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DUXBURY, MASS.

TOWN OF DUXBURY

BOARD OF APPEALS

DUXBURY BOARD OF APPEALS
MEETING MINUTES
September 8, 2022 @ 6:00 p.m.

ATTENDANCE: Wayne Dennison, Judith Barrett, Emmett Sheehan, Freeman Boynton Jr., Philip Thorn, Borys Gojnycz and Tanya Trevisan
Other persons present at the hearing: Amy Kwesell, Town Counsel, Jim Wasielewski, Building Commissioner and Lauren Haché, Administrative Assistant

CALL TO ORDER: Wayne Dennison called the meeting to order and reads the Governor's Preamble: Pursuant to Governor Baker's Chapter 20 of the Acts of 2021 dated June 16, 2021, An Act of Extending Certain COVID-19 Measures Adopted During the State of Emergency regarding suspending certain provisions of the Open Meeting Law, , G.L. c. 30A, §18, the Town of Duxbury's Board and/or Committee meetings will be conducted via remote participation to the greatest extent possible with members. For this meeting, members of the public who wish to watch the meeting may do so by viewing the Duxbury Government Access Channels – **Verizon 39 or Comcast 15**. Viewers can visit www.pactv.org/duxbury for information about Duxbury programming including streaming on Duxbury You Tube, to watch replays and Video on Demand.

ZBA Case #2021-28, Husk, 160 Marshall Street (CONT'D): *The Board voted 4-1 to grant the withdraw petition from the Applicants.*

ZBA Case #2021-40, Campbell, 5 E. Marginal Road (CONT'D): *The Board voted to continue the public hearing to September 22, 2022 at 7:30 pm.*

ZBA Case #2022-10, Old Myrtle Street LLC, Keene's Mill Village, 0 North Street, Comprehensive Permit Application (CONT'D): *The Board voted 5-0 to continue the public hearing to October 13, 2022 at 7:00 pm.*

ZBA Case #2022-15, Bolze, 1 Bradford Street: *The Board voted unanimously (5-0) to approve the special permit as requested.*

Philip Thorn makes a motion to adjourn. Tanya Trevisan seconds (5-0)

BOARD OF APPEALS MINUTES

Case No: 2021-28
Petitioner: Benjamin and Charles Husk
Address: 160 Marshall Street
Date: September 8, 2022 at 7:30 p.m.
(Continued from July 28, 2022, May, 26, 2022, March 24, 2022, January 13, 2022 & October 14, 2021)

Members present: Wayne Dennison, Judith Barrett, Freeman Boynton Jr., Emmett Sheehan, Philip Thorn & Tanya Trevisan
Members Voting: Wayne Dennison, Judith Barrett, Freeman Boynton Jr., Emmett Sheehan & Philip Thorn
Other persons present at the hearing: Amy Kwesell, Town Counsel, Jim Wasielewski, Building Commissioner and Lauren Haché, Administrative Assistant

- Wayne Dennison re-opens the public hearing and states Lauren, what have we received
- Lauren Haché states we have a list of memos including from the Deputy Police Chief, Deputy Fire Chief, Health Agent, Building Commissioner, Conservation Commission, letter from Attorney Uitti and two letters from the Applicants
- Wayne Dennison asks for the Applicants Counsel to speak
- Attorney Christopher Davidson, representing the Applicants, states at the last hearing we were asked to discuss and come up with amicable conditions, should the Board approve the special permit. The Abutters were invited to submit concerns, questions and conditions and nothing was submitted at this point from the neighbors. Some important conditions we proposed are guest restrictions, only paying guests are allowed, no smoking, no parties, quiet hours from 10:00pm through 8:00am, one on one communications when the property is booked along with meeting guests at the end of the private way to escort them to the property. Signs to guide the guests and at the discretion of the abutters – where they are installed, size etc. and the applicants will pay for and maintain the signs. Also, the applicants propose to have a sit down with the neighbors at the beginning of each season to show the rules that are given to renters. Limiting the number of vehicles, one reservation gets one car, so only four cars as there are only four bedrooms for rent.
- Wayne Dennison states thank you, we did receive an opinion from Town Counsel regarding the ownership with Benjamin Husk, is he still an owner; there is mention of an owner in interest
- Jennifer Bylo states we are working through title issues
- Wayne Dennison states so we did put two conditions that there were to be no short-term rentals in that time, is this accurate
- Christopher Davidson states that is correct, no short-term rentals
- Wayne Dennison states what is the status of the enforcement actions
- Jim Wasielewski states they are appealing the fine that I issued
- Wayne Dennison states is there any one else that would like to speak on behalf of the applicant
- Tanya Trevisan states can you clarify which structure on the property is for rentals
- Christopher Davidson states it's the main house, under one main roof, with the Applicant's living under the same roof

- Attorney David Uitti, representing the neighbors of the shared driveway, speaks to the Board and asks that they deny the special permit.
- Will Zachman, 160 Standish Street, speaks in favor of the special permit request
- Dr. Benjamin Cronin, 17 Pill Hill Lane, speaks to property rights not being absolute and is not in favor of this application, 424.4 in a list of factors speaks to adjoining premises having detrimental tendencies
- Jenny Rice, 152 Marshall Street, speaks as a direct abutter and partial owner of the private right of way, against the special permit application as an intrusion on their privacy
- Jeffrey Starrick, 20 Plumfield Lane, speaks against the special permit application
- Cleonice Husk, 160 Marshall Street, speaks about why the application should be approved
- Manual Rice, 158 Marshall Street, speaks as the most immediate abutter against the application giving examples of the issues with renters and their property
- Amy Kwesell, Town Counsel, speaks to the ownership issues and thought that Benjamin Husk had sold his portion of the property. Ms. Kwesell states I do have a question, this owner in interest, Ms. Bylo, what would her ownership be, If this has not happened, we then do not have a complete application with ownership signatures and in addition to that we also do have a letter from an owner not supporting this application
- Wayne Dennison states what we traditionally do when there is some probability that an application may be denied, rather than bar the applicants from coming back for two years, we conduct a straw poll and allow the applicants the option to withdraw. You need four votes in favor if we proceed
- Christopher Davidson states we will take the straw poll
- Emmett Sheehan, Freeman Boynton Jr. and Phil Thorn all state they will not vote in favor
- Wayne Dennison states so this application will not proceed and you can either ask to proceed or request to withdraw
- Christopher Davidson states can we confirm the voting members
- Wayne Dennison states myself, Judi Barrett, Kathy Muncey, who has resigned from the board and no longer on the board or sitting on this, Freeman Boynton, Emmett Sheehan and Philip Thorn is the alternate who has been at all of the hearings
- Christopher Davidson requests to withdraw without prejudice, knowing we can reapply at any time
- Wayne Dennison moves to grant the withdraw request
- Judith Barrett seconds
- All in favor WD, JB, FB, ES
- **All opposed PT**

Motion: It was moved, seconded and voted (4-1) to grant the applicants to withdraw without prejudice.

Moved by: WD	Seconded by: JB
Number in favor: 4	Number opposed: 1

BOARD OF APPEALS MINUTES

Case No: 2022-15
Petitioner: Stephen and Alicia Bolze
Address: 1 Bradford Road
Date: September 8, 2022 at 6:00 p.m.

Members present: Wayne Dennison, Judith Barrett, Emmett Sheehan, Freeman Boynton Jr., Philip Thorn, & Tanya Trevisan
Members Voting: Wayne Dennison, Judith Barrett, Philip Thorn, Borys Gojnycz and Tanya Trevisan
Other persons present at the hearing: Amy Kwesell, Town Counsel, Jim Wasielewski, Building Commissioner and Lauren Haché, Administrative Assistant

- Wayne Dennison opens the public hearing and reads the hearing notice
- Lauren Haché reads the correspondence and letters in support
- Freeman Boynton Jr and Emmett Sheehan recuse themselves
- Architect and Agent for the project, Michael Tartamella of Patrick Ahearn Architect LLC present the project to the Board and explains that the proposal will preserve the historical 1870 portions of the house, raze the later additions and then add a new addition, while razing the existing free-standing garage. The house currently sits sideways on Marshall Street, so they plan to rotate the existing portion to have the front of the home on Marshall Street. This is a pre-existing, non-conforming dwelling, hence the special permit request. Lot coverage will be 15.7%, we maintain the non-conformity on the North side of the property while improving the non-conformity on the West side if the property by five feet, moving the primary position back from Marshall Street. We met with historic and they determined that based on the preservation of the existing house, they gave us their blessing, as did planning and design review board.
- Wayne Dennison states thank you, couple of questions. The non-conformities you mention are size of the lot, non-conforming setbacks, is that correct
- Michael Tartamella confirms
- Wayne Dennison states so with respect to the setbacks, everything you are proposing makes it better than what exists
- Michael Tartamella states yes, however we are preserving the side yard setback on Bradford Road, we are improving the front setback on Marshall Street
- Wayne Dennison states so you are improving the setbacks, but more non-conforming with coverage
- Michael Tartamella states yes, but we are seeking the 3% extra coverage
- Wayne Dennison states there is that provision, generally someone does the math
- Michael Tartamella shares the table on the plan
- Jim Wasielewski confirms the addition is adding the existing building coverage is 14.6% and they are seeking to increase to 15.7%, allowable by 3% is 19.9%
- Borys Gojnycz states I do see they are getting rid of that existing free-standing garage and not proposing to replace, so that frees up some coverage right there and thanks the Architect for a very thorough presentation

- Wayne Dennison states are there members of the public wishing to speak
- Jeff Wilkinson, 56 Massasoit Avenue, states as a resident and on behalf of my daughter who lives on Bradford Road, we all fully support this project
- Leo Vercolloni, 46 Standish Road speaks in support
- Wayne Dennison Makes a motion to close the public hearing
- Judith Barrett Seconds
- All in favor WD, JB, PT, TT, BG
- Wayne Dennison states any discussion
- Borys Gojnycz states I am impressed that they got through the Design review Board and Historical with great support
- Wayne Dennison moves to approve the special permit as submitted
- Philip Thorn seconds
- All in favor WD, JB, PT, BG, TT

Motion: It was moved, seconded and unanimously voted to close the public hearing.

Moved by: WD Seconded by: JB
Number in favor: 5 Number opposed: 0

Motion: It was moved, seconded and unanimously voted to approve the special permit as submitted.

Moved by: WD Seconded by: PT
Number in favor: 5 Number opposed: 0

BOARD OF APPEALS MINUTES

Case No: 2022-10
Petitioner: Keene's Mill Village
Address: 0 North Street
Date: September 8, 2022 Time: 6:00 p.m.
(Continued from July 14, 2022, June 9, 2022 and May 12, 2022)

Members present: Judith Barrett (CPT), Freeman Boynton Jr., Emmett Sheehan, Philip Thorn, Borys Gojnycz & Tanya Trevisan
Members Voting: Judith Barrett, Emmett Sheehan, Freeman Boynton Jr., Philip Thorn & Tanya Trevisan
Other persons present at the hearing: Amy Kwesell, Town Counsel, Jim Wasielewski, Director of Municipal Services & Lauren Haché, Administrative Assistant

- Judith Barrett, Chair Pro Tem, re-opens the public hearing and reads a list of materials received since the previous hearing on July 14, 2022.
- The Applicants Agent, Jonathan Silverstein, states we have submitted a number of documents since the last hearing including storm water calculations, site plan, septic plans etc. I will let the project Engineer Rick Grady walk you through the project. We did as for a waiver from the Board of Health for the proposed septic from the 150-foot setback to a well. The Waiver list is fluid still
- Rick Grady, Grady Consulting, states we are still working on this and we did increase the road width on the south hamlet to 24 feet to eliminate the need to post no parking signs and to improve access for emergency roadways. We also have vertical curbing. The July 28th plans have the new flags for delineation and we did provide septic plans at great detail. The south hamlet we are proposing a common system to the right-hand side as seen on sheet 5. This enables us to be more than 150-feet from all wells. We have Pat Brennan coming out next week to determine the ground water and do more perc test pits.
- Judith Barrett states since there are technology issues, I think that it is important to have Agents and Engineers be available in person would be helpful in the future
- Amy Kwesell states so you're doing perc tests when
- Rick Grady states next Wednesday
- Amy Kwesell states will the drainage locations move and how did the first round of perc tests look
- Rick Grady states we have had three over the years and they look good
- Judith Barrett states Pat, would you like to address this now
- Pat Brennan, Amory Engineers, states I submitted a letter on August 9th with a number of comments and I know that Rick and his team are addressing them
- Daniel LaCevita, Vanasse and Associates, discusses the summer traffic count study they conducted and states an increase of traffic flow by 35%
- Elsa Chan, VHB, the Towns Peer Review consultant states that VHB thinks the summer traffic counts are appropriate and not that drastic and does not alter the original findings. Also the

driveway that was on the corner of Keene and North moved to Keene street and the adjustment is more appropriate. Also the sidewalk along North Street, which is great but there may need to have drainage upgrades to eliminate ponding

- Judith Barrett asks if they are aware about memos from DPW and Fire Dept. regarding the sidewalk
- Jonathan Silverstein states yes, we are aware
- Judith Barrett states does the Board have any questions or comments
- Freeman Boynton Jr states is the North and Keene intersection a 4-way stop
- General consensus is yes
- Philip Thorn states was there a previous plan about single family units on this property
- Judith Barrett states yes, for six single family homes on the one parcel
- Tanya Trevisan states I have a question regarding the neighbors along Keene Street and no access to town water, will this affect the wells
- Jonathan Silverstein states Mr. Grady can speak to this, but we don't believe that there will need to be any waivers or issues with regard to the 150-foot setback requirement
- John Baldwin states what well are you talking about
- Tanya Trevisan states the Shine property
- John Baldwin states the new design we don't have any septic near her property
- Pat Brennan asks for Rick Grady to show the setbacks to area wells
- Rick Grady states we did show that on sheet 5 of the set, the nearest well is over 150 feet from the nearest leaching area
- Amy Kwesell states I don't see anything about green space and amenities, has that been done
- Rick Grady states those will continue to evolve with the next set of plans
- Amy Kwesell asks about the width of all the driveways, will that be addressed
- Rick Grady agrees
- Amy Kwesell states also, the driveway from the garage door distance and then the construction staging and guest parking
- Jonathan Silverstein states we did expand the roadway to 24 feet to adequately provide
- Rick Grady states we cab depict that on the new plan
- Amy Kwesell asks parking on both side?
- Amy MacNab, 269 Old Tobey Garden Street, there is one private drinking well, the Shine's, maybe not within the setback, but this Town does have a lot of water issues especially with PFAS and clustered septic systems are big contributors to PFAS. My question is, knowing there is a well in the proximity, is there a way to conduct ground water flow tests to see which way this water is travelling so we know the potential impacts to the private well
- Pat Brennan states I do have the ground water mapping for the town, I will check and let you know
- Phil Thorn states how close is the Shine property to hook up to public water supply
- Carol Smith, 415 North Street, Nancy Shine couldn't be here, but her property is 840 Keene Street and the town water isn't accessible because all of the ledge, they can't access it
- John Baldwin states I would like to make a point, there was a variance and Freeman knows this because he did the work. They are already 104 feet from their own septic system and well.

- Freeman Boynton Jr states is there ledge in your development, could you attach them to the town water you propose to pipe in
- John Baldwin states they can look into that but I don't know if there is ledge. We have no problem looking into letting them hook into the water
- Jonathan Silverstein states I do think it's important to note that we are complying with every town regulation
- Scott Horsley speaks on behalf of the neighbors and Attorney Dennis Murphy with Hill Law and discusses the letter in file with the ZBA
- Pat Brennan shares his screen showing the groundwater flow is North West where the leaching system is and away from the wells
- Kim Abplanalp, 120 Myrtle Street, there is a tributary that flows below Keene Street and into Pembroke drinking water and I want to raise this issue
- Pat Brennan states it's not mapped as a zone a, b, or c to a surface water supply nor in zone II to public water supply according to State mapping
- Carol Smith, 415 North Street, mentions traffic concerns and the driveway on the plans close to the intersection
- Daniel LaCivita states we can go out and look at the driveway site lines and distances (75 to 100 feet)
- Judith Barrett asks Elsa Chan for a subsequent letter to the Board with regard to this
- Sherri Hussar, 404 North Street, speaks to concerns over the septic size and the bonus room in addition to the three bedrooms
- Deborah Frangesh, 399 North Street, voices concerns about the density and proximity to her property
- Jonathan Silverstein states he will grant an extension to 12/8/2022 to close the public hearing
- Judith Barrett states I will entertain a motion to continue this public hearing to Thursday, October 13th at 7:00pm
- Freeman Boynton moves the motion
- Emmett Sheehan seconds
- All those in favor JB, PT, TT, FB, ES

Motion: It was moved, seconded and unanimously voted to continue the public hearing to October 13, 2022 at 7:00pm.

Moved by: FB	Seconded by: ES
Number in favor: 5	Number opposed: 0

BOARD OF APPEALS MINUTES

Case No: 2021-40
Petitioner: Campbell
Address: 5 E. Marginal Road
Date: September 8, 2022 at 7:30 p.m.
(Continued from July 14, 2022, June 23, 2022, June 9, 2022, April 28, 2022 and February 10, 2022)

Members present: Freeman Boynton Jr. (CPT), Emmett Sheehan, Philip Thorn, Borys Gojnycz & Tanya Trevisan
Members Voting: Freeman Boynton Jr. (CPT), Emmett Sheehan, Philip Thorn, Borys Gojnycz & Tanya Trevisan
Other persons present at the hearing: James Wasielewski, Director of Municipal Services & Lauren Haché, Administrative Assistant

- Freeman Boynton Jr re-opens the hearing and states I believe the last hearing was continued due to conservation approval and you have since received that; Lauren what have we received since the last hearing.
- Lauren Haché states we have received new site and architecture plans dated July 25, 2022 and a few letters of concern, the first from Pauline Flynn of 33 Ocean Rd. North expressing concerns and asking for the Board to make a site visit, a letter from the Mann's 241 Gurnet Road concerned about the length of the proposed building and requesting a site visit.
- Freeman Boynton Jr states what is important here tonight is determining what has changed since the last hearing, there was concern about the property line where it's determined the setback on E Marginal is improving and keeping the rear setback to 15 feet. Has Conservation approved the garage underneath
- Brian Donohue, the Architect for the Applicants, addressed the board and stated that Conservation had work with them regarding the under the home garage. We have raised the building up 13.8 feet and is open underneath for sufficient flow. There is an inherent need for parking off the street, so there is parking under. We plan to move the house back six feet to allow for more parking off the street
- Discussion ensued around the 3 season spaces from the under-home driveway
- Paul Spiro, Agent for the Applicants, speaks about the zoning and the pre-existing non-conforming dwelling on the lot. He continues that nothing proposed is more non-conforming, in fact the front setback is improved and includes more parking. The coverage calculation is on the plan, to seek the 3% we are allowed by special permit 967 sq. feet and we are seeking 880 sq. ft. This will be a nice 2-bedroom structure.
- Jim Wasielewski states what is the actual height here
- Brian Donohue states it is to the mid-point of the roof with the average grade, so it's 30 feet
- Paul Spiro goes over the coverage calculations with the board
- Jim Wasielewski states this is accurate

- Freeman Boynton Jr states are there any comments from the public
- Danielle Mann, 241 Gurnet Road, a direct abutter, the non-conformity is improving and my lot line is 3 feet from this, by them moving this back it will block all my sunlight, my views, everything. We support a new home, we just object to the moving of the home back.
- Freeman Boynton Jr asks how far the Mann property is from the property line
- Danielle Mann states 15 feet on two lots and the addition we put on our home directly abuts
- Freeman Boynton Jr states maybe we should do a site visit
- Emmett Sheehan agrees
- The board agrees to see make a site visit
- Jim Wasielewski states when did you add on to your property
- Danielle Mann states 30 years ago
- Freeman Boynton states is there a view to the marsh
- Danielle Mann states ocean and air
- Freeman Boynton states when could we hear this again
- Lauren Haché states the next date is September 22nd
- Paula Shakespeare, 245 Gurnet Road, questions the close proximity to E Marginal and the egress
- John Mann, 241 Gurnet Road states that the applicant is holding out and doesn't understand why they can buy a house and expect to move it back – there should have been buyer beware. We need a site visit
- Freeman Boynton Jr states I would like to comment on that, they bought a property and now that they are starting from scratch so it makes sense to address the lack of parking. Also, they decided to go with driven wood pilings to be less intrusive
- John Mann states we do not have a problem with the building moving back 5 feet if the building didn't grow. The Owner seeks to take away something from us that he doesn't have a right to
- Freeman Boynton Jr states lets schedule a site visit
- After discussion, the board schedules site visit to the property
- Phil Thorn makes a motion to continue the hearing to September 22, 2022 at 7:30pm
- Emmett Sheehan Seconds
- All in favor FB, ES, TT, PT, BG

Motion: It was moved, seconded and unanimously voted to continue the public hearing to September 22, 2022 at 7:00pm.

Moved by: FB	Seconded by: ES
Number in favor: 5	Number opposed: 0