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## BOARD OF APPEALS

### DUXBURY BOARD OF APPEALS MEETING MINUTES May 9, 2019 @ 7:30 p.m.

**ATTENDANCE:** Kathleen Muncey, Emmett Sheehan, Freeman Boynton, Jr., Dimitri Theodossiou & Philip Thorn

**CALL TO ORDER:** Kathleen Muncey, Chair Pro Tem, called the meeting to order.

- **ZBA Case #2019-01 Hebert, Duxbury Animal Hospital, 103 Depot St. (CONT'D):** *The Board voted to approve the Special permit with conditions, all in favor (5-0).*
- **ZBA Case #2019-03 Cavanaugh/Archia Homes, 13 Lewis Court:** *The Board voted to continue the public hearing until May 23, 2019, all in favor (5-0).*

*The Board voted to approve meeting minutes from February 28, 2019 and March 25, 2019.*

*Kathleen Muncey motioned to adjourn the meeting. Emmett Sheehan seconded. All in favor, 5-0.*

## BOARD OF APPEALS — MINUTES

**Case No: 2019-01**

**Petitioner: Daniel Hebert**

**(Attorney, Walter Mirrione)**

**Duxbury Animal Hospital**

**Address: 103 Depot Street**

**Case No: 2019-01**

**Date: May 9, 2019 Time: 7:30 p.m.**

**(Cont'd from April 11, 2019)**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on ~~Thursday, April 11, 2019~~ at 7:30 p.m. to consider the application of Daniel Hebert for a Special Permit under Article(s) 400 and 900, Section(s) 401.2 (3), 410.3 (12), and 906.2 of the Duxbury Protective Bylaw. The property is located at 103 Depot Street, Parcel No. 109-600-122 of the Duxbury Assessors Map, consisting of 0.95 acres in the Residential Compatibility District and owned by Daniel Hebert. The Applicant proposes to change the use of the pre-existing non-conforming dwelling from residential with a Veterinary Hospital home occupation to a Veterinary Hospital use *only*. A Special Permit is required.

**Members present:** Kathleen Muncey, Emmett Sheehan, Freeman Boynton, Jr., Dimitri Theodossiou & Philip Thorn

**Members Voting:** Kathleen Muncey, Emmett Sheehan, Freeman Boynton, Jr., Dimitri Theodossiou & Philip Thorn

**Other persons present at the hearing:** Angela Ball, Administrative Assistant

- Kathleen Muncey, Chair Pro Tem, calls the meeting to order, states the cases on the agenda and that the intention is to proceed in that order, then she reads the public hearing notice for #2019-01 into record, noting that the posted public hearing notice had an error listing it as a pre-existing nonconforming when it is not, but explains there was no need to republish.
- Kathleen Muncey cites and reads, some in part, the documents submitted for the special permit application: Application, the brief, site plan, elevation plans, and photographs. Ms. Muncey goes on to read the correspondence received in response to the application – the Board of Health Memo, the Conservation Commission Memo including Orders of Conditions, Planning Board Memo, and the Design Review Board Memo.
- Kathleen Muncey invites the applicant to present.
- Walter Mirrione states that he represents the Applicant, Dr. Daniel Hebert who owns the Animal Hospital at 103 Depot St. and summarizes the background of the special permit application – that Dr. Hebert applied for the special permit for the use of the property as an animal hospital only under 410.3 and at that time the argument was that it wasn't an allowed use in the bylaw. Mr. Mirrione explains that Dr. Hebert then proposed a change to the bylaw at special town meeting that would add it as an allowed use and that was approved back in September of 2018 and it has since received Attorney General approval and it's been sent to the Town Clerk. Mr. Mirrione explains that since then there has been no action on this application, but prior to that they did receive Orders of Conditions and Planning Board site plan approval and Design Review Board conceptual plan

approval, so they need the use approved here and then they'll go back to the drawing board.

- Daniel Hebert explains that he cannot get financing without the special permit.
- Freeman Boynton, Jr. asks if we can condition an approval on the DRB signing off
- Mr. Mirrione states that they understand and will certainly accept that condition. He goes on to state that the DRB memo does a good job describing the history of the property, that from 1967 on it's been a home occupation use and now he'd like it to be 100% use for the hospital as changes in medicine require more space. Mr. Mirrione states the expansion is consistent with the bylaw and Dr. Hebert knows he needs architectural approval prior to a building permit being obtained.
- Kathleen Muncey asks if it'll be the same sign.
- Walter Mirrione states there is no planned change there.
- Dan Hebert states that he got a permit for the sign in 2014 and the lighting for it goes off an hour after closing and the latest time is 9pm.
- Kathleen Muncey mentions they've had issues raised with sign lighting.
- Dimitri Theodossiou states that he remembers that last year he remembers a resident taking issue with the lighting.
- Dr. Hebert states that he believes there to be an accuracy issue there, that he spoke with residents last year and discussed the lighting issue and discovered there was a problem with the timer but it has since been corrected and shrubbery will be moved to block the light
- Freeman Boynton, Jr. asks for hours of operation. Dr. Hebert responds, the latest closing being 9pm.
- Kathleen Muncey asks if the plans are the same.
- Dr Hebert explains that yes, they are largely the same but the elevator location may change but that's up to how the engineering may change but he understands it's all conditional.
- Freeman Boynton, Jr. states that the DRB indicated that the site plan had changed
- Dan Hebert states that the DRB may be referring to the plan that had pavement
- Philip Thorn states that he recalls a lot of support from the neighbors and the extent of the pushback was landscaping and lighting concerns.
- Dr Hebert confirmed, and explained the steps he's taken to address each neighbors concern – fencing for south side neighbor, a plan to block headlights with shrubbery and fencing.
- Dimitri Theodossiou asks Dr. Hebert to explain changes to parking lot
- Dr Hebert explains the pavement removal was per the Conservation Commission's request and back yard will be crushed pavement.
- Dimitri asks if he foresees percentage changes
- Kathleen Muncey points out that this request is for use.
- Dan Hebert states that he needs the special permit for use to get financing and he will go back to DRB, Planning if Scott feels it's appropriate.
- Freeman points out that the DRB can only request changes and the ZBA is there to consider their input and the neighbors' and he'd like to see landscape plans required.
- Kathleen Muncey states that would be on Scott and then asks if anyone else would like to speak.
- Walter Mirrione states that they are happy to submit final landscape plan to Board as a gesture of good faith.

- Kathleen Muncey suggests to condition the permit.
- Freeman Boynton, Jr. agrees, stating they can make it conditional upon a favorable review from DRB and Scott's review of landscaping buffer and lighting.
- Freeman Boynton, Jr. makes a motion to close the public hearing. Emmett Sheehan seconds. All in favor, 5-0.
- Kathleen Muncey explains that they are talking about approving this with conditions, 1) Favorable recommendation from the Design Review Board, 2) Zoning Board's approval on the landscape plan and 3) Lighting plan to be in-line with hours of operation and the current law requiring it on for one hour after close.
- Kathleen Muncey makes a motion to approve application as proposed with the 3 conditions. Emmett Sheehan seconds. All in favor, 5-0.
- Walter Mirrione asks if he can clarify one thing which is to confirm that they'd like the landscaping plan submitted to the ZBA or to Scott?
- Kathleen Muncey states that it'd be to the ZBA at an administrative meeting.

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

|                           |                          |
|---------------------------|--------------------------|
| <b>Moved by: FB</b>       | <b>Seconded by: ES</b>   |
| <b>Number in favor: 5</b> | <b>Number opposed: 0</b> |

**Motion: It was moved, seconded and unanimously voted to grant the special permit for #2019-01, with conditions.**

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|---------------------------|--------------------------|
| <b>Moved by: KM</b>       | <b>Seconded by: ES</b>   |
| <b>Number in favor: 5</b> | <b>Number opposed: 0</b> |

## **BOARD OF APPEALS — MINUTES**

**Case No: 2019-03**

**Applicant: Jacqueline Cavanaugh c/o Archia Homes  
(Agent, Peter Stames)**

**Property Address: 13 Lewis Court**

**Date: May 9, 2019 Time: 7:30 p.m.**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, May 9, 2019 at 7:30 p.m. to consider the application of Jacqueline Cavanaugh c/o Archia Homes for a Special Permit under Article(s) 400 and 900, Section(s) 401.2, 404.9, 410.4, and 906.2 of the Duxbury Protective Bylaw. The property is located at 13 Lewis Court, Parcel No. 139-042-006 of the Duxbury Assessors Map, consisting of .05 Acres in the Residential Compatibility & Wetlands Protection Overlay Districts and owned by Jacqueline Cavanaugh. The Applicant proposes to raze and rebuild a pre-existing, nonconforming dwelling. A Special Permit is required.

**Members present:** Kathleen Muncey, Emmett Sheehan, Freeman Boynton, Jr., Dimitri Theodossiou & Philip Thorn

**Members Voting:** Kathleen Muncey, Emmett Sheehan, Freeman Boynton, Jr., Dimitri Theodossiou & Philip Thorn

**Other persons present at the hearing:** Angela Ball, Administrative Assistant

- Kathleen Muncey, Chair Pro Tem, announces they will now move on to case #2 on the agenda for 13 Lewis Court. She reads the public hearing notice into record and then cites, and reads, some in part, the correspondence received: Application, Site plan with existing and proposed plans, elevation plans showing the scope of work, Board of Health Memo, Conservation Commission Memo with Orders of Conditions, the Design Review Board Memo, Planning Board Memo and then Ms. Muncey read letters from abutters in favor.
- Jackie Cavanaugh states that she is there along with her neighbor to support them.
- Kathleen Muncey invites the Applicant to present.
- Peter Stames of Archia Homes states he is representing the applicants and briefly explains the plans.
- Kathleen Muncey asks what the height is. Peter states 33.6 to the ridge.
- Dimitri asks about existing. Peter states 22.2.
- Peter and the Board discuss a discrepancy between the plans and the application.
- Freeman Boynton, Jr. asks what elevation they are basing the grade on.
- Peter states he's got it at zero in his drawings.
- Freeman states that it's very close to being too high, so he needs to calculate if he's under 30' as the bylaw states it's 30' above grade. Freeman goes on to explain the plans and how he arrived at his calculations, stating the concern is if the flood elevation is above ground he wants to make sure they meet the height requirements.
- Freeman and Dimitri discuss the plans – page A5 – and Freeman clarifies that those elevations are above zero.
- Freeman points out the setbacks on the plan and states that we want it at less than or equal to existing and notes that it shows it 1/10 closer on a few sides.
- Kathleen Muncey asks if we want to see a new plan.

- Dimitri, Kathy & Freeman discuss the setbacks on the plan and note that it appears that the house has shifted a bit on the plan and it may not be accurate.
- Peter Stames states he had the engineer do this part and he can go back and have it corrected.
- Kathleen Muncey states that would be a good idea as they are reluctant without an accurate plan to go by.
- The Board and Peter Stames discuss options for a continuance.
- Kathleen Muncey makes a motion to continue the public hearing until May 23, 2019.
- Emmett Sheehan seconds.
- All in favor, 5-0.

**Motion: It was moved, seconded and unanimously voted to continue the public hearing until May 23, 2019.**

**Moved by: KM**

**Seconded by: ES**

**Number in favor: 3**

**Number opposed: 0**