hall asked if the Scenic Overlay District is referenced anywhere other than 404.50.

10. Design Review Board.

Nate Kelly said that Yarmouth works well. District specific, non-residential development, design manual, adapted from Cape Cod. Operates outside of special permit.

George Hall said tourist areas are strictly regulated with Design Review Boards.

Nate said considerations are put into three buckets:

Must haves: Building placement, form massing, parking, etc. (bylaw)

Maybes: Roof lines, articulation, etc. (regulations)

Maybe/Maybe not: Window treatments, cornices, materials. (guide book)

He will provide two examples of design manuals they did in Rhode Island.

Judi Barrett asked George Hall and Nate Kelly if they had looked closely at the so-called 3 percent rule under Sec. 410.4 and its relationship, if any, to Sec. 401.2(4), expansion or alteration of non-conforming single-family dwellings. George said he had not caught that issue and would look at it. (He subsequently replied an email which Judi forwarded to the ZBRC).

The consultants will provide the examples promised during the above discussion within the week.

Public Comment

Sarah McCormick, from the Design Review Board agreed with the concern about section 401.2,4, that clarification is needed so the Zoning Enforcement Officer does not need to make determinations regarding intensification of nonconformity. She also suggested that section 404.50 about piers is confusing, and the 50% rule is problematic. If an old pier is repaired, it would be less intrusive than a new one built to newer standards.

Kathy Palmer agreed that this bylaw encourages people to let their piers decay. She also mentioned that she appreciated the Historic Commission visiting her and informing her about the history of her home before she began work on her house.

Steve Williams from the Design Review Board has been studying the bylaw and referencing other towns. He has compiled a list of issues for consideration in this project. Judi Barrett asked that he send it to her, and she will forward it to the consultants.

TOWN CLERK
APR 25 AM 8:47
DUXBURY, MASS.

Next Meeting

The next meeting was not scheduled.

Meeting adjourned @ 9:40 pm.

List of Documents and Other Exhibits Used at the Meeting: Horsley Witten Group
Memorandum to Judi Barrett, dated March 11, 2014

TOWN CLERK
14 APR 25 AM 8:47
DUXBURY, MASS.