



# Town of Duxbury Massachusetts Planning Board

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DUXBURY, MASS.

## Minutes 08/22/18

The Planning Board met on Wednesday, August 22, 2018 at 7:00 PM at the Duxbury Town Hall, 878 Tremont Street, Mural Room, lower level.

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

Absent: David Uitti, Vice-Chairman.

Staff: Valerie Massard, Planning Director; and Ashley MacMillan, Administrative Assistant.

Mr. Casagrande called the meeting to order at 7:05 PM.

## OPEN FORUM

Ms. Ladd Fiorini mentioned that she felt rushed reviewing the meeting material and would like to receive the agenda packet sooner if possible. The Planning staff responded that they will do their best to keep mailing the agenda packets out in a timely manner.

Jim MacDonald, of 91 Partridge Road, brought attention to the board on an issue he is having in his neighborhood. Mr. MacDonald believes the popular rise of residential pickle-ball courts is a growing problem in several regions and could become a problem for Duxbury. While Mr. MacDonald believes the sport itself is great, he is concerned with the amount of noise it creates in residential neighborhoods. Mr. MacDonald stated that the problem arose when his neighbor directly across the street built a private pickle-ball court and creates excessive noise. Mr. MacDonald pointed out that the town of Duxbury has neither a noise ordinance nor any outdoor sporting restrictions. Mr. MacDonald believes a good solution would be to enforce a mandatory noise reduction barrier for private courts. Mr. Glennon asked if Mr. MacDonald could use a comparison to help understand the noise level associated with pickle-ball. Mr. MacDonald described the sound as a constant, relentless ping-pong. Mr. Casagrande thanked Mr. MacDonald for bringing this issue to the Planning Board's attention.

## **A.-C.) ADMINISTRATIVE NOTES: ANR PLAN (424 Kingstown Way); ZBA REFERRAL (20 Ryans Lane); ZBA REFERRAL (326 Powder Point Avenue)**

Ms. Massard stated that due to the high number of items on the agenda this week, the first three items are proposed to be handled as administrative notes due to their straightforwardness. Mr.

Glennon asked for an explanation on the lot line reconfiguration at 424 Kingstown Way, which Ms. Massard clarified. Mr. Casagrande stated that he does not have a problem with the pier at 326 Powder Point Avenue from a zoning perspective. The Planning Board members agreed that they would be more comfortable handling the three items in their own separate motions.

Motion: Ms. Turcotte made a motion to endorse the ANR plan for 424 Kingstown Way, and Mr. Bear provided a second.

Vote: 6-0, unanimous.

Motion: Ms. Ladd Fiorini made a motion to recommend approval to the ZBA of the Special Permit request for 20 Ryans Lane, and Ms. Turcotte provided a second.

Vote: 6-0, unanimous.

Motion: Ms. Ladd Fiorini made a motion to defer to the ZBA regarding the Special Permit request for 326 Powder Point Avenue, and Mr. Glennon provided a second.

Vote: 6-0, unanimous.

#### **D.) CONTINUED PUBLIC HEARING: Citizen's Petition by Island Creek Oysters and Waterfront Realty Group**

Ms. Massard reintroduced the Citizen's Petition for the proposed zoning amendment for those who missed the previous meeting on August 8. Mr. Casagrande added that the proposed amendment seeks to modify the zoning bylaw by creating a new district, "Neighborhood Business Light", and that recent updates to the language, considered at the last meeting, have made this district even more restricted. Mr. Casagrande noted that all official language changes will have to be made on the floor at the Special Town Meeting on September 6.

Ms. Massard noted that she followed up on Mr. Glennon's suggestion at the last meeting that Island Creek Oysters and Waterfront Realty Group request a use variance from the town, and after discussing this possibility with the building department and town counsel, Ms. Massard would recommend against requesting a use variance. Mr. Glennon asked for Ms. Massard's opinion on whether or not the Planning Board should have use variances at all, and Ms. Massard responded no.

Ms. Massard explained some key points of the Petition for those absent from the last meeting as well as some changes that have since been made to the language. Specifically, Ms. Massard pointed out that a Neighborhood Business Light (NB-L) district must be adjacent to an existing NB district, and stated the dimensions allowed for lot sizes, frontage, and setbacks. Ms. Massard explained that the uses outlined in Section 421.3 are allowed in NB-1 but prohibited in NB-L. Ms. Massard added that the language has been changed slightly to prohibit the use of any type of

drive-thru establishment in NB-L. Mr. Bear pointed out that the 2 properties in question for rezoning (397 and 405 Washington Street) are currently in the Residential-Compatible district.

Mr. Casagrande asked if anyone had anything to add in regard to the issue of spot-zoning. Jonathan Mark, owner of Waterfront Realty Group and potential buyer of 397 Washington, stated that he has recently done some research to negate the spot-zoning argument. Mr. Mark reported that he has found 10 additional properties in town that he believes could benefit from the creation of the new NB-L district. Mr. Mark based his search on properties that met the criteria for NB-L eligibility: at least 30,000 sq. ft. in lot size, have 200 feet of frontage, and abut an existing NB-1 or NB-2 property. Mr. Casagrande reiterated that there are opportunities in town for NB-L besides the Island Creek Oyster site.

Mr. Mark added that he and Island Creek Oysters have the intention to preserve the two buildings as historical properties, which may not happen if ICO is forced to sell the houses as residential for economic reasons.

Ms. Massard stated that the Memorandum of Understanding is currently under review by Town Counsel; it is a legal document that would require both buildings to be treated as if they are in a historic district and is separate from zoning. Ms. Massard added that she believes Island Creek Oysters has been listening to the concerns of the town regarding the historical façade of the buildings.

Chris Sherman, President of Island Creek Oysters, explained that while the two buildings are outfitted for commercial use, they are actually zoned residential and were “grandfathered” into allowable commercial use by the previous property owner, Battelle. Once ICO bought the property from Battelle, the grandfathered use was negated, (because two years had passed since the use was abandoned), and ICO approached the spring 2018 Town Meeting to rezone the majority of the property to NB-1. During the spring Town Meeting, 397 and 405 Washington were left out of the NB-1 rezone due to the town’s concern for the historical streetscape. Mr. Sherman believes that there is little opportunity for 397 and 405 Washington to become single-family dwellings, and that the new NB-L district takes the long-term risk away from these two structures in terms of demolition.

Ms. Massard pointed out that the Economic Advisory Committee approves of the NB-L district concept, but takes a neutral stand on rezoning the two specific properties.

Sara Wilson, of 120 Bay Road, said there are some things she likes about the proposal, and some things she does not. Ms. Wilson stated that after much contemplation, she believes the best course of action would be to first designate the buildings within the historic district, and then approach the zoning issue at the next annual Town Meeting in March. Ms. Wilson feels buildings could be restored to single-family homes and wanted to know if a real estate market test had been done yet. Ms. Wilson believes the Attorney General’s office is paying little attention to spot-zoning. Ms. Wilson added that the ramifications of this zoning amendment in the future will be large and calls this type of proposal “creeping commercialism”. Ms. Wilson

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said that the term “adjacent” is misleading and would like to see the word changed to “adjoining”, which the petitioners agreed to do. Ms. Wilson does not agree that NB-Light refers to “light” uses, and feels that the NB-L allowable uses may bring high-traffic and parking needs. Ms. Wilson was adamant that the proposal needs reevaluating and should be postponed until the annual Town Meeting in March 2019.

David Corey, of 47 Surplus Street, is a nearby abutter and is involved with preservation and the historic district. Mr. Corey said he feels the proposal is a great solution to preserving the buildings, and believes the setback regulations are generous. Mr. Corey added that he is impressed with the applicants’ thoughtfulness and desire to sustain the historical façade of Washington Street.

Lori Hall, of 175 Abrams Hill Road, also gave her opinion on the zoning proposal. Ms. Hall explained, agreeing with Ms. Wilson, that she believes the historical preservation is the top priority over the zoning amendment. Ms. Hall feels that the aesthetic of the streetscape is the most important factor to consider. Ms. Hall asked about the future of the MOU in the event the property was to change owners, and Ms. Turcotte answered that the MOU is only legally binding for the current owner. Ms. Massard stated the terms are applicable to future owners in the current draft. Ms. Hall was also concerned about the parking needs of the two buildings; Mr. Casagrande explained that the applicants would need to apply for a special permit for more than three parking spaces.

Mr. Wadsworth added that he believes zoning changes should be handled at the regular annual Town Meeting. It was noted that it is at the discretion of town counsel to advise whether this situation is spot-zoning.

Mr. Bear said he thinks this is spot-zoning. Mr. Bear mentioned that a lot of people believed that these two properties would remain residential after the previous annual Town Meeting in March 2018. Mr. Bear does not recommend relying on an MOU because it is not indefinite. Mr. Bear found errors in the language as it was presented tonight, and believes the process was rushed. Mr. Bear agreed with Mr. Wadsworth that zoning changes should happen at annual Town Meetings, and feels that if it is passed it will create issues later on. Mr. Bear feels the proposal is happening too quickly and does not want to recommend approval.

Ms. Turcotte stated that the economics of remodeling the buildings would not make sense, and that the risk of selling could allow a potential buyer to tear down the houses. Mr. Casagrande agreed with Ms. Turcotte and said that everyone wants to save the houses as is.

Mr. Glennon said he appreciates ICO’s efforts to look at less invasive methods other than zoning and to investigate his suggestion of requesting a use variance. Mr. Glennon suggested amending NB-1 to be similar to NB-Light, and then rezoning the houses to NB-1 (instead of creating a new district). Similar to Mr. Glennon’s idea, Ms. Massard suggested that they could rezone the entire parcel to NB-Light in the future if the applicant is willing. In the meantime, investigation into zoning solutions for Snug Harbor is on the horizon from a planning perspective.

Mr. Casagrande added that if passed, property adjacent to an NB-1 or NB-2 district could go to Town Meeting and propose to be changed to NB-L if it meets the dimensional requirements.

Shelia Lynch, of 344 West Street, believes that if the Planning Board delays this proposal, ICO could potentially sell the properties and the buildings could be demoed. Ms. Lynch feels they should not delay the MOU agreement (and simultaneous zoning change), because it will be best for the streetscape long term.

Motion: Ms. Ladd Fiorini made a motion to recommend approval of the Citizen's Petition to amend the zoning bylaw to create a new Neighborhood Business Light district as presented as an amendment on the floor at this Planning Board meeting and to rezone portions of the Island Creek Oyster property to NB-Light as shown on the Petition map. Ms. Turcotte provided a second.

Vote: 4-2, with Mr. Bear and Mr. Glennon opposed.

#### **E.) COMMITTEE REPORT: Design Review Board; Sarah McCormick, Chair**

Sarah McCormick, Chairperson of the Design Review Board, requested to reschedule her presentation to another meeting. The Planning Board was happy to accommodate, thanked Sarah for coming, and looks forward to hearing from her on a future date. The Planning Department staff will coordinate with Ms. McCormick to reschedule.

#### **F.) ZBA REFERRAL, SPECIAL PERMIT: 106 King Phillips Path**

Mr. Casagrande stated that the applicant proposes to alter an existing structure on a multiple-dwelling lot, a preexisting nonconformity. Mr. Glennon summarized that from his understanding, this proposal includes a minor change from a previously issued Special Permit for a deck and covered porch. It was noted that the applicant did not build pursuant to the Planning Board's recommendation.

Motion: Ms. Turcotte made a motion to recommend approval to the Zoning Board of Appeals for the Special Permit request of 106 King Phillips Path, and Mr. Wadsworth provided a second.

Vote: 4-2, with Mr. Glennon and Mr. Bear opposed.

#### **G.) NEW BUSINESS FOR NEXT PLANNING BOARD AGENDA**

Ms. Massard reported that the next Planning Board meeting will include a presentation by MAPC on the "Envision Duxbury" Comprehensive Plan.

Ms. Massard announced that the town has received a \$10,000 grant from Massachusetts AARP to construct a walking loop at the Senior Center.

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### ADJOURNMENT

Motion: Ms. Ladd Fiorini made a motion to adjourn at 9:15 PM, and Mr. Bear provided a second.

Vote: 6-0, unanimous.

*The next Planning Board meeting will take place on Wednesday, September 12, 2018 at 7:00 PM at the Duxbury Town Hall, 878 Tremont Street, Mural Room, lower level.*

Materials reviewed at the meeting:

- ANR Plan: 424 Kingstown Way
- ZBA Referral: 20 Ryans Lane
- ZBA Referral: 326 Powder Point Avenue
- Citizen's Petition, Map, and MOU language from Island Creek Oysters
- ZBA Referral: 106 King Phillips Path