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TOWN OF DUXBURY
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BOARD OF APPEALS

DUXBURY BOARD OF APPEALS  
MEETING MINUTES  
December 8, 2022 @ 7:30 p.m.

**ATTENDANCE:** Freeman Boynton Jr.(CPT), Emmett Sheehan, Philip Thorn, Judith Barrett, Borys Gojnycz and Tanya Trevisan

**Other persons present at the hearing:** James Wasielewski, Director of Municipal Services & Lauren Haché, Principal 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](http://www.pactv.org/duxbury) for information about Duxbury programming including streaming on Duxbury You Tube, to watch replays and Video on Demand.

**ZBA Case #2022-18, Bradford, 15 Lewis Court:** *The Board voted unanimously (5-0) to approve the special permit.*

**ZBA Case #2022-26, Corey, 32 Linden Lane:** *The Board voted 5-0 to grant the special permit, with conditions.*

**ZBA Case #2022-27, Fitzsimmons and Confar, 11 Puritan Way:** *The Board voted unanimously (5-0) to grant the special permit..*

**Administrative:**

**a. Duxbury Woods Master Deed Amendment**

*Tanya Trevisan Makes a motion to approve the minutes from October 13, 2022. Emmett Sheehan Seconds*

*Philip Thorn Makes a motion to approve the minutes from November 10, 2022. Emmett Sheehan Seconds  
Wayne Dennison makes a motion to adjourn. Philip Thorn seconds (5-0)*

## BOARD OF APPEALS MINUTES

**Case No: 2022-18**

**Petitioner: Bradford**

**Address: 15 Lewis Court**

**Date: December 8, 2022 at 7:30 p.m.**

**(Continued from October 27, 2022 and September 22, 2022)**

**Members present:** Freeman Boynton Jr. (CPT), Judith Barrett (remote), Emmett Sheehan, Philip Thorn, Borys Gojnycz (remote), and Tanya Trevisan

**Members Voting:** Freeman Boynton Jr. (CPT), Judith Barrett, Emmett Sheehan, Borys Gojnycz and Tanya Trevisan

**Other persons present at the hearing:** James Wasielewski, Director of Municipal Services & Lauren Haché, Principal Assistant

- Freeman Boynton Jr. re-opens the public hearing and asks what the Board has received since the last hearing
- Lauren Haché states we have received revised architectural plans dated November 1<sup>st</sup>, a revised Site Plan dated December 1<sup>st</sup>, a letter with a volume chart December 1<sup>st</sup> and a supplemental letter from the Design Review Board and a letter from December 5<sup>th</sup> from Paula Shakespeare.
- Freeman Boynton Jr. states can you show me on the plan the Shakespeare home
- Chip Bradford, the applicant, shows the Board the home in reference to the property
- Freeman Boynton Jr states would you like to present your changes
- Rick Grady with Grady Consulting presents the newly revised site plans, noting that they lowered the roof line as requested and then we did have the site walk as well. The site plan hasn't changed, most notably they made architectural changes
- Freeman Boynton Jr states they did listen and make it look more like a 2 ½ story over a 3 story home. Let's open this up to the public
- Maureen Fitzgerald from 247 Gurnet Road spoke in concern and stated that her previously written letter was not read and asks to have it read into the record.
- Lauren Haché reads the letter dated September 21, 2022 and reads the concerns about the view and sunrise being blocked by the new proposed house.
- Maureen Fitzgerald, 247 Gurnet Road states that the house moving forward will further block my view
- Emmett Sheehan states is this the front of the house expanding or the rear?
- Maureen Fitzgerald states it affects my rear view and I have a princess balcony that overlooks Lewis Court with a path view to the ocean
- Freeman Boynton Jr states it isn't in our purview to speak to people's views, we work with mass and coverage
- Maureen Fitzgerald states I quoted directly from the Bylaws
- Freeman Boynton Jr states it's "vista" in the Bylaw not views. In order to preserve a view, you would have to have an easement over someone else's property
- Tanya Trevisan states it does talk about scenic views from public ways but not private homes

- Judith Barrett states we don't have an obligation to protect someone's private view but on the other hand we do have to consider detriment
- Emmett Sheehan states to the neighborhood, a detriment to the neighborhood
- Judith Barrett states that is the questions, she is asserting that it is
- Maureen Fitzgerald states if you were to purchase a house with an ocean view, would you pay more for the view or for a house overlooking a three story building
- Emmett Sheehan states at some point all of these homes have to go up, so I would assume any little shack out there will eventually be rebuilt up
- Judith Barrett states we have to determine if the proposal increases the non-conforming nature of the house and/or if the increase is more detrimental to the neighborhood
- Maureen Fitzgerald states I in no way disagree with a rebuild, I know they have to, I just object to going to the north to go bigger
- Rick Grady states that we are not decreasing or increasing into any setback
- Freeman Boynton Jr. states how far are you increasing out
- Rick Grady states 8 feet
- Maureen Fitzgerald states the other structure aligning with this one has a porch, not a mass structure like this one
- Emmett Sheehan states on our site visit we determined that this was in line with the others
- Freeman Boynton Jr states I have a problem with protecting peoples views, that would prohibit anyone from doing anything out there. We are not here to protect other people's views
- Emmett Sheehan agrees and states lets face it, all of those homes were cottages at one point and driving out there now, we can see how much these homes have gone up
- Rick Grady states mainly due to the flood plain elevation
- Emmett Sheehan states I think this design goes inline with all of the other recent cases out here
- Judith Barrett states the Design Review Board did approve the new design and I take their view very seriously
- Borys Gojnycz states after the site visit they are proposing to something that is in line with the homes that are in front of it and around it in the neighborhood
- Jackie Wolff, 13 Lewis Court, states when we had to come before the board a few years ago to rebuild we could not go one inch outside of the footprint. We had to re-do our framed home because we were outside of the footprint
- Emmett Sheehan states are you in favor of this project
- Jackie Wolff states we want to be in favor but it is surprising that it is 5 feet outside of the footprint and three stories
- Jim Wasielewski, Building Commissioner, states these two lots are not similar. Your lot did not have frontage, it was within the setback and therefore cannot increase. This lot remains conforming in front setbacks, as it has over the 25 feet to the property line or in this case Lewis Court. They are allowed to move the house a little bit forward without creating a new non-conformity
- Freeman Boynton Jr states that is why your house had to stay in the footprint. You did not have the room to expand, it was already within the setback. Are there any other questions
- Maureen Fitzgerald states what about a mass, are there any limits to that

- Freeman Boynton Jr states we call it non-conforming volume and there aren't any limits. In fact this one is a lot more reasonable than the last one. This is 1 ½ times the volume of the existing. We do limit impervious coverage on a lot and they are not exceeding that here. That is permitted with an extra 3% coverage
- Rick Grady explains the coverage calculations on the site plan. Existing 15.6% and we're allowed 30.2% but come in at 19.5%
- Freeman Boynton Jr asks if there are any other questions
- Emmett Sheehan makes a motion to close the public hearing
- Judith Barrett seconds
- All in favor TT, ES, FB, JB, BG
- Freeman Boynton Jr asks if there is any discussion
- Tanya Trevisan states I understand the neighbors concerns, but also understand that we do not hold that right to protect them. I also think the Applicants did a nice job revising the plans to what we have asked for previously
- Freeman Boynton Jr states does anyone want to make a motion
- Tanya Trevisan makes a motion to approve the special permit as requested
- Emmett Sheehan seconds the motion
- All in favor TT, ES, FB, JB, BG

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

Moved by: ES

Seconded by: JB

Number in favor: 5

Number opposed: 0

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

Moved by: TT

Seconded by: ES

Number in favor: 5

Number opposed: 0

## BOARD OF APPEALS MINUTES

**Case No: 2022-26**

**Petitioner: David Corey**

**Address: 32 Linden Lane**

**Date: December 8, 2022 at 7:30 p.m.**

**Members present:** Emmett Sheehan (CPT), Judith Barrett (remote), Philip Thorn, Borys Gojnycz (remote) & Tanya Trevisan

**Members Voting:** Emmett Sheehan (CPT), Judith Barrett (remote), Philip Thorn, Borys Gojnycz (remote) & Tanya Trevisan

**Other persons present at the hearing:** : James Wasielewski, Director of Municipal Services & Lauren Haché, Principal Assistant

- Freeman Boynton Jr states I must recuse myself from this case
- Emmett Sheehan, Chair Pro Tem, opens the public hearing and reads the public hearing notice into the record and states let's hear from the Applicant
- Lauren Haché states would you like me to read the case responses
- Emmett Sheehan states yes please
- Lauren Haché reads case memos from the Health Agent, Planning Board, the Design Review Board and a supplemental email from the Design Review Board.
- David Corey, 32 Linden Lane, presents the proposal stating they recently purchased the property and would like to build a pier for recreational boat use. It doesn't extend but 2 feet past the marsh and all other parts are compliant with the Bylaw. The other piece to note is that the pier is not proposed to go over the beach to connect to the lawn. There are a lot of people that walk the beach, so we propose to have a stairway down and then up the pier at the mean high tide mark. Meaning that at high tide we will have to go through the water to get to the stairs, but it was important for us to preserve the beach for all use and not restrict their access. The Planning Board requested that there be notation of the WPOD on the plan, so I did submit a revised plan to included that.
- Emmett Sheehan states were there any neighbor comments
- David Corey states at the Conservation meeting, there were no objections from neighbors
- Emmett Sheehan states so it's 70 feet
- Phil Thorn states it certainly shows that it is well within the setbacks
- Tanya Trevisan states did we get a letter from Conservation
- David Corey states we did receive Orders of Conditions
- Emmett Sheehan states any questions from the public or the Board
- Emmett Sheehan states hearing none, do I have a motion
- Philip Thorn agrees and states it is straight forward and I would just state no lighting, except for seasonal
- Philip Thorn makes a motion to close the public hearing
- Judith Barrett seconds
- All in favor JB, ES, PT, TT, BG

- Tanya Trevisan makes a motion to approve the pier application as proposed
- Philip Thorn seconds
- All in favor JB, PT, TT, ES, BG

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

Moved by: PT

Seconded by: JB

Number in favor: 5

Number opposed: 0

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

Moved by: TT

Seconded by: PT

Number in favor: 5

Number opposed: 0

## BOARD OF APPEALS MINUTES

**Case No: 2022-27**

**Petitioner: Fitzsimmons and Confar**

**Address: 11 Puritan Way**

**Date: December 8, 2022 at 7:30 p.m.**

**Members present:** Freeman Boynton Jr. (CPT), Judith Barrett (remote), Emmett Sheehan, Philip Thorn, Borys Gojnycz (remote), and Tanya Trevisan

**Members Voting:** Freeman Boynton Jr. (CPT), Judith Barrett, Emmett Sheehan, Borys Gojnycz and Tanya Trevisan

**Other persons present at the hearing:** James Wasielewski, Director of Municipal Services & Lauren Haché, Principal Assistant

- Freeman Boynton Jr., Chair *Pro Tem*, opens the public hearing and reads the public hearing notice
- Lauren Haché reads letters in support from 29 neighbors and case response from the Planning Board, Board of Health and Design Review Board
- Judith Barrett states how do we address the Planning Boards memo regarding making the proposed dwelling to meet complete conformity
- Jim Wasielewski, Building Commissioner, states the Zoning Bylaw does not speak to a pre-existing, non-conforming structure that way
- Judith Barrett states I agree, I just don't want to ignore it
- Phil Thorn states it seems unattainable due to the lot size to become more or fully conforming
- Freeman Boynton Jr states you would have to cut the house in half
- Tanya Trevisan states how many bedrooms are in the existing home; 2 bedrooms
- Nick Leing, Agent with Grady Consulting, presented the proposed application stating that on one side of the lot line there are very high hedges that both the homeowners and the neighbors prefer to keep for privacy. The front setback will hold at 29.9 feet and the width of the house proposed is 32 feet, increasing 6 inches in that dimension
- Freeman Boynton states the room counts stay consistent with the existing system
- Nick Leing states yes, three bedrooms
- Tanya Trevisan questions the roof dormers
- Nick Leing states the Design Review Board asked that we add some dormers, there were no dormers on the original plan
- Freeman Boynton Jr states is there a third floor plan
- Nick Leing states unheated storage
- Freeman Boynton Jr states why would you add dormers
- Tanya Trevisan states this gives it the look of a third floor
- Freeman Boynton Jr states the expense alone must be so much more
- Nick Leing states the DRB asked for it because they thought the original design was very roof heavy

- Discussions over the attic space and the massing of the roof with skylights or a change in pitch
- JP Kenn, the Builder, states the homeowners agree that it looks nice but the added cost of this isn't feasible
- Judith Barrett states this does look a bit too much. I do find the DRB comments helpful but I don't think this is necessary
- Freeman Boynton Jr states would the applicants be amendable to reducing the pitch of the roof to 10 and then eliminate the dormers
- Borys Gojnycz states maybe an eyebrow dormer
- Philip Thorn states have the neighbors seen the dormer plans
- JP Kenn states both immediate neighbors are in support and then some, after seeing these new plans
- Philip Thorn states I agree with Judi in regard to the DRB but the neighbors comments bear more to be and if they don't have a problem with the design without the dormers, then I don't
- Jim Wasielewski speaks to the perspective of the home as someone driving by and it won't look like a flat sheet
- Freeman Boynton Jr states do we have dimensions to the midpoint
- Nick Leing states it is 27 feet from the midpoint, so about a 5 point difference
- Freeman Boynton Jr states I am looking for an elevation from 20 feet midpoint
- Nick Leing states the elevation is 66
- Freeman Boynton Jr states where do make the calculation here; ok it's compliant and opens the discussion up to the public
- There were no comments
- Emmett Sheehan states I would personally let them do this without the dormers
- Judith Barrett agrees
- Tanya Trevisan states that the comment Jim made about perspective was helpful
- Freeman Boynton Jr states so the consensus
- Borys Gojnycz states I agree with no dormer and lower pitch, but I don't want to totally go against the Design Review Board, that's why I suggested the eyebrow dormer
- Emmett Sheehan makes a motion to close the public hearing
- Tanya Trevisan seconds
- All in favor JB, BG, PT, TT, FB
- Jim Wasielewski states one comment, I do respect the Design Review Board and I want to make sure that I state that
- Phil Thorn states are we clear on which set of plans we are going to approve
- Tanya Trevisan states the original plans are November 7, 2022 and the revised are December 1, 2022
- Judith Barrett agrees, we need to notate the plans in the decision
- Emmett Sheehan makes a motion to approve the special permit request for 11 Puritan Way to raze and rebuild the home as proposed on the plan dated October 17, 2022, not requiring dormers.
- Judith Barrett states we should mention why the Board didn't go along with the Design Review Boards suggestion on adding dormers and we should also mention the Planning Boards

comment, basically if you raze and rebuild and keep the new build at 15% lot coverage and met all the setbacks, what would you have

- Emmett Sheehan states I don't think it should be addressed in this decision
- Freeman Boynton Jr states there aren't a lot of options for that in this case and by right they can rebuild with that they have
- Judith Barrett states we should notate we decided not to go along with it for practical reasons would be important to memorialize in the decision
- Emmett Sheehan states well it will be in the minutes
- Jim Wasielewski states they aren't creating any new non-conformities and they are grandfathered in. To have it moved, it would eliminate parking, which is required in the zoning bylaw
- Tanya Trevisan seconds the motion on the table
- All in favor JB, PT, TT, ES, FB

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

Moved by: ES

Seconded by: TT

Number in favor: 5

Number opposed: 0

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

Moved by: ES

Seconded by: TT

Number in favor: 5

Number opposed: 0

## Administrative matter:

### Duxbury Woods Master Deed Amendment

- Mark Einhorn, Esq. presented the request on behalf of the Duxbury Woods Homeowners Association, stating that there are five properties that have finished their basements and with their tradition, they raise the percentage interest of those units, which means the other properties go down a bit. There is a 100% consent to do this. In their Comprehensive permit, the ZBA has authority to approve the amendment. Your Board has previously approved this as well.
- Freeman Boynton Jr states are any of these basements walk out
- Mark Einhorn states I am not certain; the work has already been done
- Freeman Boynton Jr states I am curious if any of these basements increase the design flow to the current septic systems
- Mark Einhorn states I would doubt that, they pulled the building permits and the work is done. This is strictly about the value and the percentage change
- Freeman Boynton Jr states do you need a building permit Jim
- Jim Wasielewski states yes you do; do some of these units have shared septic
- Mark Einhorn states I don't know, I was brought in to do the percentage interest, I was not involved with the design etc. This is just to reallocate the percentages
- Freeman Boynton Jr states a lot of the septic systems have failed in this subdivision, so I have concerns about bedrooms being added etc.
- Mark Einhorn states every single home owners in this development gave consent 100%
- Tanya Trevisan states but if the septic fail...
- Mark Einhorn states I can't speak to the septic systems
- Freeman Boynton states I did replace 39 and 40 Deacons Path, I just hate to see this. Do the condo docs have any language around building permits to trigger the Board of Health
- Emmett Sheehan states I am fine with that
- Jim Wasielewski states so this is just around condo fees around finished spaces and not allowing for additional basements
- Mark Einhorn states yes
- Emmett Sheehan states so if someone wants to finish their basement in the future would they have to come back
- Mark Einhorn states yes, anything they request to be amended, we have to come back as it is states in the comprehensive permit
- Freeman Boynton Jr states doesn't the Comprehensive permit limit bedrooms
- Tanya Trevisan states that is my questions, I would like to see the comprehensive permit attached to this request and what amendments that are required to be approved by the ZBA
- Freeman Boynton Jr states I think we can approve this but that the Client should be made aware of our concerns
- Mark Einhorn states I can speak with the Condo Association about this
- Freeman Boynton Jr states Tanya would you like to review the Comprehensive Permit
- Tanya Trevisan states I would feel more comfortable reviewing the comp permit

- Judi Barrett states it is a book! But I just want to understand Tanya what the concern is
- Tanya Trevisan states I want to find out what the Board needs to review to amend and what we are responsible for
- Freeman Boynton Jr states these are all issues we are currently dealing with in these comprehensive permits, converting non-living space to living space. We should probably have Tanya communicate with you directly
- Philip Thorns makes a motion to continue the administrative matter to January 12, 2023
- Emmett Sheehan seconds the motion
- The Board voted unanimously to continue this matter to January 12, 2023