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# TOWN OF DUXBURY



## BOARD OF APPEALS

### DUXBURY BOARD OF APPEALS MEETING MINUTES

November 9, 2017 @ 7:30 p.m.

**ATTENDANCE:** Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., Dimitri Theodossiou & Borys Gojncyz

**CALL TO ORDER:** Wayne Dennison called the meeting to order.

- **2017-08 Robbie, 295 St. George Street:** *The Board moved to grant the special permit, subject to conditions imposed by other Town Boards. All in favor (4-0).*
- **2017-09, Fire Dept, 668 Tremont Street:** *The Board moved to grant request for a variance. All in favor (4-0).*
- **2017-10 Baldwin, 0 North Street:** *The Board moved to continue the hearing until January 11, 2018. All in favor.*

*Kathleen Muncey makes a motion to close the public hearing for 295 St. George Street. Dimitri Theodossiou seconds. All in favor (4-0). One abstained (Freeman Boynton, Jr.).*

*Dimitri Theodossiou makes a motion to approve the Special Permit for 295 St. George Street. Kathleen Muncey seconds. All in favor (4-0). One abstained (Freeman Boynton, Jr.).*

*Wayne Dennison makes a motion to close the public hearing for 668 Tremont Street. Kathleen Muncey seconds. All in favor (4-0). One abstained (Freeman Boynton, Jr.).*

*Wayne Dennison makes a motion to grant the variance for 668 Tremont Street. Kathleen Muncey seconds. All in favor (4-0). One abstained (Freeman Boynton, Jr.).*

*Wayne Dennison makes a motion to continue the public hearing for 0 North Street. All in favor (4-0).*

*Freeman Boynton makes a motion to close the public hearing for 0 North Street. Dimitri Theodossiou seconds. All in favor (4-0).*

## **BOARD OF APPEALS — MINUTES**

**Applicant: Jack Robbie**

**Property Address: 295 St. George Street**

**Case No: 2017-08**

**Date: November 09, 2017 Time: 7:40 p.m.**

**(CONT'D from October 26, 2017)**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, ~~October 26, 2017~~ at 7:30 p.m. to consider the application of Jack Robbie for a Special Permit under Article(s) 400, 600, and 900, Section(s) 421.3, 421.4, 424, 425, 603, 615, 906.2 and 906.5 of the Duxbury Protective Bylaw. The property is located at 295 St. George Street, Parcel No. 106-030-000 of the Duxbury Assessors Map, consisting of 8,276 sq. ft. in the Neighborhood Business District 1 and owned by Sandra M. Snyder c/o John B. & Jennifer S. Robbie. The applicant proposes to change the use from residential to mixed-use. A Special Permit is required.

**Members present:** Wayne Dennison, Kathleen Muncey, Dimitri Theodossiou, Freeman Boynton, Jr. & Borys Gojncyz

**Members Voting:** Wayne Dennison, Kathleen Muncey, Dimitri Theodossiou & Borys Gojncyz

**Other persons present at the hearing:** Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Assistant

- Wayne Dennison, Chair, calls the meeting to order. He states that staffing issues will be dealt with as each case is approached. Mr. Dennison states that the first case on the agenda is relative to 295 St. George Street, case #2017-08 and reads the public hearing notice. Mr. Dennison asks when it was first opened.
- Angela Ball (ZBA admin) answers and the two discuss the particulars of the case continuance and it's reiterated that the case was opened on 10/26/17 only to continue the case to tonight and no correspondence was read. Angela Ball reminds Mr. Dennison that of the 5 members there tonight, one cannot sit.
- Mr. Dennison asks if the applicant is present.
- Jack Robbie responds yes.
- Mr. Dennison explains to Mr. Robbie that if he proceeds forward this evening he will need all 4 members to vote in the affirmative and if the case gets to a continued state they can then have another member listen.
- Mr. Robbie agrees to proceed that evening with the 4 member panel.
- Wayne Dennison cites and reads correspondence received - brief, application, photographs, utility relocation & easement agreements, plans, a letter from Duxbury Construction to Amory Engineers dated 9/6/17, a series of drawings.
- Mr. Dennison cites and summarizes/reads a memo from the Design Review Board dated 9/22/17 concluding it has no objections; a memo from Tracy Mayo of the Board of Health dated 9/20/17 that it has approved the application for Disposal System Construction Permit and that the septic will be installed in conjunction with the building permit; an email from Valerie Massard to Pat Brennen discussing particulars of landscape plan and lighting; an administrative site plan decision from the Planning Board and a memo from the Conservation Commission.
- Mr. Dennison asks if there is any correspondence with anyone for or against. No.
- Jack Robbie identifies himself and states that he is before the board for a special permit for a change of use – that it's residential going to mixed-use. Mr. Robbie goes on to state

that the zoning is currently NB, he complied with all the setbacks, the floor space is 1,176 sf and is 3 floors for a total of 3,528 sf. Mr. Robbie states that the mixed-use building faces St. George Street and the office will be approached from the back, that it is 2 storeys residential from the front and a storage building here [pointing to plans]. He states he has 8 parking spaces total and current zoning requires 6, so he has 2 extra. Mr. Robbie [pointing to the plans] states the building is a renovated barn structure and that 1<sup>st</sup> floor from the St. George side is all residential and second floor is 2 bedrooms. He states that setbacks are 15' from the front, 2.4' from the side and 49' from the back and 8,000sf lot size.

- Mr. Dennison asks if the 2.4' was existing.
- Mr. Robbie states no, that zoning allowed a zero setback and existing is about 14' but it's not listed here.
- Mr. Dennison states that he did not go through each condition in the administrative site plan imposed by the planning board and asked Mr. Robbie to go through it.
- Mr. Robbie states that he did go to the Planning Board for a site plan approval and he knows they approved it.
- Mr. Dennison states that the conditions are general and cites a few of the conditions in the site plan review and asks Mr. Robbie if he is aware of them.
- Mr. Robbie states that he is and has been used to all of them.
- Mr. Dennison asks the Board if anyone has any questions. No.
- Mr. Dennison states that he sees that he will be using one of the apartments for himself and he asks if he'd consider making one of the apartments affordable [as Mr. Juliano was asked].
- Mr. Robbie states that he only has one, explains he lives on the cape and his business is up here and that he and his wife would like a place to stay overnight, closer to friends in this area as the cape can get a bit too quiet and lonely in the winter time. Mr. Robbie states that the intent is to have a place to live as needed and an office. He states he has a construction management business, has two project managers and two part time accounting people so the office use will be very light, that his ours will be somewhere to 4 or 5 o'clock at night and concludes that the use for residential or business will be very light.
- Mr. Dennison asks Mr. Robbie if it is 2 apartments.
- Mr. Robbie states it is one 2 bedroom apartment.
- Mr. Dennison states he understands and then asks if anyone has any questions.
- Borys Gojncyz states that he does and states that there was a comment made on lights and the timing and asks if there is a set time or security lighting.
- Mr. Robbie states that he submitted a lighting plan and that lighting isn't a big part of what he needs there and that spot lights and motion lights are not a big deal. He states he doesn't expect to have a lot of lights on unless he is there.
- Borys Gojncyz states that there weren't any specifics in the light plan.
- Wayne Dennison states that the planning board approved the lighting plan.
- Mr. Robbie states that he wants to be a good neighbor, so he won't be shining lights unnecessarily.
- Wayne Dennison states that the planning board incorporated a required hand-switched lighting.
- Wayne Dennison asks if anyone has any comments about this proposal.
- Marjorie Mayo of St. George Street states that she'd like it to move on quicker, that she is the neighbor and they've done a beautiful job with the Millbrook area and this is the final piece and she'd love to see it done.
- Mr. Robbie states that at the last meeting that didn't happen there was another neighbor there who was going to support the project.
- Wayne Dennison asks if the Board wants to have any further discussion. No.
- Kathy Muncey states she thinks it's very attractive.
- Board discusses voting on the project.

- Kathy Muncey makes a motion to close the public hearing. Dimitri Theodossiou seconds. All in favor (4-0).
- Dimitri Theodossiou makes a motion to approve the special permit, subject to conditions imposed by the other boards. Kathy Muncey seconds. All in favor (4-0).

**Motion: It was moved, seconded and unanimously voted to close the public hearing for 295 St. George Street.**

Moved by: KM  
Number in favor: 4

Seconded by: DT  
Number opposed: 0

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

Moved by: DT  
Number in favor: 4

Seconded by: KM  
Number opposed: 0

## **BOARD OF APPEALS — MINUTES**

**Applicant: Town of Duxbury Fire Department**

**Property Address: 668 Tremont Street**

**Case No: 2017-09**

**Date: November 09, 2017 Time: 8:15 p.m.**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, November 9, 2017 at 7:30 p.m. to consider the application of the Town of Duxbury Fire Department for a Variance under Article(s) 400, 410, and 900, Section(s) 410.4 and 906.3 of the Duxbury Protective Bylaw. The property is located at 668 Tremont Street, Parcel No. 093-503-040 of the Duxbury Assessors Map, consisting of 1.83 acres in the Residential Compatibility District (RC) and owned by the Town of Duxbury. The applicant proposes to add 28.5 ft. to an existing 108 ft. microwave radio tower, resulting in a 136.5 ft. tower. A variance from the 65 ft. height limit is required.

**Members present:** Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., Borys Gojncyz & Dimitri Theodossiou

**Members Voting:** Wayne Dennison, Kathleen Muncey, Borys Gojncyz & Dimitri Theodossiou

**Other persons present at the hearing:** Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Assistant

- Freeman Boynton, Jr. states that he feels it might be appropriate for him to recuse as his mother in-law is a direct abutter and is in the audience tonight.
- Wayne Dennison asks how many they have if Freeman recuses himself.
- Angela Ball answers, 4.
- Kathleen Muncey states it's a variance.
- Freeman Boynton, Jr. asks others if they think it's a conflict.
- Wayne Dennison states he feels it's fair for Freeman to sit out.
- Wayne Dennison & Kathleen Muncey concur that vote needs for a variance are the same and they would need a majority.
- Wayne Dennison [addressing the Fire Dept. representatives] states they can be heard tonight, but they'll need a unanimous vote. Fire Dept. representative agrees.
- Wayne Dennison reads the public hearing notice into record.
- Mr. Dennison states that they received an application; a structural analysis indicating there will not be problems with raising the height, and a site plan. Mr. Dennison reads a Memo from Chief Kevin Nord dated 2/17/2011 (from the old variance request) and states that there was a variance granted June 23, 2011, the basis for which was that the construction could not proceed without a variance as the by-law does not provide a specific height limit exception for public safety facilities; the existing tower is inadequate for emergency needs; the proposed public safety communications tower is a site-specific unique structure that does not generally affect the district as a whole; it has to be close to the Fire station; and that there would be no substantial detriment to the public good by varying the by-law.
- Mr. Dennison states that the Board of Health had no comment & that the Conservation Commission had no comment either. Mr. Dennison summarizes the Planning Board Memo dated 11/8/17, stating that the Fire Station is one of two in Duxbury and that Central Station received a variance in 2011 for the 100' microwave tower and a previously constructed 65' tower, that the purpose has grown to become the regional old colony communications center, a recent multi-million dollar grant covering 100% of the cost to renovate the communications center was awarded, as part of the improvements as a propagation study shows that the existing tower was insufficient and that ultimately the

Planning Board voted unanimously to recommend support of the request with similar findings and reasons as were noted in the previous variance.

- Mr. Dennison asks if there is any more correspondence. No.
- Mr. Dennison states they'd like to hear from the applicant.
- Chief Kevin Nord states that he is here to represent the Fire Department, that his colleague Capt. Reardon cannot be here as he is in training, but he has enough information to continue. Mr. Nord states that the back story is that originally they had a 54' tower to the North of the station, but back in 2011 when they did the renovation of the station it was decided to move the communications center from the police department to the 668 Tremont station. Mr. Nord goes on to explain that any communication is done through that building, be it the police department, the fire department or the harbormaster – he states there are no radios, they are there and are remoted in through there, it is the hub. Mr. Kevin Nord states they are having communication problems in the area they call the “bowl area” of Washington Street, the beach area, and it's difficult for the police, fire, and harbormaster to communicate. Mr. Nord explains that due to this and some trouble with the trees in the area where the water tank is off of Crescent Street by Standish monument, they did a study to see if it would be worthwhile to cut trees or go up with that mast and they are at capacity. He states that after doing some studies they found they could elevate the Tremont Street tower and it would increase communication. Mr. Nord explains that they need the variance for those reasons.
- Mr. Dennison asks the Board if there are any questions.
- Dimitri Theodossiou asks if they are moving the tower.
- Mr. Nord states they are not, that there has been some confusion. He states that it was moved in 2011 and it was moved from the north to the south. It was built with the capacity that we could add to it later on, that's why it has a 36' foundation into the ground. He states they are going up in order to get to the above the tree line so we can get to the Crescent St and Birch Street towers and is for officer and fire fighter safety.
- Wayne Dennison states that in order to get a variance under state law, you have to show either an aspect of the soil, shape or typography is sufficiently unique so that we will set aside the zoning law.
- Kevin Nord states that we've done it when asking to go from the 65' to the 100' and now the 128'.
- Wayne Dennison asks if it's on the same grounds, because in order for the fire station to be functional it has to be next to it and that the Fire Station is where it is.
- Kevin Nord states that is correct.
- Wayne Dennison asks if anyone has any questions.
- Eve Penoire of Heritage Lane states her lot is in full view of the tower and is there to strenuously oppose it becoming more nonconforming, that it is already 166% of the allowed height and this proposal would make it 210%. Ms. Penoire states that at every town meeting, residents consistently vote to maintain the rural character of the Town. Penoire states that while she is sympathetic to public safety she thinks there must be another way, that this is a slippery slope and may bring down property values and urges the Board to deny the application. Penoire states that perhaps relocating to another spot on Town land, having it otherwise disguised so as to not be such a blot or eyesore.
- Mr. Dennison asks Chief Nord if there is anything else they can do and what did he consider.
- Kevin Nord states that there have been towers on that property since the station was built in 1968 and this is the first complaint he's heard. He states that the tower was put up in 2011 and he hasn't heard a complaint as of yet. Mr. Nord goes on to state that they did some studies back then and they found that very few homes on Heritage can see it as Heritage drops down into a cul-de-sac and thinks they're isn't a home in part of it.
- Eve Penoire states there are plans to build a home.
- Wayne Dennison states that the other suggestion was putting it somewhere else, can that be done?

- Kevin Nord states no, you can only run so much cable between the radio and the antennae and it being remote, you'd get into more towers. He said microwave is a very stable product in the market and have gotten away from phone lines as copper lines have static and errors. Mr. Nord states that the police department has a small microwave bowl behind their station and that's how we feed them their signal.
- Eve Peniore states that she understands that copper lines are quite antiquated and has had the same problems at her house, but wonders if they could consider Comcast or Fios and urges the ZBA to have it be the last resort because over 210% over the normal height is a disregard of height restriction.
- Wayne Dennison asks if there is further comment.
- Borys Gojncyz states that he is assuming that land lines are not a good alternative.
- Kevin Nord states that what they are trying to do is initiate enough microwave coverage for all these other towers and repeaters and after the studies we've found that we need more real estate to hang those microwave dishes up a little higher. He states that they have secured the funding and there is no cost to the Town.
- Wayne Dennison asks if there is further comment.
- Marie Buonagurio states that she lives directly behind the Fire station at 22 Heritage Lane. She states that she was relying on the Clipper article that stated it was going to be moved, but now understands it is not; however, should it be moved it would bring it closer to Rte. 3A and Heritage Lane and this seems a little shaky that this is all that we can do.
- Wayne Dennison states that he doesn't think it can be easily moved.
- Marie Buonagurio states she didn't think so either, that trees can be trimmed, the harbormaster only has a small antennae, they could have some more down there. She states that it'd be best to keep it reasonable and best control that they can, that she's been a neighbor for 20 years and it seems to have changed since the first meeting.
- Wayne Dennison asks if she has greater or lesser concern if it's not moved, because with this application it is not moving, just getting taller.
- Marie Buonagurio states that the area is a very busy one and that she thinks they have to consider the neighborhood.
- Kevin Nord states that they had gone before the Planning Board to get their take on the project and be transparent and the article that was written about that seemed to confuse as it quoted the first variance that included moving the tower; however, this variance request does not include moving it now or in the future.
- Kathleen Muncey asks if he would be opposed to a condition that states it has to stay where it is.
- Kevin Nord states no, because it almost has to stay there as the dispatch center is on the second floor of the building and cable runs have to stay within so many feet.
- Wayne Dennison asks if the Board has any questions. No.
- Eve Peniore states that she is strenuously opposed, but should the Board grant this variance she asks that they try and disguise the tower at the very least, that the tower is on the Heritage Lane side.
- Wayne Dennison asks her when she says disguised, what would she propose they do.
- Eve Peniore states that she's seen on television that they are made to look like large trees or can be painted to blend with the sky, there are many approaches and anything that would make it look less obtrusive and less industrial.
- Wayne Dennison addresses Dennis Murphy in the audience, stating that he has vast experience with towers and asks what he would propose.
- Dennis Murphy states that perhaps a fresh coat of paint that is sky grey could be a condition.
- Kathy Muncey asks if it would then peel.
- Kevin Nord states that it is now galvanized steel gray and if he were asked to paint it he would have to look at the cost to the Town taxpayers to paint it now and future maintenance whereas now there is no maintenance.
- Dimitri Theodossiou states that painting galvanized steel is not the answer.

- Wayne Dennison asks if there are further questions.
- Wayne Dennison states that he will take the “temp” of the Board and states that although he understands there is community opposition, he thinks this does qualify for a variance as a unique site and as much as it may help with other instances he doesn’t think painting will help here and he is inclined to grant the variance another 28 feet.
- Kathy Muncey states that she is inclined as well.
- Dimitri Theodossiou states that he thinks public safety overrides everything else.
- Borys Gojncyz states that he has never even noticed it himself, but understands that as an abutter that is different; however he thinks public need supersedes.
- Wayne Dennison asks Kevin Nord if he’d like the Board to vote, if there is anything else.
- Kevin Nord states that yes, and to the neighbors that expressed concern they will be sure to make sure it’s not overdone. He goes on to state that an example of a tower that is not clean and unobtrusive – the one off 3A behind the Scituate Town Hall is what they are trying to avoid doing and they are looking for the perfect antennas, etc.
- Wayne Dennison moves to close the public hearing.
- Kathy Muncey seconds. All in favor (4-0).
- Wayne Dennison asks if there is any further discussion. No.
- Wayne Dennison moves to grant the variance on substantially the same reasons that the 2011 variance was granted, that this is a unique site due to its location and typography and that there will be no material deleterious effect on the by-law and that therefore the variance requirements have been met and that we grant the variance.
- Kathleen Muncey seconded. All in favor (4-0).

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

Moved by: WD  
Number in favor: 4

Seconded by: KM  
Number opposed: 0

**Motion: It was moved, seconded and unanimously voted to grant the variance.**

Moved by: WD  
Number in favor: 4

Seconded by: KM  
Number opposed: 0



## **BOARD OF APPEALS — MINUTES**

**Applicant: John Baldwin**

**Property Address: 0 North Street**

**Case No: 2017-10**

**Date: November 9, 2017 Time: 8:30 p.m.**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, November 9, 2017 at 7:30 p.m. to consider the application of John Baldwin for a Special Permit under Article(s) 400 and 900, Section(s) 401.5, 401.6, 404.8, 404.9, 410.1, 410.4, and 906.2 of the Duxbury Protective Bylaw. The property is located at 0 North Street, Parcel No. 009-010-001 of the Duxbury Assessors Map, consisting of 2.27 acres in the Residential Compatibility and Wetlands Protection Overlay Districts and owned by Susan J. Curtis, TT/Zero North Street Nominee Trust. The applicant proposes to construct a new single family dwelling in Wetlands Protection District. A Special Permit is required.

**Members present:** Wayne Dennison, Freeman Boynton, Jr., Dimitri Theodossiou & Borys Gojncyz

**Members Voting:** Wayne Dennison, Freeman Boynton, Jr., Dimitri Theodossiou & Borys Gojncyz

**Other persons present at the hearing:** Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Assistant

- Wayne Dennison states for the record that the application for North Street raises several issues as the applicant is suing this Board and several members of this Board, so he would like to poll the Board to see if they feel they can remain impartial irrespective of that fact.
- Mr. Dennison states that he feels he can be fair either way.
- Kathleen Muncey states that she recused anyway.
- Freeman Boynton, Jr. states that he feels he can be fair and reasonable. Borys Gojncyz agrees.
- Wayne Dennison states that this same scenario is relative to a person who has submitted materials relative to this case, Ms. Frangesh, who is also suing the board, but he feels he can still be impartial.
- Freeman Boynton, Jr. & Borys Gojncyz agree.
- Wayne Dennison states for the record that the counsel for Ms. Frangesh, who has written a letter in opposition, is apparently associated with a law office with which he is adverse in other matters, but he still feels he can remain impartial; however, he states this so that anyone feeling otherwise can now comment. No response.
- Wayne Dennison opens the public hearing and reads the public hearing notice into record.
- Wayne Dennison cites and summarizes documents received: A formal application signed by the applicant; Orders of Conditions relative to this site; a site plan; Board of Health Memo stating that they have approved the 4 bedroom septic plan; the Design Review Board Memo stating that the DRB reviewed the matter at a meeting and made individual visits to the site and conclude that the design for 0 North & Keene streets will function, but is not well done as the design lacks simplicity or innovation and will not enhance the neighborhood; A Memo from the Planning Board stating that they voted unanimously (6-0) to recommend to defer judgement to the Board of Appeals and asks that the Board consider carefully Section 404.9 and 404.5 in rendering their decision; An email in opposition from Sherri & Joe Hussar of 404 North Street; An email in opposition from Dr. Carole Smith of North Street; An email in opposition from Thomas Warren of North

Street; an email in opposition from Nancy Shine of 840 Keene Street; An email in opposition from Glen & Terri Kanner of 275 North Street; An email in opposition from Kim & MaryAnn Abplanalp of 120 Myrtle Street; An email in opposition from Peter K. Prime; An email in opposition from Richard Brennan of 100 Myrtle Street; A letter on behalf of many neighbors from Dennis Murphy.

- Wayne Dennison asks if there is anything more. No.
- Rick Grady of Grady Consulting states he is there along with the applicant, John Baldwin. He states that this is property located at the corner of North Street and Keene Street [pointing to a map] and there is a bordering vegetated wetland which has been reviewed and accepted by the Conservation Commission. Mr. Grady goes on to state that the applicant is proposing to construct a single family dwelling on a lot that has 81,344 sf of upland, the WPOD has an elevation of 40 and the portion of property outside of WPOD is 37,040 sf. He goes on to state it's mapped by natural heritage for endangered species, so they did submit & got approval from NSP, then submitted a notice of intent to Conservation Commission and got approval for construction and then submitted a septic system design to Board of Health and also got approval. Mr. Grady states that no work is proposed within the WPOD, but they believe that the map is inherently inaccurate and this is one of those areas as it's quite a ways away from wetland, soils are not wetland soil. He then states he'd like to turn it over to Mr. Baldwin
- John Baldwin states that he'd like to give some background on the Wetland Protection Overlay District. Mr. Baldwin goes on to state that this is a letter from Mr. Lansing Bennett written in 1976 to the Clipper [hands out copies to Board] and states that this is included in the WPOD maps and it's almost like tracing paper where there are overlays. Mr. Baldwin states that the letter was written in 1976 but WPOD was developed in 1971. He reads aloud the Lansing letter, then states that the WPOD is a zoning by-law not a wetland regulation and at that time...
- Wayne Dennison asks if in 2015 Town Meeting already considered this exact lot and voted against it.
- John Baldwin states that they did, but they never went to Conservation and there were no Orders of Conditions.
- Susan Curtis states that the property has been vetted to the nines; we've gotten an independent peer review, the approval of the Health Board, of Conservation...
- Wayne Dennison states that he doesn't know that they can do this because it's a non-conforming lot.
- Freeman Boynton, Jr. asks when the lot was created.
- John Baldwin states that it was created in 2014 and was broken off from a 9 acre piece and asks if he can finish, he'll get away from the history.
- Wayne Dennison states that the history is really bracketed by a vote that happened two years ago that states we are not going to do this.
- John Baldwin states that the Town Meeting did not have "ducks in a row", not Conservation approval nor a septic approval, nothing. He states that you can clearly see that it makes no sense with 80,000 sf of upland and that the history matters because it was 20,000sf of upland you needed when the WPOD was formed, not 40, then it went from there to 1985 to become 40,000 and it was never the intent of Lansing Bennett and those involved to do this. Mr. Baldwin states that special permits are another thing to talk about, Barnswallow and Pheasant Hill were approved by the Planning Board as a subdivision in 1981 and after realizing they were in the WPOD they went to the ZBA and the Board then voted unanimously to grant the special permit and move the boundary line.
- Freeman Boynton, Jr. asks if that is currently the procedure now.
- John Baldwin states he doesn't know and that is where he is going with this and he'll finish, he's got two more points. Baldwin states that in 2013 Joe Webby came before the Board with 2 Pheasant Hill for a special permit for a pool and at that meeting, which I was at, a brief history of the property was explained that Shawn Dahlen built a home in the WPOD as a result of an error and a variance was granted. Mr. Baldwin goes on to

states that we gave them a special permit to build a pool on a non-conforming lot in the WPOD.

- Wayne Dennison asks what variance.
- John Baldwin states that it is per what he is reading by Joe Webby that states there was a variance and an error, in 2013. He goes on to state that in 2005 Dingley Dell estates came to the ZBA after going to the Planning Board for an ANR lot and they needed a special permit to put the road in and they got one, despite it being in the WPOD. He states that they wouldn't have had a lot if they couldn't put the road in. Mr. Baldwin states that special permits have been issued without meeting regulations.
- Wayne Dennison states that he reads the by-law and doesn't think this is consistent.
- Susan Curtis states that the by-law says you can grant a special permit by going with what Conservation recommends.
- Wayne Dennison states that if there is a piece of the by-law you'd like him to read, he'll be happy to do it and that it is not just up to him, you need the Board to vote with you tonight.
- Freeman Boynton, Jr. states that it seems to him that unless the lot pre-dated zoning it's not grandfathered to be less than 40,000 sf, so how could it have been created to be a buildable lot unless it had 40,000sf outside of the WPOD.
- John Baldwin states that it is because the Planning Board has no authority over zoning and they took a 9 acre piece and split it.
- Freeman Boynton, Jr. states that he has seen other properties try to create 40,000 sf lots outside of the WPOD but because they couldn't do it outside the WPOD, they couldn't do a subdivision.
- John Baldwin states he is asking how they could have granted special permits in the past for the exact same thing.
- Freeman Boynton, Jr. states that Lansing Bennett and the founders of the WPOD created the by-laws back then it was written into them that if the line was determined not to be accurate you could do something to move that line, but it is my understanding that more recently the Planning Board modified the regulations regarding the WPOD so that now the only way you can move that line is by going to Town meeting, that is my understanding, it's not something we can change.
- John Baldwin asks how was it done with Dingley Dell.
- Freeman Boynton, Jr. asks when Dingley Dell was done, and when did the Planning Board change that by-law, was it last week, last year.
- John Baldwin states that the 40,000 sf is the same by-law for lot and lot area that it was before 2005.
- Freeman Boynton, Jr. asks when the regulations change.
- John Baldwin states that he doesn't see it in the by-law that you have to move the line.
- Wayne Dennison states that the problem that he has is that even if the Board acknowledges that another was granted in error he doesn't agree with continuing to propagate that error.
- John Baldwin states he doesn't think it was necessarily an error.
- Freeman Boynton, Jr. states that he bets that if when the Barnswallow line subdivision was created, the line could be moved without going to Town meeting.
- Susan Curtis states the whole project was in the WPOD.
- Freeman Boynton, Jr. states that if the line could be moved without having to go to Town meeting and the mechanism was in the by-law back in '81 to change the line, then the person at 2 Pheasant Hill went back to do a pool, there was an existing house on the property.
- John Baldwin asks it's non-conforming?
- Freeman Boynton, Jr. states that if the line was moved it's not nonconforming.
- John Baldwin states that it was moved to elevation 54 and remained in the WPOD.
- Freeman Boynton, Jr. states it sounds like they'd have to do a lot of research to determine that.
- John Baldwin states that he could give that to them, but if it doesn't matter....

- Freeman Boynton, Jr. states that when the Planning Board altered the by-law they found you can only move the line with Town meeting approval.
- Susan Curtis states that it [the by-law] doesn't say that.
- Freeman Boynton, Jr. states that bunches of other people have to go to Town meeting to move the line...
- John Baldwin states that somewhere in the state law that in order to move a boundary of zoning you need to go to Town meeting and he's not sure if it applies to the WPOD, but it doesn't say THAT in the by-law.
- Susan Curtis states that it's because they didn't have the science at the time...
- Wayne Dennison states that he understands the problems with the by-laws and in some respects this doesn't bear any relation to wetlands and the Planning Board found that much; however, if there is a way to get to your result with this by-law, I would to see it.
- Susan Curtis states that at Town meeting in 1985 it read that "in this district a lot may be utilized for development of permitted uses provided that 30,000 contiguous square feet shall be outside any power line and 40,000 square feet shall be outside of the wetlands protection district" and 1986 article 43 reads the same way, but it also adds "or outside of any land under any water body, bog, swamp, wet meadow or marsh as defined in M.G.L. Ch 131 Section 40, the wetlands protection act and as determined by the Conservation Commission".
- Wayne Dennison asks where that language is in the current by-law.
- John Baldwin states it's in definitions, in lot area.
- Wayne Dennison states the language is in there, but what it says is the land as determined by the...and or land within the WPOD. He states it doesn't seem to work that if it's not wet or if the Con Comm says it's ok you can do it.
- Susan Curtis asks if it says and/or and if and/or means to him that you can consider both or consider the expertise of your Conservation Commission.
- Wayne Dennison states that it says land under any water body, bog, swamp, wet meadow or marsh, as defined in G.L. c. 131 sec. 40, and as determined by the Conservation Commission, and/or land within the Wetlands Protection Overlay District and/or land within any overhead easement, the purpose for which is for the transmission of high voltage electricity.. and that all it means in this instance and/or suggests that land could be subject to multiple conditions in that list. Mr. Dennison goes on to state that it shall not be included in the lot area, it's in the WPOD, it's not within the lot area, it's straightforward to him.
- John Baldwin states that the fact that they issued special permits in the past and nothing has changed since 2005 and 2014, that it wasn't a mistake that they still needed to meet all the regulations in the by-law and we still did exactly that, exactly what I am asking for. Mr. Baldwin goes on to states that there are subdivisions in town that are in the WPOD that we've built in that there isn't anything for and yes, there are a lot of mistakes but if you have to go to Town meeting and people don't distinguish between WPOD and by-law, how else besides a variance that he hears they don't give often.
- Wayne Dennison states that he can't say that we don't give variances, he just saw one.
- John Baldwin states that he understands that and that he was told at a ZBRC meeting to go for a special permit for this very thing because they've had the discussion over and over again about the problem with the WPOD.
- Wayne Dennison states he wanted to be direct because he cannot read the by-law the way he reads it; Mr. Dennison states that there is also only 4 here and we can continue because he knows there are a lot of people that want to talk about this, so unless there is someone else that would like to make an argument in favor of this, I don't think you can do it under the by-law and it so "flies in the face" of what Town meeting did that he wouldn't want to and doesn't see himself saying yes to this.
- Susan Curtis states that the unfortunate by-product is that they are talking about one modest dwelling on this piece of property, and this goes round and round all the time and if this does not go forward, you know what is going to happen and that is tragic.

- Wayne Dennison states that if what you are suggesting to me is that if you don't get your way then you are going to do a 40B, then ok.
- John Baldwin & Susan Curtis state they are trying so hard.
- John Baldwin states that they have 8 acres of land and they can't do anything even with 8 acres of upland.
- Wayne Dennison asks if he can't do anything with 8 acres.
- John Baldwin states that well, you know what happened recently,
- Wayne Dennison states you can't subdivide it into 4 properties, but you can certainly build on 8 acres of land.
- Susan Curtis states that she wonders if they are looking for a denial or a continuance.
- Wayne Dennison asks if there is anyone else that would like to speak.
- Garth Hoffman of 11 Congress Street state that there are a few issues that have been kind of muddy, that he has 80,000 sf of upland and that the way you read the by-law, I am not going to disagree with you, but with apologies to Paul Brogna the presentation at Town meeting was inadequately explained. Mr. Hoffman states that he [Mr. Baldwin] is 3,000 sf short of upland, by definition, to have a buildable lot.
- John Baldwin states outside of the WPOD.
- Mr. Hoffman states, that right and he is trying to reclassify upland, not wetlands and he's got 45,000 sf of them and is only trying to reclassify 3,000 and the problem is WPOD. Mr. Hoffman goes on to state that then you go Town meeting and you don't end up arguing science or math, it ends up about emotions because people think you are trying to find a loophole when you are really trying to go back to the intent with the WPOD and he feels that at some point the Planning Board co-opted this and said you can't go to ZBA or Con Comm anymore, you've got to go to Town meeting and that effectively makes it spot zoning due to it not being fact anymore, it's emotions and a way to control development and it's been superseded by far better regulations.
- Wayne Dennison states he fully understands the point about the WPOD, but the problem is we have a by-law and have decided collectively to govern ourselves through Town meeting.
- Garth Hoffman asks if there is a provision in the by-law to grant a variance above and beyond the by-laws and the requirement to go to Town meeting.
- Wayne Dennison states that you can get a variance under state law and under our by-law if you make an appropriate variance request and you would have to show that there is something unique about the size, soil, typography of this property and will have to go through the entire variance analysis and put on a variance case.
- Garth Hoffman asks if that happens at the Town or the state level.
- Wayne Dennison states that it happens here, it's a process which by definition, we are going to vary the by-law; we will set aside what the rules say because there is a state law that allows us to do so.
- John Baldwin states he is going to ask for a continuance.
- Garth Hoffman asks how much of that has he presented.
- John Baldwin states that he hasn't applied for it; Wayne Dennison concurs.
- Freeman Boynton, Jr. states wouldn't they be opening a can of worms.
- Wayne Dennison states that anyone can apply for a variance.
- John Baldwin asks Freeman why we shouldn't be able to ask for a variance with a situation like this.
- Freeman Boynton, Jr. states that he thinks you should be allowed to do what Lansing Bennett suggested, that if the line is not accurate you can move it to where science says it should be, I agree, but there are no provisions in the by-law that allow us to give you a special permit.
- Susan Curtis states that we hear a lot about intent and the intent was altered and it's not about protecting the wetlands at all, it's about taking people's property.
- John Baldwin states that hear this at every meeting they go to and he's trying to say that the by-law was never 40,000 sf until somebody changed it, and if you look at article 25 that was presented in 2002 there are over 30 articles that were presented and people at

Town meeting didn't even know what was going on by the Town they got to these articles.

- Wayne Dennison states that you can continue if you'd like.
- The Board and John Baldwin discuss available dates and decide on January 11, 2018.
- Dennis Murphy states that he thinks he can clarify a few things, that the Ness's that owned the land did create an ANR plan in 2014 and it divided what was their lot on 1A of 7 acres and reserved only 1.1 acre of upland for that and this was the remainder and was never represented to be a buildable lot and is the happenstance of one of my clients that bought the house and the estate assumed that the second lot, the 2A lot would get the 3,000 sf from moving the line at Town meeting and another way to think about it is where would the 3,000 sf come from and this absolutely involves the moving of a zoning district boundary. Mr. Murphy goes on to state that the list on his cc of his clients has two that wish to be added and one that wishes to be dropped. Mr. Murphy states he will email those changes.
- Wayne Dennison moves to continue the hearing to January 11, 2018.
- Freeman Boynton, Jr. moves to close the public hearing.
- Dimitri Theodossiou seconds. All in favor (4-0).

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

Moved by: WD  
Number in favor: 4

Seconded by: DT  
Number opposed: 0