



TOWN CLERK

OCT 15 2019

DUXBURY, MA

TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS MEETING MINUTES

January 24, 2019 @ 7:30 p.m.

ATTENDANCE: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. and Borys Gojnyecz,

Other persons present at the hearing: Scott Lambiase, Director of Municipal Services, Amy Kwessell, K-P Law & Angela Ball, Administrative Assistant

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

ZBA Case #2018-19, J Mark Waterfront, 397 Washington, Special Permit (CONT'D):
The Public Hearing has been rescheduled until February 14, 2019 and has been so re-noticed.

ZBA Case #2018-10 McLaughlin, 685 Washington St., Special Permit (CONT'D): *The Board voted to deny the special permit (3-1).*

Administrative:

A. Approve meeting minutes

EXECUTIVE SESSION

1) Call to Order

2) Executive session under G.L. c.30A, §21(a)(3) to discuss strategy with respect to litigation regarding Chiu Wei-Chi, as Trustee of the 240 Harrison Street Realty Trust v. Town of Duxbury Zoning Board of Appeals et al.; Land Court, Case No. 18 MISC 000402. Votes may be taken. Board to return/not return to open session.

3) Adjourn

Judith Barrett voted to adjourn the meeting. Philip Thorn seconds. All in favor (4-0).

BOARD OF APPEALS — MINUTES

Case No: 2018-19

Petitioner: J Mark Waterfront

Address: 397 Washington Street

Date: January 24, 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 24, 2019 at 7:30 p.m. to consider the application of Jonathan Mark of Waterfront Realty Group, Inc. for Special Permits under Article(s) 400, 600 and 900, Section(s) 410.6, 421.3 #7, 421.3 #11, 601.4, 601.9 and 906.2 of the Duxbury Protective Bylaw. The property is located at 397 Washington Street, Parcel No. 119-147-405 of the Duxbury Assessors Map, consisting of 33,977 S.F. in the Residential Compatibility & Neighborhood Light Districts and owned by Ditch Digger LLC. The Applicant proposes a mixed-use of the building – professional office space and accessory apartments – as well as a continued use of an existing free-standing sign with added lighting.

Members present: Wayne Dennison, Judi Barrett, Kathleen Muncey, Freeman Boynton, Jr., & Borys Gojnycz

Other persons present at the hearing: Scott Lambiase, Director of Municipal Services, Amy Kwessell, K-P Law & Angela Ball, Administrative Assistant

- Wayne Dennison, Chair, opens the meeting and explains that the 2018-19 case will be continued from tonight to February 14, 2019.

BOARD OF APPEALS — MINUTES

Case No: 2018-10

Petitioner: McLaughlin

Address: 685 Washington Street

Date: January 24, 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 24, 2019 at 7:30 p.m. to consider the application of John McLaughlin for a Special Permit under Article(s) 400 and 900, Section(s) 404.6, 404.7, 404.8, 404.9, 404.20 and 906.2 of the Duxbury Protective Bylaw. The property is located at 685 Washington Street, Parcel No. 117-147-000 of the Duxbury Assessors Map, consisting of 3.79 acres in the Residential Compatibility & Wetlands Protection Overlay Districts and owned by John G. and Doreen K. McLaughlin. The Applicant proposes to construct a new pier.

Members present: Wayne Dennison, Judi Barrett, Kathleen Muncey, Freeman Boynton, Jr., & Borys Gojnycz

Other persons present at the hearing: Scott Lambiase, Director of Municipal Services, Amy Kwessell, K-P Law & Angela Ball, Administrative Assistant

- Wayne Dennison, Chair, opens the hearing, stating the next matter is 685 Washington Street. There is no new correspondence, voting member are all here, have you all had a chance to consider this application.
- Members all respond yes
- Freeman Boynton Jr. states that it was brought to his attention that he signed a petition before becoming a Board Member but he feels he can be impartial
- Wayne Dennison states we consider a special permit for waterfront property and approve despite opposition because people get to make reasonable use of the property and opposition being if they don't like it, don't look at it, is not enough of a reason. The Bylaw specifically considers piers and I understand people prefer with and without. I am not convinced a Special Permit applies here under the Bylaw. We used Conservation Commission and Town Counsel's opinion and agree that 404.8 doesn't apply. On reverse, we heard that due to SSOC, Conservation Commission can't apply but the DEP appeal doesn't take into account the salt marsh, so I don't think DEP decides anything. My view is that the credible evidence from Ms. White is that this ends in the salt marsh, which is what the Conservation Commission said and under different circumstances, I'd approve; I don't think under 404.20 this complies and delineation in the Applicants plan was reliable. I don't think it has been sufficient.
- Freeman Boynton Jr states meaning the body of water the pier ends in is a tidal creek.
- Wayne Dennison responds yes
- Borys Gojnycz states I wasn't surprised with the opposition, as I've been a fan of the property and thought it'd be a matter of time before a pier and I didn't know what a salt marsh was and according to the definition, it's inclusive of the tidal creek and they are important.
- Freeman Boynton Jr responds I don't recall the definition of a tidal creek, I thought you could jump over and this can't be jumped over. I am not sure...
- Kathleen Muncey states there was no definition

- Judith Barrett agrees
- Wayne Dennison states I thought it was tidal flat
- Kathleen Muncey states the plan was different than what was filed with the DEP
- Freeman Boynton Jr states that the DEP doesn't have the tidal creek
- Kathleen Muncey states just the water's edge
- Judith Barrett quotes the Bylaw
- Freeman Boynton Jr states ask Town Counsel?
- Kathleen Muncey responds Beals and Thomas said it complies
- Wayne Dennison states yes, but there is no delineation review
- Judith Barrett responds yes, just completion review
- Kathleen Muncey states determine wetlands
- Judith Barrett states that it extends the full distance over the salt marsh to access the water's edge, that's what we need to determine
- Amy Kwessell, K-P Law, states yes, the Bylaw says over salt marsh and under DEP regulations, tidal creeks may contain flat etc. so, does it end in a tidal creek or a flat?
- Wayne Dennison asks can Conservation Commission weigh in. And it says in a narrow tidal creek, never reached open water and their recommendation is in line with what White said
- Kathleen Muncey asks how long would the dock have to extend
- Wayne Dennison states 198 feet and is within 2 feet of the limit
- Judith Barrett asks have we ever gone against the Conservation Committee
- Freeman Boynton Jr states it's difficult to ignore, since we don't have other expertise
- Borys Gojnycz states in the presentation it was clear that it was on both side and that based on the information provided, we can prove 404.2 isn't complied with, without the Conservation Committee
- Freeman Boynton Jr states the tidal creek needs to be defined before we do another; at what point does the creek become flat etc.
- Amy Kwessell states if we look at the DEP definition of a salt marsh which may include creek, ditches and tidal pools, a flat is any near or level part of a coastal beach etc. DEP do not define anything with a width unfortunately.
- Kathleen Muncey states that the tidal flat is not part of the salt marsh
- Amy Kwessell states that the salt marsh definitely says MAY
- Borys Gojnycz states the use of MAY, I'm just confirming not all
- Kathleen Muncey states it could also mean the tidal creek is not part of the salt marsh
- Amy Kwessell states the definitions are from the DEP regulations, you are ZBA re: Zoning Bylaw and B&T didn't delve there as it's for the ZBA not the Conservation Commission
- Wayne Dennison states that 404.20, no other than full distance are in question, per the B&T review
- Freeman Boynton Jr asks if there are parts of the river with the same width as portion of the dock
- Kathleen Muncey asks could someone put in a 200 foot dock with similar width on Blue Fish River.
- Freeman Boynton Jr states I think so
- Kathleen Muncey states the issue of extending over the salt marsh is concerning and dangerous to the conservation and wildlife, correct
- Wayne Dennison states it's kind of a guessing issue, whether you think it extends the full 200 feet
- Freeman Boynton Jr asks if it's a creek, then why
- Kathleen Muncey asks about old testimony
- Wayne Dennison states the problem I have is that Conservation Committee knows more about this stuff than I do

- Freeman Boynton Jr states it was denied twice
- Wayne Dennison states we asked for a recommendation under the Bylaw and their recommendation was negative
- Freeman Boynton Jr states that is tough to ignore
- Kathleen Muncey asks what if it was that they denied with Conservation, got an SOC and then came back to us
- Freeman Boynton Jr states they didn't get an SOC from DEP ruling on our Bylaws.
- Wayne Dennison states DEP does something else
- Kathleen Muncey states even if we have a SEC, we say no because the Conservation Commission said no?
- Wayne Dennison states Conservation Commission has the jurisdiction over the wetlands Bylaw and they are deprived of the ability to enforce and got SSCC, but now we've asked under Zoning Bylaw to give a recommendation and in this instance they said no.
- Judith Barrett states and the Conservation Commission used the Horsley Witten Group to help with that
- Freeman Boynton Jr states we use other Boards all the time for opinions
- Borys Gojnyecz states it seems that Paul Driscoll's argument has abandoned tidal creek part and focused on distance to the water's edge
- Judith Barrett states that the Bylaw doesn't use that language and quotes 404.2 #2
- Judith Barrett continues are we holding this Applicant to a higher standard than we typically would
- Freeman Boynton Jr states that normally if the Conservation Committee doesn't approve, we don't see it
- Kathleen Muncey asks have we had any that have been denied
- Freeman Boynton Jr asks pre-existing docks
- Kathleen Muncey states no other in town ending in the tidal creek
- Borys Gojnyecz states I think there are, but may be grandfathered in
- Freeman Boynton Jr states is there a body of water with end in it
- Freeman Boynton Jr continues I'd guess most in Blue Fish River go out and don't end in a small area
- Kathleen Muncey states the width part still bother me, that it's no longer a creek
- Wayne Dennison asks if there is anything else. No? Straw poll if it complies with 404.20.
- Judith Barrett responds NO
- Kathleen Muncey states I DO
- Borys Gojnyecz states I DO
- Kathleen Muncey states I think it complies
- Wayne Dennison asks what part, explain
- Kathleen Muncey states that with no definition of a salt marsh or a tidal creek, it's at the water's edge
- Borys Gojnyecz asks what about state laws
- Judith Barrett states we are interpreters of at Zoning Bylaw
- Borys Gojnyecz states but without a definition, you look to ...
- Kathleen Muncey states that if zoning didn't want piers to end in a tidal creek, it should have said that
- Wayne Dennison states that the Conservation Committee says it never reaches open water
- Borys Gojnyecz states that was Attorney Driscoll's point
- Freeman Boynton Jr states it's open water if you can get a dock and a boat to fit, right?

- Wayne Dennison states I thought Ms. White was compelling with the arguments and opinions and that they were consistent with Conservation.
- Freeman Boynton Jr states if I had a definite tidal creek, it would be an easier decision
- Judith Barrett states well, we have...
- Freeman Boynton Jr states I felt that Ms. White said something different when we asked for a definition of a creek
- Wayne Dennison states she also used examples that you couldn't use the plan that was made by other info in the firm
- Judith Barrett states I am not opposed, just not sure the standard has been met with the Bylaw and I am upset by the treatment of family despite that I have to apply the Bylaw
- Wayne Dennison states we often pause to see if the Applicant wants to withdraw versus getting a negative determination
- Paul Driscoll asks how long the Applicant has to make that determination.
- Wayne Dennison states if we extend the dates, we don't have to decide this tonight
- Paul Driscoll states I've only heard creek vs. flat, and Mr. Dennison stating the Bylaw compliance not there, so if it's a regulation, will I be appealing salt marsh or other provisions not applying? It's a fair request to know
- Judith Barrett states I don't have a basis to say the rest of the application is not compliant with the application and doesn't have other issues with the Bylaw
- Paul Driscoll states if other issues don't get decided, what if it's remanded again, so can the Board address all the issues before we meet
- Freeman Boynton Jr states that the salt marsh extent is the only issue
- Borys Gojnycz states I agree, I'd be hard pressed to deny a pier in an area full of them, but the piece of land is impressive and it's amazing and it's untouched and on the other side the tree on the river is so beautiful, so I can see why this is such a special spot with lots of artists...
- Judith Barrett states the Bylaw, if it meets it, how can I say it wasn't met
- Wayne Dennison states how about the benefits to the town outweigh the adverse to the town
- Judith Barrett states we've had plenty of special permits that do not do that
- Wayne Dennison states I don't think we have to take on issues until a Judge tells us to.
- Judith Barrett and Wayne Dennison discuss the issue, should we make findings?
- Judith Barrett states How do you say it's adverse if the design is according to the Bylaw, so how do you say you haven't done that
- Freeman Boynton Jr states and if more in the area exist
- Wayne Dennison states that the benefit for people to make use of the land, it's a public benefit. Talks about 906.2; it's a suitable location, considering nearby land uses supported or damaged, so whether the site is more sensitive than similarly Wayne continues to go over section 906.2 #2 a) n/a b) n/a c) n/a d) n/a e) n/a #3 a) I agree that the Bylaw b) yes, a pier on the water c) n/a d) n/a e) n/a and f) this one does apply and we're back to 404.20. I am persuaded to continue to make findings under 906.2
- All agree it's fair and concur
- Wayne Dennison states that it meets all standards except 404.20 distance over a salt marsh that are germane.
- Wayne Dennison asks Freeman Boynton Jr if there are any 906.2 issues
- Freeman Boynton Jr states no
- Judith Barrett asks does the Applicant want to recess and talk
- Paul Driscoll states that it seems that all others will comply, except 404.20. May I take a couple of minutes
Recess for Applicant to discuss
- Paul Driscoll states in light of time spent, we request that you move forward and not withdraw

- Judith Barrett states counsel suggested we make findings, so our findings are 404.9 the argument that we cannot act and they disagree
- Amy Kwessell states it's not prohibiting 404.5 but pursuant to 407.61, ok by special permit
- All Agree
- Wayne Dennison states the proposal as to which motion
- Amy Kwessell states is the motion to grant 404 and 906
- Judith Barrett states I move to grant the Special Permit pursuant to 404 and 906.2
- Borys Gojnycz second

Motion: It was moved, seconded and voted to deny the special permit.

Moved by: JB

Seconded by: PT

Number in favor: 1

Number opposed: 3