



TOWN CLERK
2019 SEP 18 AM 11:00
DUXBURY, MASS.

TOWN OF DUXBURY

~~~~~

## BOARD OF APPEALS

### DUXBURY BOARD OF APPEALS MEETING MINUTES

January 10, 2019 @ 7:30 p.m.

**ATTENDANCE:** Wayne Dennison, Judith Barrett, Kathleen Muncey, Borys Gojnycz, Emmett Sheehan, Freeman Boynton, Jr. & Philip Thorn

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

- **ZBA Case #2018-20 Duddy, 14 Stetson Place, Special Permit:** *The Board voted to continue the public hearing until February 14, 2019. All in favor, 5-0.*
- **ZBA Case #2018-22, 0 North Street, Remand Hearing:** *The Board voted to continue the public hearing until February 28, 2019. All in favor, 5-0.*

### ADMINISTRATIVE

- **Minogue, 12 Back River Way:** *The Board voted to approve the proposal, determining it did not require an amendment to the Back River Way Special Permit, #83-3. All in favor, 5-0.*

## BOARD OF APPEALS — MINUTES

**Case No: 2018-20**

**Petitioner: Brian Duddy,**

**Doug Friesen/Duxborough Designs, Agent**

**Address: 14 Stetson Place**

**Date: January 10, 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, January 10, 2019 at 7:30 p.m. to consider the application of Brian Duddy for a Special Permit under Article(s) 400 and 900, Section(s) 410.2 #4, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 14 Stetson Place, Parcel No. 119-079-226 of the Duxbury Assessors Map, consisting of 0.25 Acres in the Residential Compatibility District and owned by Brian P. & Kathleen M. Duddy. The Applicant proposes to construct additions to a pre-existing, non-conforming structure, plans for which increase the coverage beyond the allowable amount. A Special Permit is required.

**Members present:** Wayne Dennison, Judith Barrett, Kathleen Muncey, Borys Gojnycz, Emmett Sheehan, Freeman Boynton, Jr. & Philip Thorn

**Members Voting:** Wayne Dennison, Judith Barrett, Kathleen Muncey, Borys Gojnycz, & Freeman Boynton

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

- Wayne Dennison, Chairman, calls the meeting to order and reminds the public to use the microphone when speaking.
- Wayne Dennison reads the public hearing notice into record. Mr. Dennison cites and reads, some in part, correspondence received - the revised building plans based on feedback from the Design Review Board and the Planning Board, the Planning Board Memo, the Board of Health Memo, the Conservation Commission Memo and the Memo from the Design Review Board.
- Mr. Dennison states that ultimately it's 1,621 sf allowed and the proposed revision exceeds that and that he has two letters from designer Doug Friesen of Duxborough Designs, one dated 12.18.18 and one dated 12.19.18 describing the changes.
- Wayne Dennison invites the Applicant to speak/present.
- Brian Duddy of 14 Stetson Place addresses the Board, informing them that he is the applicant but his agent, Doug Friesen is not here, but he doesn't have a proposal prepared.
- Wayne Dennison tells Mr. Duddy that the issue seems to be that this is a coverage issue and I think it looks like you'll need Doug to help present this as even with the extra percentage allotted you are still over what we could grant to you with a special permit. It looks like you are at 1881sf and you need 1621 sf per the DRB.
- Brian Duddy states that we're trying to put a garage on to add a place for a car as road is small and we want to keep good feel of Stetson Place and of Duxbury.
- Wayne Dennison states that we hear a lot of these and the bylaw provides for that, but you're over on square footage of what I can give you without a variance. I suggest you revise as I just cannot approve this.
- Brian Duddy and the Board agree to a date to continue of February, 14, 2019.

- Freeman Boynton, Jr. makes a motion to continue the public hearing until February, 14, 2019. Emmett Sheehan seconds. All in favor.

**Motion: Motion: It was moved, seconded and unanimously voted to continue the public hearing until February 14, 2019.**

**Moved by: FB**

**Seconded by: ES**

**Number in favor: 5**

**Number opposed: 0**

## BOARD OF APPEALS — MINUTES

**Applicant:** n/a Remand from Commonwealth of MA,  
**Re Decision Nos.** 2016-19, 2016-20 & 2016-21

**Property Address:** 0 North Street

**Case No:** 2018-22

**Date:** January 10, 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, January 10, 2019 at 7:30 p.m. to consider a matter remanded to the Board from the Commonwealth of Massachusetts Land Court – Civil Action No. 17 MISC 000165. The Case is an Appeal of the Zoning Board of Appeal's Decision Nos. 2016-19, 2016-20 & 2016-21 which upheld one (1) of six (6) building permits issued for properties *formerly* known as Parcel No.'s 023-010-001A through 023-010-001F with street addresses of 387, 389, 391, 393, 395 and 397 North Street, respectively. The properties are each now known as 0 North Street, Parcel No.'s 009-010-001, 009-010-002 and 023-010-003 the Duxbury Assessors Map, consisting of 2.27, .921, & 10.9 acres in the Residential Compatibility & Water Protection Overlay Districts, owned by Susan J. Curtis, Trustee and Zero North Street Nominee Trust. The remand is for the limited purpose of determining whether the Board of Appeals has the authority under the Town's Zoning Bylaws to uphold one of the building permits issued without a special permit by annulling the other issued permits.

**Members present:** Wayne Dennison, Judith Barrett, Borys Gojnycz, Emmett Sheehan, Freeman Boynton, Jr. & Philip Thorn

**Members Voting:** Wayne Dennison, Judith Barrett, Emmett Sheehan, Freeman Boynton, Jr., & Borys Gojnycz

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

- Wayne Dennison, Chairman, opens the hearing and reads the public hearing notice.
- Mr. Dennison states that this is a hearing that is really confined to answering four questions that were directed to us, which are:
  1. Does the ZBA have authority to cure defect if under 530.2 it needed a special permit, so can we cure a problem with lot 1 by annulling other 5;
  2. The total area needed to be cleared under all 6 bldg permits of all 6 lots
  3. If a special permit from the planning board should have been a precondition of granting the 6 building permits, and finally
  4. If a special permit from planning board was required (section 611) whether the bylaws permit the ZBA to cure the defect in the building permit application by annulling as many permits as we needed to bring it under the threshold level that requires a special permit.
- Mr. Dennison cites letters received from Hill Law and from Driscoll and Gibson, then invites Mr. Murphy of Hill Law to speak, stating that since this was originally an appeal, but asks him to stick to the 4 items.
- Mr. Murphy states that Land Court was clear and that we are talking about Lot 1, but as an historical fact, 6 were issued and we are talking about the 1 that was issued for Lot 1 but he's asking you to consider that all 6 would've needed a special permit.
- Wayne Dennison states that this is complicated factually and the bylaw isn't clear.
- Dennis Murphy states that you could answer all by answering the first question and that answer is No. He states that there are 5 building permits that could be reinstated by the

- court and that can't be the result without a special permit and I think you could say that you either don't have the authority or if you do, you ought not to use it to revive the 5.
- Wayne Dennison states that he reads it differently and the building permit we are talking about is for Lot 1 and if you treat it alone then that didn't need a special permit nor did #2-5 but #6 did.
  - Dennis Murphy states they were all filed at the same time.
  - Wayne Dennison states that I looked at them, but we're talking about the 1<sup>st</sup> one, so is it that they came at same time that you need a special permit.
  - Dennis Murphy states that the Land Court stated that the ZBA failed by no annulling all 6 and failing to consider if they had the authority to cure the others by keeping 1 and annulling 5. Mr. Murphy goes on to states that the issue is not about lot 1 in isolation, it's about all as bylaw talks about land in contiguous parcels and in 611 it's even broader as it spans timeframe of 3 yrs. in aggregate of 3 yrs.
  - Wayne Dennison asks how much was cleared.
  - Dennis Murphy states that it was a total of 70, 400sf and the remand asks you to calculate total and goes over the other points the remand made.
  - Wayne Dennison asks how that number was calculated.
  - Dennis Murphy states that his client did the calculations
  - Wayne Dennison and Deborah Wolf Frangesh discuss the area to be cleared and how the Frangeshes got to the # for clearing.
  - Dennis Murphy quotes the bylaw and what 611 allows.
  - Wayne Dennison states it's useful but problematic at the same time as he reads that in 611 certain things don't count. Murphy disagrees. Barrett reads from bylaw and Dennison states it doesn't provide exceptions.
  - Dennis Murphy, Wayne Dennison & Judith Barrett all discuss the bylaw and their respective interpretations of 611.
  - Deborah Frangesh shows pictures of her calculations to the Board
  - Paul Driscoll, representing Baldwin and Curtis states that if Murphy's analysis of a611 is correct then even for condos you could only clear 30 sf and that he's not sure what Judge Foster intended and he finds it confusing. Paul Driscoll describes that the Judge was clear that the only thing before them was the building permit with Lot 1.
  - Wayne Dennison states that the judge ordered them to figure out the lot clearing square footage.
  - Paul Driscoll states that 611 was adopted in 2002 and bylaw committee states certain things are exempt like clearing for residential so the other calculation doesn't apply.
  - Wayne Dennison states that you can't put 5 houses on a lot so the notion of 30sf per is N/A.
  - Paul Driscoll states that if the judge asked for all 6 then the #6 is important as judge is asking for all and we'd like to submit a plan drawn by Baldwin.
  - John Baldwin shows the Board a plan and explains where the clearing will be.
  - Paul Driscoll states that they have 70 something and we get to 90 something but it is n/a if we are only dealing with 1 and the judge is asking you to decide an issue you already did.
  - Wayne Dennison states that if you win in superior Court and land court you will have 6 dwellings on continuous lots without a special permit and that shouldn't happen.
  - Judith Barrett states not under 530.
  - Wayne Dennison states that's why the judge came up with this.
  - Paul Driscoll states that the Town is a defendant in Plymouth lawsuit and in Land Court town was needing to defend the ZBA and in Plymouth town made a motion to transfer and court ruled that jurisdictions are different.
  - Wayne Dennison states that this is complicated and if you did this 1 building permit per day, you wouldn't get to this issue until #6 and judge has concluded that since all 6 filed at the same time it is a collective permit.

- Paul Driscoll argues that the judge has no right and this is a remand, not a final judgment.
- Mr. Murphy argues that there is no relevant difference with 2 different lots as 530 applies to contiguous land in common ownership and that the judge's interpretation is binding.
- Wayne states he thinks that the judge is saying that even if you apply for 6 separate it triggers 530.
- Dennis Murphy states he thinks the bylaw was intended to be inclusionary and that the only import of 2 different cases is that there are 5 other building permits still out there
- Wayne Dennison states why can't Scott just say no without a special permit if they get all the lots reinstated and can't he just take away the 6th until a special permit?
- Dennis Murphy states that he thinks he'd have to and that puts the cart before the horse as under 411 you need a special permit before you get a building permit.
- Wayne Dennison asks if anyone else has anything to say.
- Paul Driscoll argues that Judge Foster's own orders on page 15 states the opposite and that until those proceedings happen this is n/a.
- Wayne Dennison states that this all comes down to Judge Foster deciding that you needed 530 for 6 and that we have 2 different calculations for land clearing and wonders if anyone else has thoughts.
- Amy Kwesell of KP Law states that she agrees that this is a difficult memo with regard to 611 and she thinks that the Total Area is what the ZBA should grapple with right now. She goes on to state that I think your answer to question #2 is No, so you don't need to go to #3; she states that with regard to 530 it's tough because a judge determined you did need a special permit so if the ZBA agrees with the judge and cannot find a cure with bylaw then I think Baldwin could go and get a building permit for lot 1.
- Wayne Dennison asks if he could forgo one and get the other, right?
- Amy Kwesell agrees, stating that yes as there is no look back period under 530.
- Wayne Dennison states that so if you build one house ok, second ok..
- Amy K states that 611 says it's contiguous
- John Baldwin states that he's seen subdivisions in town without a special permit
- Judith Barrett reads from Section 611
- John Baldwin states that homes aren't included in that
- Wayne Dennison states that we ruled not 6 on 1 lot.
- John Baldwin states that they are talking about clearing
- Emmett Sheehan states that we agree that they are under it.
- Wayne Dennison states he'd like to continue the meeting and the Board discusses dates available.
- Amy K states that because this is a remand I'd ask that the Frangeshes ask for a continuance.
- Dennis Murphy states that we are well beyond the 100 days so I can't figure that out
- Paul Driscoll states that with a remand the Court will often states a timeframe but in this case the judge did not specify
- Wayne Dennison states that he can see Mr Murphy's point
- Amy K states that Atty Driscoll is right, some remands have time frames.
- The Board and the others discuss a date.
- Wayne Dennison makes a motion to continue until February 28, 2019. Judith Barrett seconds. All in favor, 5-0.

**Motion: It was moved, seconded and unanimously voted to continue the public hearing until February 28, 2019.**

Moved by: WD  
Number in favor: 5

Seconded by: JB  
Number opposed: 0

## **BOARD OF APPEALS — MINUTES**

**Applicant: Minogue**  
**c/o South Shore Homeworks, Nate Poploski**  
**Property Address: 12 Back River Way**  
**Case No: 2018-23**  
**Date: January 10, 2019**

**Members present:** Wayne Dennison, Judith Barrett, Borys Gojnycz, Emmett Sheehan, Freeman Boynton, Jr. & Philip Thorn

**Members Voting:** Wayne Dennison, Judith Barrett, Emmett Sheehan, Freeman Boynton, Jr., & Borys Gojnycz

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

### **ADMINISTRATIVE:**

**Minogue, 12 Back River Way:** Applicant has requested building permits to make exterior changes to the home. The Board of Appeals must determine whether an Amendment to the Special Permit under which Back River Way was constructed is necessitated.

- Wayne Dennison states there is an administrative matter for 12 Back River Way.
- Nate Popoloski states that that he is here to ask for permission as this development was built on a special permit.
- Wayne Dennison asks if he has a letter from the HOA in favor
- Freeman Boynton, Jr. asks if he is here for the garage
- Nate states that they are here for the other and will be back for garage
- Wayne and the Board discuss changes.
- Judith Barrett asks if they need a separate special permit, that's the question.
- Emmett Sheehan asks if any other have done work.
- Scott Lambiase states that yes, several have and we have never said no.
- Wayne reads from the bylaw section 903.2.
- Wayne Dennison asks if anyone has any issues with this. All concur, no.
- The Board votes all in favor to approve the request.
- 

**Motion:** It was unanimously voted to approve the proposal.

**Moved by: WD**  
**Number in favor: 5**

**Seconded by: JB**  
**Number opposed: 0**