



# Town of Duxbury Massachusetts Planning Board

TOWN CLERK  
2018 OCT -1 PM 3:53  
DUXBURY, MASS.

## Minutes 08/08/18

The Planning Board met on Wednesday, August 8, 2018 at 7:00 PM at the Duxbury Town Hall, 878 Tremont Street, Mural Room, lower level.

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

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

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

Mr. Casagrande called the meeting to order at 7:07 PM.

### OPEN FORUM

No one from the Planning Board or the public audience brought anything forward during open forum.

### A.) PUBLIC HEARING: Citizen's Petition, Submitted by Daniel Hebert, 103 Depot Street

Motion: Mr. Glennon made a motion to waive the reading of the Public Hearing Notice, and Mr. Bear provided a second.

Vote: 4-0, unanimous.

Ms. Massard stated that the Citizen's Petition, submitted by Daniel Hebert of 103 Depot Street, requests that the Town of Duxbury consider the amendment of the zoning bylaw to allow for veterinary hospitals (for the care and treatment of domestic animals) in the residential-compatibility (RC) district, by Special Permit.

Mr. Casagrande clarified that this amendment would add another use to the list of allowable uses by Special Permit within the residential-compatibility district, similar to the light business uses such as offices. Mr. Casagrande and Ms. Massard confirmed that no one in the public audience was present to speak on behalf of the Citizen's Petition article.

Ms. Massard stated that there was a request for a Special Permit to the Zoning Board of Appeals by the existing Duxbury Animal Hospital at 103 Depot Street. During the process, there was a question regarding the definition of a "hospital" as it pertains to animals, and a question to the

non-conformity status. Mr. Casagrande stated that during the Planning's Board's review of that Special Permit request, it was approached as a pre-existing, non-conforming use. Mr. Bear added that it was originally permitted with the family living on the second-floor of the business. Mr. Casagrande stated that he is concerned that by amending the bylaw, anyone in town would be allowed to apply for a Special Permit to open an animal hospital within the residential-compatibility district. Mr. Casagrande stated that he feels there could have been a better method to approach this issue rather than amending the zoning bylaw. In case law in another town, the use of hospital as it applies to animals vs. people had arisen, and Town Counsel had brought this to the ZBA's attention during the special permitting process.

Mr. Glennon asked if Ms. Massard has an opinion about how this zoning change would affect the town's Comprehensive Plan project and the zoning recodification project. Ms. Massard stated that she feels zoning is an ongoing process, and that the bylaw is a moving document, therefore all the projects will affect each other in some way.

Mr. Glennon pointed out that this change could have been presented as a Use Variance instead of a zoning amendment. Mr. Glennon asked members of the public audience if anyone had an opinion they would like to share, but no one came forward.

Mr. Glennon asked what the existing Special Permit uses in the residential-compatibility are under Section 410.3. Mr. Wadsworth provided his copy of the zoning bylaw which Mr. Glennon read aloud to the room: (1.) a stand for the sale of produce raised on the premises, (2.) home occupation in accordance with Section 410.7, (3.) conversion of a single-family dwelling in existence for 10 years prior to the application for a Special Permit in accordance with Section 410.6, (4.) cemetery, (5.) golf course, (6.) Hospital, convalescent home, sanatorium. Institution, including a continuing care or similar assisted living retirement facility for persons age 62 and over operated in connection with a skilled nursing facility subject to state licensure, (7.) riding stable, (8.) bed and breakfast within existing footprint of an existing single-family dwelling, in which the operator resides, (9.) private club not conducted for profit and not containing sleeping quarters for more than 4 persons, (10.) Residential Conservation Cluster Development in accordance with Section 540, and (11.) Wireless Telecommunications Services Facility in accordance with Section 610. Mr. Glennon reiterated that the proposed zoning amendment would add a 12<sup>th</sup> allowable use under Special Permit for a veterinary hospital, defined as: "for the care and treatment of domestic animals." Ms. Massard pointed out that Town Counsel had offered some amendments to further define that this does not relate to kennels prior to the petition being filed.

Motion: Mr. Glennon moved to close the public hearing at 7:25 PM. Mr. Bear provided a second.

Vote: 4-0, unanimous.

## *DISCUSSION*

Mr. Glennon stated that he felt the proposed amendment is consistent with the existing Special Permit uses in Section 410.3. Mr. Casagrande added that while the 103 Depot Street does not offer overnight boarding or kenneling, he is concerned about potential veterinary hospitals that may open in the future and want to do kenneling. Ms. Massard stated that she has discussed with Daniel Hebert the possibility of editing the Citizen's Petition to clarify that the Special Permit would not allow boarding or kenneling, adding that he would have to consider it at the floor during the Special Town Meeting on September 6. Mr. Glennon wanted to make it clear that the Planning Board would not support the zoning amendment without the change to the Citizen's Petition clarifying that the use would allow for veterinary care and treatment but not overnight boarding or kenneling.

Motion: Mr. Glennon made a motion to recommend approval, contingent on the conditions discussed, of the proposed zoning amendment requested by the Citizen's Petition by Dr. Daniel Hebert, and Mr. Bear provided a second.

Vote: 3-1, with Mr. Wadsworth opposed.

#### **B.) PUBLIC HEARING: Citizen's Petition, Island Creek Oysters and Waterfront Realty Group**

Ms. Massard explained that the proposed zoning amendment is a 2-part single article. The first component is a proposal to add a new zoning district to the bylaw- "Neighborhood-Business Light" or "NB-Light". The NB-Light district would be similar to a "Neighborhood Business 1" or "NB-1". The uses excluded to create NB-Light are plumbing/carpentry businesses, bus depots, and cell towers.

The second consideration is that the NB-Light district has different dimensions than NB-1 and NB-2, specifically; the minimum lot size is 30,000 square feet, there must be 200 feet of frontage, the front setback must be 25, the side setback must be 25 feet to residential use, and the rear setback must be 15 feet to residential use. Comparatively, the minimum lot size for NB-1 and NB-2 is 15,000 square feet, requires 100 feet of frontage, and 0 feet for front, side, and rear setbacks. Also, a NB-L district must abut an existing NB-1 or NB-2 district.

Ms. Massard explained that one of the concerns surrounding this Citizen's Petition is the desire to preserve the two historical buildings (397 and 405 Washington) that are currently owned by Island Creek Oysters. This desire was expressed in a Memorandum of Understanding which is currently under review by Town Counsel. The MOU agreement would ensure the properties would be preserved as if they were in a historical district.

Mr. Bear added that the Economic Advisory Committee met earlier in the week and upon review, found the language for the NB-Light district to be sound; however, the EAC has reservation on the matter due to the unknown future plans for the properties. Mr. Bear also reported that the EAC felt that the proposal is rushed, and would be more comfortable recommending approval after seeing a long-term site plan.

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Ms. Massard reiterated that the 2 properties, 397 and 405 Washington Street, were never included in the NB-1 zoning that was approved at the spring 2018 Town Meeting. The two properties are also not viable for residential use as the insides are converted to offices and remodeling would be cost prohibitive.

Mr. Casagrande stated that he feels the new NB-Light district would provide a buffer between residential and commercial districts if the commercial district decided to expand. Mr. Glennon suggested amending the current NB districts instead to creating a new one, and would like to avoid spot-zoning. Mr. Glennon believes the application requires more information to justify creating a new district.

Chris Sherman, President of Island Creek Oysters, spoke to the Planning Board on behalf of the Citizen's Petition. Mr. Sherman explained that the Petition is a continuance of the discussion from when a portion of ICO was rezoned to NB-1, excluding 397 and 405 Washington Street. Mr. Sherman stated that both he and ICO are aware of the sensitivity surrounding the Washington Street façade. Bearing this sensitivity in mind, Mr. Sherman explained that the zoning amendment, limiting short-term and long-term uses, will meet the Petition's goals and prevent undesired outcomes for the properties.

Mr. Sherman added that the buildings at 397 and 405 Washington are remodeled internally for office space, as they were once used, therefore rezoning them to be used as offices again would not be a drastic change. Mr. Sherman explained that remodeling the buildings to residential use is not feasible, and keeping them for NB-Light uses (instead of selling as residential) will protect the historical value.

Jonathan Mark, Owner of Waterfront Realty, spoke briefly about the hypothetical future use of the aforementioned properties. Mr. Mark plans to potentially buy 397 Washington Street from Island Creek Oysters and plans to make the first floor his real estate office. Mr. Mark stated that he is willing to work with the Historic District Commission to restore the buildings back to the original exterior aesthetic.

For clarification, Mr. Wadsworth asked if the properties can be used as offices under the current zoning. Mr. Sherman replied that neither property can be used commercially because they are zoned residential. Mr. Sherman maintained that by allowing ICO to use the buildings as offices, they can be maintained for years to come. Ms. Massard explained that because ICO is a farm they are exempt, but otherwise the use is lost due to the property being vacant for two years.

Mr. Bear asked Mr. Sherman about the future plans for the remainder of unused property at ICO. Mr. Sherman stated that ICO's only intention is to use the buildings as they are meant to be used, and fill the empty spaces. Mr. Sherman maintained that ICO has no current plans to build additional structures.

Mr. Glennon recommended that, to avoid amending the zoning bylaw, Island Creek Oysters should consider requesting a use variance. Mr. Sherman replied that the company has considered all alternatives to the Citizen's Petition, including a use variance request, but believes the zoning amendment is the best way to reach the desired outcome.

Mr. Wadsworth stated that he would like to get an idea of what could potentially happen at the properties. Mr. Sherman maintained that the properties will only be used for office space, with potential residential apartments above Mr. Mark's real estate office.

Motion: Mr. Glennon made a motion to continue the public hearing of the Citizen's Petition on Wednesday, August 22 at 7:10 PM. Mr. Wadsworth provided a second.

Vote: 4-0, unanimous.

### **C.) RECOMMENDATION TO SELECTMEN: Chapter 61A, 74 Bay Road**

Ms. Massard explained that this request for 74 Bay Road has surfaced before. The town has previously not expressed interest, and a new Purchase and Sale has been offered for consideration. An archeological dig found the property to have historical value based on a 2,000 year old shell that was discovered. Mr. Glennon asked if there are any third parties in town that would be interested in using the right of first refusal, such as the Rural and Historical Society.

Motion: Mr. Wadsworth made a motion to recommend that the town not exercise its Right of First Refusal of the Chapter 61A request of 74 Bay Road to the Duxbury Board of Selectmen. Mr. Glennon provided a second, and recommended the town assign the First Right of Refusal to any interested committee in town due to the historic nature of the property.

Vote: 4-0, unanimous.

### **D.) OTHER BUSINESS**

- NASH ROAD: Ms. Massard noted that John Cully of JRM Investment Realty LLC deposited a Performance Guarantee Bond amount based on the estimate provided by Merrill Engineers. Mr. Cully stated that he sent the Lot Release draft agreement to the Planning Department.

Motion: Mr. Bear made a motion to accept the performance guarantee with JRM Investment Realty LLC and to release all lots in the Nash Road subdivision. Mr. Wadsworth provided a second.

Vote: 4-0, unanimous.

- MINUTES: The minutes from 7/11/18 and 7/25/18 were approved 3-1, with Mr. Glennon abstaining due to absence from the meetings.

## **E.) ADJOURNMENT**

Motion: Mr. Wadsworth made a motion to adjourn the meeting at 9:06 PM, and Mr. Bear provided a second.

Vote: 4-0, unanimous.

*The next Planning Board meeting will take place on Wednesday, August 22, 2018 at 7:00 PM at the Duxbury Town Hall, 878 Tremont Street, Mural Room, lower level.*

Materials reviewed at the meeting:

- Citizen's Petition and MOU language from Island Creek Oysters
- Citizen's Petition from Daniel Hebert
- Chapter 61A Request: 74 Bay Road
- Nash Road Performance Guarantee Estimate
- Minutes from 7/11/18 and 7/25/18
- Construction Cost Estimates from July 2018