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TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS

MEETING MINUTES

December 1, 2022 @ 7:00 p.m.

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

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

CALL TO ORDER: Judith Barrett 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 #2022-10, Old Myrtle Street LLC, Keene's Mill Village, 0 North Street: *The Board voted to continue the public hearing to January 12, 2023 at 7:00pm.*

BOARD OF APPEALS MINUTES

Case No: 2022-10

Petitioner: Keene's Mill Village

Address: 0 North Street

Date: December 1, 2022 Time: 7:00 p.m.

**(Continued from October 13, 2022, September 8, 2022,
July 14, 2022, and May 12, 2022)**

Members present: Judith Barrett (CPT), Freeman Boynton Jr, Emmett Sheehan, Philip Thorn, and Tanya Trevisan

Members Voting: Judith Barrett, Freeman Boynton Jr., Emmett Sheehan, Philip Thorn, and Tanya Trevisan

Other persons present at the hearing: Amy Kwesell, Town Counsel, Jim Wasielewski, Building Commissioner and Lauren Haché, Principal Assistant

- Judith Barrett, Chair Pro Tem, re-opens the public hearing and states Attorney Silverstein is joining us via zoom; Jonathan would you like to lead the discussion
- Jonathan Silverstein states I would like to note that we have resolved most of the major issues and have made great progress with the proposal. We will have our Engineer present as well and we have an updated waivers list as well. There is also an updated elevation plan of the town house units as well.
- Rick Grady, Grady Consulting, presents the changes to the site plans for the proposal. We worked on some changes working on what the Fire Department has asked for, making the road wider and we are proposing cape cod berms and discusses some of the design changes.
- Judith Barrett states do Board Members have questions
- Freeman Boynton Jr states what is the status on NHESP, when do you think that might happen
- Rick Grady states we an expired approval, so we would expect that this Board and Conservation to condition approval. We believe we will be ok with NHESP because we are proposing a similar building footprint from what was previously approved
- Judith Barrett states why don't we hear from the Town's Peer Review Consultant, Pat Brennan
- Pat Brennan, Amory Engineers, goes over his report and states most of the things that I have questioned can or will be changed easily. One thing they have added on their most recent plan set is the existing culvert or old cart path, it is extended and maintained in keeping with the flow pattern. Also the water service to 850 Keene Street and they have added that with an easement on this plan; the pavement width is 26 feet.
- Rick Grady answers some questions around the Natural Heritage permitting that the Applicant previously acquired from a similar application on the property.
- Amy Kwesell states so is the northern part of the property not in the habitat
- Rick Grady states we have to revisit this and re-apply, I believe the northern section is in that zone
- Amy Kwesell states because Mr. Baldwin did obtain another lot since the six house proposal came through, have you filed with Natural Heritage
- Rick Grady states we are filing, we should know around 30 days
- Amy Kwesell states I did not have time to review the waivers
- Judith Barrett states we are not even going to discuss those tonight; they came in too late. She also mentioned a call with Deputy Chief Monahan regarding sprinklers in buildings and did

mention that there should be no parking on one side of the street and how does that work in a private development.

- Emmett Sheehan states can they put up signs for no parking
- Amy Kwesell states we can also require that in the homeowners association documents
- Rick Grady agrees
- Judith Barrett opens the floor to the public and states new information only please
- Attorney for the neighbors, Denis Murphy with Hill Law states we have Scott Horsley is here and I want to mention that you are being asked to waive wetlands regulations, subdivision regulations and all of the board of health regulations. The way these things work, the design engineer is designing the project under State standards without considering local rules and regulations. Mr. Murphy continues to speak about mounding and nitrogen loading under the board of health regs., specifically depth to ground water, the board of health has 5-6 feet depending on the soils and the definition of a bedroom.
- Scott Horsley shares his screen and speaks about storm water and septic systems in terms of groundwater mounding
- Rick Grady, the Agent and Engineer for the project, lists the three waivers they are seeking from the Board of health as minimum setback distances to wetland setbacks in a reduction of the 150', we are asking to stick to straight title 5 on depth to ground water and lastly, the no mounding systems, we are asking for a waiver on.
- Freeman Boynton Jr. states are the septic systems designed to accommodate 3 bedroom systems or 4
- Rick Grady states 3 bedrooms in each unit and we are anticipating a similar condition
- Tanya Trevisan states Mr. Grady are there basements
- Rick Grady confirms there are basements
- Amy Kwesell states all of this can be conditioned, especially that there be no bedrooms in the basement; Is this a condominium association
- Judith Barrett states yes
- Amy Kwesell states so we can condition the condo docs as well
- Sherrie Hussar, 404 North St asks about the drinking well at 399 North Street and why is it not on the plan in consideration of the distance to the septic
- Dick Brennan, 100 Myrtle Street, states this battle has been going back and forth for several years and I am suggesting to step out of the box, if this is about money, put a few houses in and make a few million
- Deborah Frangesh, 399 North Street, states from what I heard the local board of health requires an analysis for a mounding system; shouldn't we ask for the mounding analysis and we not waive that
- Pat Brennan, Amory Engineers, states the local board of health does not require mounding, that is a state requirement when you get over 10,000 gallons per day
- Sherri Hussar, 404 North Street asks if the Design Review Board would review the changes of the site plan and the duplexes
- Judi Barrett states yes, we can arrange to have them look at this
- Carol Smith, 415 North Street, mentioned the culvert and I don't see where it was added and extended-could someone point that out and secondly, are we going to get detailed waivers
- Judi Barrett explains the process and how as we progress, the details will keep coming forth
- Amy Kwesell states the waiver list does state unit 1, 5 and 6 is requesting a waiver from the wetlands
- Jonathan Silverstein agrees and states we are working on specificity as we progress

- Deborah Frangesh, 399 North Street, mentions a stream to be mindful of
- Rick Grady states we are aware, we will be filing with Conservation Commission in the next week
- Freeman Boynton Jr states I don't think we've ever allowed someone to build within 50 feet from the wetlands
- Judith Barrett agrees
- Kim Aplapnap, 120 Myrtle Street, states in terms of waivers, how do you assess an exhaustive list of waivers
- Judi Barrett states under Chapter 40B, the Applicant is allowed to apply for waivers and we have to assess that and determine if they really need it and if they changed their plan, could they comply. In the end we have to realize the significance of the local waiver, they cannot waive state regulations. Chapter 40B assumes that if a town doesn't have 10% affordable housing, you could have several going on at a time, some may be built out and the town still isn't at 10%
- Kim Aplapnap states what are our options if the waivers are granted; as neighbors, what can we do
- Judith Barrett states we look to our Peer Reviewers as to what is harmful to the neighborhood and what is safe
- Phil Thorn states I do encourage folks to go to your representatives about 40B, it needs to be fixed
- Deirdre Graceffa, 62 Myrtle Street, asks about the 3-bedroom not 4-bedroom being memorialized after the fact
- Amy Kwesell, Town Counsel, states it will be in the decision and the condominium documents, so if someone creates an illegal 4 bedroom, they will be in trouble with inspectional services as well as their condo association. This is usually discovered when emergency services are called in, they will report it to the building dept. People don't get away with this. The floor plans are not acceptable the way they are now, with that bonus space
- Dick Brennan, 100 Myrtle Street, the assessor just came in to my home and states an extra room is a bedroom by doorway and space and window
- Freeman Boynton Jr states the assessors definition is different than the state title 5
- Amy Kwesell states some of the waivers need some work. There are at least three to waive and not be subsumed
- Lorelei Driscoll, 11 Forest Street, regarding the 40B process, I am asking for percentage, from a math perspective wouldn't it make sense to have fewer homes on this property
- Judith Barrett states the denominator is determined by the Federal census and it doesn't change for 10 years. We're still dealing with the 2010 census but that denominator doesn't change until the next census
- Pat Brennan states they are only required to have 25% affordable based on the total number, of affordable units
- Carol Smith, 415 North Street, asks about nitrogen loading and requiring a septic expert
- Judith Barrett states Mr. Brennan is an expert
- Carol Smith states can we get an advisement around the nitrogen loading
- Michael DiVirgilio, 270 North Street, states I don't understand how we have been splitting hairs around this property and the town needs to address this 10 percent thing, they need to figure out a project that will address it. This project is a disgrace. This man is going to come to my neighborhood and do whatever he wants
- Judith Barrett states whoa, I take issue with that comment, I appreciate your concern, do not assume what this board is going to do. We have not voted on this project yet. You need to report to us what your concerns are.

- Michael DiVirgilio states we addressed this with Mr. Cutler
- Judith Barrett states we need to have another date for this and we cannot accept day of hearing submittals
- Lauren Haché states the 180 days is January 19, 2023
- Judith Barrett states how about January 19, 2023; We need all submittals in to this Board by December 31st
- Judith Barrett states we will continue this case to January 12, 2023 and ask if they would extend the date to file the decision.
- Jonathan Silverstein states the 19th is the date to close the hearing, but we can issue an extension, we don't want the board to be concerned about feeling rushes to close the public hearing, we are going to be reasonable about that
- Freeman Boynton Jr makes a motion to continue the public hearing to January 12, 2023 at 7:00pm
- Emmett Sheehan Seconds the motion
- All in favor JB, TT, FB, ES & PT

Motion: It was moved, seconded and voted (5-0) to continue the public hearing to Thursday, January 12, 2023 at 7:00pm.

Moved by: FB

Seconded by: ES

Number in favor: 5

Number opposed: 0