



TOWN CLERK

OCT 15 2020

DUXBURY, MA

TOWN OF DUXBURY

BOARD OF APPEALS

DUXBURY BOARD OF APPEALS MEETING MINUTES April 25, 2019 @ 7:30 p.m.

ATTENDANCE: Wayne Dennison, Judith Barrett, Kathleen Muncey, Emmett Sheehan, Borys Gojncyz, Freeman Boynton, Jr., Dimitri Theodossiou & Philip Thorn

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

- **ZBA Case 2019-02 Brodie, 331 Bay Road:** *The Board voted to approve the special permit as proposed. All in favor, 5-0.*
- **ZBA Case #2018-21 William Raveis, c/o Archer Signs, 53 Railroad Ave. (CONT'D):** *The Board voted continue the hearing until June 13, 2019 with 4 in favor and 1 opposed.*
- **ZBA Case #2018-22, 0 North Street, Remand Hearing (CONT'D):** *The Board voted to answer the questions posed by the Remand unanimously.*

Administrative

- **ZBA Case #2019-05 Fargo, 12 Rachael's Ln.:** *The Board approved to amend the Special Permit for Weston Farms with conditions.*
- **Approve Meeting Minutes**
 - A. *Judith Barrett moved to approve the meeting minutes from September 13, 2018. Freeman Boynton Jr. seconded. All in favor, 5-0.*
 - B. *Judith Barrett moved to approve the meeting minutes from April 11, 2019. Freeman Boynton Jr. seconded. All in favor, 5-0.*

Judith Barrett made a motion to adjourn the meeting. Freeman Boynton Jr. seconded. All in favor.

BOARD OF APPEALS — MINUTES

Applicant: Glenn Brodie,
Agent, Duxbury Construction
Property Address: 331 Bay Road
Case No: 2019-02
Date: April 25, 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, April 25, 2019 at 7:30 p.m. to consider the application of Glenn Brodie for a Special Permit under Article(s) 400 and 900, Section(s) 404.6, 404.7, 404.8, 404.20 and 906.2 of the Duxbury Protective Bylaw. The property is located at 331 Bay Road, Parcel No. 100-066-101 of the Duxbury Assessors Map, consisting of 3.2 acres in the Residential Compatibility & Wetlands Protection Overlay Districts and owned by Glenn A. & Linda K. Brodie. The Applicant proposes to demolish an existing pier and construct a new pier. A Special Permit is required.

Members present: Wayne Dennison, Judith Barrett, Kathleen Muncey, Borys Gojnycz & Dimitri Theodossiou

Members Voting: Wayne Dennison, Judith Barrett, Kathleen Muncey, Borys Gojnycz, Dimitri Theodossiou & Philip Thorn

Other persons present at the hearing: Angela Ball, Administrative Assistant & Amy Kwesell, KP Law (Town Counsel)

- Wayne Dennison, Chairman, called the meeting to order, reads the public hearing notice for case #2019-02 into record, then he cites and reads, some in part, the correspondence received on the application: the application, the plans, photographs, Conservation Commission Memo and Orders of Conditions, the Planning Board Memo that defers judgment to the ZBA, the Design Review Board Memo and the Board of Health Memo. Mr. Dennison invites the Applicant to present the case.
- Bob Kroll of Kroll Engineering, pointing to the plans, explains the location of the proposed pier.
- Wayne Dennison asks how close the pier will be to any others.
- Bob Kroll states that they went through several runs with the Conservation Commission to find the best spot and determined that it was best to come straight out.
- Dimitri Theodossiou asks to pass around the photographs.
- Bob Kroll states that the Design Review Board approves of this design, the Chapter 91 license has been applied for, the Army Corps has been applied to, they have the Orders of Conditions in-hand and no neighbors have opposed.
- Kathleen Muncey asks how old the existing pier is.
- Glenn & Linda Brodie respond together, concurring that it is from the 1970's and elaborate that all are cedar posts and shriveled up.
- Wayne Dennison asks if this is in the WPOD.
 - It's established amongst all that it is
- Bob Kroll states it goes out 2' beyond the salt marsh
- Wayne asks if they received anything from Harbormaster.

- Glenn & Linda Brodie state no, that it is moved over 30' from where it was
- Bob Kroll and Wayne Dennison discuss measurements; Bob informing that it is 4' with a 6x8' bump out at end and the piles are 2' out of the salt marsh.
- Glenn Brodie states that they relocated the pier at the request of Conservation.
- Wayne Dennison reads #11 from 404.20 of the Bylaw, which states that reconstructed piers do not need to comply with all requirements but should conform as much as preexisting one did.
- Bob Kroll explains that they would've replaced it exactly but Conservation asked them to move it.
- Wayne Dennison asks if anyone has any questions.
- Philip Thorn asks where the railing is.
- Bob Kroll explains that it is standard sizing and on either side.
- Dimitri Theodossiou asks if there is any lighting plans.
- Glenn & Linda Brodie both answer, no.
- Wayne Dennison reads a few requirements of piers and asks Bob if all comply. Yes.
- Dimitri Theodossiou asks if all wood is pressure treated. Yes.
- Borys Gojncyz states that float had sun damage and asks if new one will alleviate that
- Bob Kroll responds yes, as it is no longer in the salt marsh
- Wayne Dennison asks if there is a delineation of where the marsh ends.
- Bob Kroll confirms, stating that one of the wetlands people from Conservation did it.
- Wayne Dennison motions to close the public hearing. Judith Barrett seconds. All in favor.
- Wayne Dennison asks the Board if there is any discussion. No.
- Judith Barrett makes a motion to grant the special permit as proposed for case #2019-01.
- Kathleen Muncy seconds. All in favor (5-0).

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

Moved by: WD

Seconded by: JB

Number in favor: 5

Number opposed: 0

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

Moved by: JB

Seconded by: KM

Number in favor: 5

Number opposed: 0

BOARD OF APPEALS — MINUTES

Case No: 2018-21

Petitioner: William Raveis c/o Archer Signs

Address: 53 Railroad Avenue

Date: April 25, 2019 Time: 7:30 p.m.

(Continued from 2/14/19)

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, February 14, 2019 at 7:30 p.m. to consider the application of William Raveis Real Estate c/o Archer Signs for a Special Permit under Article(s) 400 and 900, Section(s) 421.1 #2, 424, 425.1, 601.9 and 906.2 of the Duxbury Protective Bylaw. The property is located at 53 Railroad Avenue, Parcel No. 106-741-105 of the Duxbury Assessors Map, consisting of 0.53 Acres in the Neighborhood Business District (NB-1) and owned by BLCR Holdings LLC c/o William Raveis Real Estate. The Applicant proposes to add external lighting to both a wall and a freestanding sign. A Special Permit is required.

Members present: Wayne Dennison, Judith Barrett, Kathleen Muncey, Emmett Sheehan & Borys Gojnycz

Members Voting: Wayne Dennison, Judith Barrett, Kathleen Muncey, Emmett Sheehan & Borys Gojnycz

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

- Judith Barrett opened the meeting and asked who was there to chair
- Bryan Vassar or Archer Signs explains that we asked for lighting and the last meeting didn't go well and I'm not sure quite how to go on-application was to light monument sign and wall sign and the subject came up about visibility and safety. I see that the road is quite lower and I don't see where to go from here-we would've rather had it be suggested we change it.
- It's discussed that the sign had a straight permit from Scott
- Wayne Dennison describes the past hearing and occurrences, states that he has had conversations with the police and it's a hazard.
- Wayne Dennison states that we are here to address the lighting and I think I'll ask Scott to have you here to address that.
- Bryan Vassar states I'd like to address the sign now, as I think I'll have to move the signs location and pull it back and that option will lose visibility of the sign. In the opposite direction, it's a lot better.
- Bryan adds that we could also modify the sign and raise it up on a couple of posts. It'll be about 1 foot closer to the street, but that would open it up on the bottom.
- Bryan also adds a third option is to spin it and that visibility is terrible. I know it's not before the Board, but I'd like to discuss it.
- Wayne Dennison asks the hours of operation
- Bryan says they close at 5pm
- Wayne Dennison asks why you need light. We allow hours of operation?
- Emmett Sheehan points out that the sign we did was until 7pm

- Judith Barrett states there are two issues here, illumination and sign permit issued improperly and it's a monument sign.
- Wayne Dennison states the issue is if it's not permitted, it's prohibited.
- Wayne Dennison says if you have a flush mounted sign, you're permitted a free standing sign. Scott's view was that it was replacing an old sign.
- Wayne Dennison states I don't think he's taken any action, he's just corresponded with you.
- Freeman Boynton Jr asks any copy of the permit?
- Angela Ball replies no, different department
- Borys Gojnyecz states that prior to even knowing this was a case here, I saw the sign and the biggest issue is that it's a solid wall and you have to lurch in to traffic in order to see beyond it.
- The Board and Bryan discuss options to fix the signs.
- Wayne Dennison asks Amy do we have an application that is just for illumination. Should we be taking up the redesign or should we consider illumination, decide and then seek the sign.
- Amy replies yes, there's a due process here. Notice was full illumination, nothing else.
- Bryan Vassar asks when you have a permit, what is the next step?
- Wayne Dennison asks if there is anyone here to talk about illumination.
- Bryan Vassar answers to sign issue and we'd like a continuance ...
- Wayne Dennison states that MA Law allows for subsequent appeal of your permit.
- Pam Smith 243 St George St.-states you have as much of a problem. I filed a complaint with the Building Dept. and the lights go on at dusk and sunset. There is a light that's on a telephone pole and I'd like them to change that arrangement to be a motion sensor and do a timer on the lights.
- Kathleen Muncey so, there premises not the sign
- Pam Smith says 4pm – leave
- Wayne Dennison If the sign went off at 7pm, any issue?
- Pam Smith replies I have a business and I don't have a lit sign. I use a motion detector sign.
- Susan peters 47 Railroad Ave.-There's a lot of light, there's lighting behind the building, as well and it's on all night. We'd like to have more guidelines and go with a motion sensor lighting, if possible.
- Bryan Vassar states that the placement of the lighting is tough without a sign. Lighting issues are separate and I'd like them both to be addressed
- Wayne Dennison asks how is the lighting on the sign proposed
- Bryan Vassar replies Gooseneck fixtures on building
- Amy states there's a chance that the sign is too large for the bylaw. I come up with 33sf and 25 sf is maximum with your hanging signs, it goes by normal formula, not to exceed 25sf in area.
- Bryan Vassar asks base or sign?
- Emmett Sheehan states that the base is part of the sign
- Bryan Vassar states something has to change; if we put poles it will be good.
- Wayne Dennison requested the height issue-I'm ok with lighting flush mounted sign until 7pm but not the unlawful sign. I'd approve one and deny the other and ask.

- Freeman Boynton Jr. can we vote to approve with conditions of them bringing to compliance
- Amy asks on a light pole?
- Bryan Vassar says we'll only keep it on until 7pm and we're in agreement to bring the sign into code
- Wayne Dennison states I'm uncomfortable with that approach. I'm ok with the unlawful check on sign and wait on change.
- Bryan Vassar states that's why I'd ask for a continuance
- Wayne Dennison states we have a photo on record that shows we don't need another light.
- Bryan Vassar says we feel like we have our act together
- Judith Barrett states we have a noncompliance issue, I'd say withdraw
- Wayne Dennison states I understand your position and you feel your due diligence, but it's a sign in a bad place
- Judith Barrett et al, he wants to continue
- Wayne Dennison states I propose we vote on lightening and v on gooseneck contingent on removal of parking lot sign.
- Bryan Vassar says I'd like to say we are here to cooperate
- Susan Peters replies since you discussed pink light and a motion detector, can you consider all on a motion detector if possible?
- Freeman Boynton Jr. states most important is to have hazard reviewed and if we vote on the other first, the rest will take forever
- Kathleen Muncey replies I say we don't allow lighting until sign is in compliance
- Judith Barrett asks do we need more information
- Emmett Sheehan asks LED Lights?
- Dimitri Theodossiou states it seems that it needs to be Scott that enforces removal and the lighting is secondary. So let them come back with all this taken care of.
- Emmett Sheehan moves to motion to continue until 6/13/19
- Wayne Dennison seconds
- Discussion
- Borys Gojnycz asks is there enough time for Scott to enforce and possibly time to correct this
- Bryan Vassar denied
- All in favor 4

Motion: It was moved, seconded and voted to continue the public hearing until June 13, 2019.

Moved by: ES

Seconded by: WD

Number in favor: 4

Number opposed: 1

BOARD OF APPEALS — MINUTES

Case No: 2018-22

Petitioner: Remand from Commonwealth of MA

Address: 0 North Street

Date: April 25, 2019 Time: 7:30 p.m.

(Cont'd from Jan 10, 2019)

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, Borys Gojnyecz, Judith Barrett, Emmett Sheehan, Freeman Boynton Jr., Philip Thorn & Dimitri Theodossiou

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

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

- Frangesh vs. Baldwin
- Wayne Dennison opens continued hearing and explains the three getting remanded to the ZBA and that new information from Hill Law says it's an argument that they cannot decide – I understand the Applicant provided....
- Wayne Dennison continues me new car? No
- Judith Barrett asks who is voting. Wayne Dennison, Judith Barrett, Emmett Sheehan, Freeman Boynton Jr & Borys Gojnyecz
- Wayne Dennison asks would anyone like to speak.
- Paul Driscoll replies I'll set up procedural-Frangesh's contested and John B contested that ZBA annulled 5 of 6. The Judge in land court kind of split the matter and did a judgement and a remand. He reversed Lot 1 permit and sent back a portion on remand, those 3 questions.
- Frangesh's think it's over, but I think that the ZBA should respond to the Judge and then after the response the Judge may change the order

- Paul Driscoll states I think he entered judgement with the Registry of Deeds as a “stop” on any action on land. This situation has changed, as John B has dismissed lawsuit challenging revocation of five building permits and now only have one left.
- Wayne Dennison asks why not go for a new building permit on lot 1?
- Paul Driscoll responds John B has decided he’ll do a 40B project. Plaintiff can discuss, not a defendant. John B has never been in a position to dismiss and John B won’t know what he’ll do until the Judge decides on the other land
- Dennis Murphy states the land court issued a judgement and we are saying it’s a judgement that’s official, but it’s possible that the ZBA opinion may not be heard by Judge Foster.
- Wayne Dennison asks does that mean you don’t want us to answer 3 questions.
- Dennis Murphy states No; I just think it doesn’t answer all others. In context of this case, we asked to see if we could find even ground.
- Mr. Murphy goes over the situation
- Paul Driscoll states this is a judgement, but has two parts, one of which was the remand.
- Wayne Dennison states we’re going to answer questions
- Paul Driscoll states we don’t know what will happen but a Judge can always amend
- Judith Barrett Moves to close Public Hearing
- Emmett Sheehan second
- All in favor
- Wayne Dennison First question 1. If the Board has authority
- No
- And 2 If the total area to be cleared (required 611) I’d go with 9,800 sq. ft. as Frangesh’s was lower ad it goes to 611
- Wayne Dennison as I read it (611) they exempt 30,000 sq. ft. if a residential structure, so the land area of 98,000 sq. ft. was more than 30,000 sq. ft. but it includes a 30,000 sq. ft. exemption for each house, then you do not need a special permit but, I prefer to read the exemption that structures get 30,000 sq. ft. exemption and we’d come to 68,000 sq. ft. and a special permit was required.
- Freeman Boynton Jr did someone else do it another
- John B states Scott Lambiase
- Judith Barrett states he did as per lot
- Wayne Dennison states does it permit the Board to deflect, I say no; Amy, how do you read 611
- Amy Kwessell states I read it as Chairman does because if you were allowed five houses on one lot, you would bulldoze the whole lot. I would suggest that the Board acknowledges the Supreme Court case was dismissed and the only thing in play is one building permit and this is all academic and I agree with Attorney Driscoll and the Judge ordered a remand and you had to answer four and you’ll find that five permits are gone and it’s moot and the Bylaw has changed and should remember that if you get an application for a Comprehensive Permit, you’ll get a waiver.
- Amy Kwessell continues I agree with your view and that it’s only one tough question as they don’t want you clearing the lot
- Borys Gojnycz states what’s the best result for Applicant’s; He has approval for one home, can clear 30,000 square feet
- Amy Kwessel states that he has no permits, but has an option to apply for lot 1 and 2 per the current Bylaw
- Wayne Dennison moves to answer questions (page 15 of the Judgement)

- Judith Barrett Seconds, All in Favor
 - 1. No
 - 2. No
 - 3. Yes
 - 4. No

Motion: It was moved, seconded and unanimously voted to move to answer questions.

Moved by: WD

Seconded by: JB

Number in favor: 5

Number opposed: 0

BOARD OF APPEALS — MINUTES

ADMINISTRATIVE

ZBA Case #2019-05 Fargo, 12 Rachael's Ln.:

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

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

- Wayne Dennison describes the reason for being here as 903.2 of the Bylaw
- Sarah Fargo states here as 903.2 requires me to do so, I'd like to enclose my porch as other have done in the past.
- Sarah Fargo reads an old memo from July 2002 approving the same
- Freeman Boynton Jr states I don't think we have enough information. This is a 1992 plan with a proposed porch drawn on it. Can we approve with Scott (Lambiase)
- John B states I am the contractor for the project; Jim L says it's an administrative matter
- Freeman Boynton Jr states exact lot, exact change to lot
- John B asks can we make a condition
- Freeman Boynton Jr states yes, I'm ok with that
- Motion to approve with condition that Scott approves that it will meet impervious coverage requirements for this lot and area

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

Moved by: FB

Seconded by: JB

Number in favor: 5

Number opposed: 0