



TOWN CLERK
2023 MAR 24 AM 9:09
DUXBURY, MASS.

TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS

MEETING MINUTES

January 26, 2023 @ 7:30 p.m.

ATTENDANCE: Wayne Dennison, Judith Barrett, Freeman Boynton Jr., Emmett Sheehan, Philip Thorn, and Tanya Trevisan

Other persons present at the hearing: Amy Kwesell, Town Counsel, 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 for information about Duxbury programming including streaming on Duxbury You Tube, to watch replays and Video on Demand.

ZBA Case #2023-02, Rice, Kunz, Boess, and Weiss, 160 Marshall Street, APPEAL: *The Board voted to allow the appeal in part and overturn the appeal in part.*

Wayne Dennison moves to approve special town counsel invoice from Mead, Talerman and Costa. Judith Barrett Seconds.

Wayne Dennison moves to adjourn. Philip Thorns seconds.

BOARD OF APPEALS MINUTES

Case No: 2023-02

Petitioner: Rice, Kunz, Boess, Weiss

Address: 160 Marshall Street

Date: January 26 , 2023 Time: 7:30 p.m.

Members present: Wayne Dennison, Judith Barrett, Emmett Sheehan, Philip Thorn, and Borys Gojnycz

Members Voting: Judith Barrett, Freeman Boynton Jr., Emmett Sheehan, Philip Thorn, and Borys Gojnycz

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

- Wayne Dennison opens the public hearing and reads the public hearing notice and states we have a brief from Counsel for the property owners and briefly summarizes the letter. We have case response from the Planning Board, including the minutes of the Boards discussion of this case and a memo from the Design Review Board, also the Planning Director's Board Report, a title 5 inspection report and I believe that is everything. I also have requested that the original letter from the Zoning Enforcements letter from November 17th and the original request for enforcement from September 23rd.
- Town Counsel, Amy Kwesell, talks about the enforcement requests the at Applicants have requested regarding commercial use, more than one dwelling on the property, a violation of the bylaw around the two trailers without a building permit and the need for a special permit for the two accessory dwellings due to the property being in the WPOD. There is no continued violation that the building commissioner is actually witness to. The beach loft is not a dwelling unit, it does not have a stove. The cottage is most likely a pre-existing, non-conforming use and structure. The two accessory buildings without a building permit, those do not need a building permit as they are under the square footage required for a building permit. Then number four, the accessory buildings do require a special permit and the building commissioner has directed the home owners to apply for a special permit for both of those structures due to the property being in the WPOD.
- Wayne Dennison states so the Building Commissioner did fine the applicants and the home owners appealed that to the court and prevailed. So to what degree are claims predating the July events stopped being relied on by this board
- Amy Kwesell states you are correct, the court ruled that they do not have the authority to rule against past actions.
- James Wasielewski, the Building Commissioner, addresses the Board, stating that he worked with counsel and the homeowners to get compliant.
- Attorney David Uitti presents to the Board the need for action and enforcement and the commercial use of the property in a residential district.
- Discussions ensued with the Board and Appellants Counsel
- The Board determinations are as follows:
 - The Board hereby overturns the Zoning Enforcement Officer's denial of this request and orders that a cease and desist letter be issued ordering the Owners to cease all existing and future commercial activity at the Property.

- The Board hereby affirms the Zoning Enforcement Officer's denial of this request to remove the trailers/accessory structures but orders that a cease and desist letter be issued ordering that all use of the trailers/accessory structures cease until they are properly permitted.
- The Board hereby affirms the Zoning Enforcement Officer's denial of this request with regard to the Cottage as it finds that the Cottage is a pre-existing nonconforming use.
- The Board hereby overturns the Zoning Enforcement Officer's determination that the Beach Studio and Loft is not a dwelling unit and finds that as the Owners have advertised that the unit has a stove, it is an unpermitted dwelling unit. Further, the Board orders that a violation letter be issued ordering that the stove in the Beach Studio and Loft be immediately removed and not replaced.
- The Board hereby affirms the Zoning Enforcement Officer's denial of this request as Title 5 is not within the jurisdiction of the Zoning Bylaw.
- The Board hereby affirms the Zoning Enforcement Officer's denial of this request as issuing fines is at the discretion of the Zoning Enforcement Officer pursuant to the Zoning Bylaw.
- The Board hereby affirms the Zoning Enforcement Officer's denial of this request as commencing litigation is at the discretion of the Zoning Enforcement Officer pursuant to the Zoning Bylaw.

- Emmett Sheehan seconds
- All in favor WD, JB, ES, PT, BG

Motion: It was moved, seconded and voted (5-0) to close the public hearing.

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

Motion: It was moved, seconded and voted (5-0) to allow the appeal in part and deny the appeal in part.

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