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DUXBURY, MASS.

# TOWN OF DUXBURY



## BOARD OF APPEALS

### DUXBURY BOARD OF APPEALS

#### MEETING MINUTES

July 23, 2020 @ 7:30 p.m.

**ATTENDANCE:** Wayne Dennison, Kathleen Muncey, Philip Thorn & Emmett Sheehan

**Other persons present at the hearing:** Lauren Haché, Administrative Assistant

**CALL TO ORDER:** Wayne Dennison called the meeting to order and reads the Governor's Preamble: Pursuant to Governor Baker's March 12, 2020, Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020, Order imposing strict limitation on the number of people that may gather in one place, the Town of Duxbury's Board and/or Committee meetings will be conducted via remote participation to the greatest extent possible with members. For this meeting, members of the public who wish to watch the meeting may do so by viewing the Duxbury Government Access Channels – Verizon 39 or Comcast 15. Viewers can visit [www.pactv.org/duxbury](http://www.pactv.org/duxbury) for information about Duxbury programming. To watch a meeting live on PACTV's streaming channel, PACTV Prime, visit [www.pactv.org/live](http://www.pactv.org/live). To watch replays of a meeting, visit [www.pactv.org/duxbury](http://www.pactv.org/duxbury) or to watch online visit PACTV's Video on Demand at [www.pactv.org/ondemand](http://www.pactv.org/ondemand). **NO IN-PERSON ATTENDANCE OF MEMBERS OF THE PUBLIC WILL BE PERMITTED.** Every effort will be made to ensure that the public can adequately access the proceedings to the best of our technical abilities; and despite our best efforts due to lack of technical infrastructure, this meeting will be available on PACTV to view a video recording and a transcript or other comprehensive record of proceedings as soon as possible after the meeting.

**ZBA Case #2019-17, WB Builders, 1&25 Lincoln St:** *The Board voted to continue to September 10, 2020 at 7:30pm.*

**ZBA Case #2020-07, Duxbury Marketplace, LLC, 35 Depot Street:** *The Board voted to approve the special permit, with conditions.*

**ZBA Case #2020-08, Wolff, 13 Lewis Court:** *The Board voted to deny the variance, but approved to amend special permit 2019-03.*

*The Board moved to adjourn the meeting. All in favor.*

## **BOARD OF APPEALS — MINUTES**

**Case No: 2019-17**

**Petitioner: WB Builders**

**Address: 1 & 25 Lincoln St.**

**Parcel #'s: 056-907-001 through & 056-907-005; 056-103-000; 071-036-000; 056-060-000**

**Date: July 23, 2020**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, December 19, 2019 at 7:30 p.m. to consider the application of WB Builders Duxbury LLC for a Comprehensive Permit. The properties are located at 0 Lincoln Street, Parcel No.'s 056-907-001 through & 056-907-005 and 056-103-000; 1 Lincoln Street, Parcel No. 071-036-000; and 25 Lincoln Street, Parcel No. 056-060-000, of the Duxbury Assessors Map, consisting of 21 acres in the Residential Compatibility, Planned Development #1, Wetlands Protection Overlay, Flood Hazard Overlay & Aquifer Protection Districts and owned by WB Builders Duxbury LLC. The Applicant proposes to construct forty (40) single family detached condominium homes – ten (10) of which will be affordable to meet the definition of low and moderate income housing under G.L. c. 40B, Sections 20-23. The application may be viewed in the Municipal Services Department between the hours of 9:30 a.m. and 2:30 p.m., or by appointment. Any individual with a disability may request accommodation in order to participate in the public hearing and may request the application and any accompanying materials in an accessible format. Such requests should be made at least three business days in advance by contacting the Municipal Services Department.

**Members present:** Wayne Dennison, Kathleen Muncey, Emmett Sheehan & Philip Thorn

**Members Voting:** Wayne Dennison, Kathleen Muncey, Emmett Sheehan & Philip Thorn

**Other persons present at the hearing:** Lauren Haché, Administrative Assistant

- Wayne Dennison opens the Public Hearing and reads the Governor's preamble. He states that the first matter is ZBA case 2019-17, we have received additional correspondence about this matter, but the Applicant wishes to continue this matter to another night. Lauren, do we have a date?
- Lauren Haché responds yes, September 10, 2020 at 7:30pm.
- Wayne Dennison asks is that date available
- Lauren Haché confirms, yes
- Wayne Dennison asks, does the Board have any objections to continuing at the Applicants request?
- Emmett Sheehan No
- Kathleen Muncey No
- Wayne Dennison No
- Wayne Dennison moves to continue
- Emmett Sheehan seconds
- All in favor: Wayne Dennison Aye, Emmett Sheehan Aye, Philip Thorn Aye, Kathy Muncey Aye

## **BOARD OF APPEALS — MINUTES**

**Case No: 2020-07**

**Petitioner: Duxbury Marketplace, LLC**

**Address: 35 Depot Street**

**Parcel #'s: 110-771-000**

**Date: July 23, 2020**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, July 23, 2020 at 7:30 p.m. to consider the application of Duxbury Marketplace LLC for a Special permit under Article(s) 400 and 900, Section(s) 424, 425.1, 601.9 and 906.2 of the Duxbury Protective Bylaw. The property is located at 35 Depot St., Parcel No. 110-771-000 of the Duxbury Assessors Map, consisting of 10,008 sq. ft. in the Neighborhood Business District (NB) and owned by Duxbury Marketplace LLC. The Applicant proposes to add uniform gooseneck lighting to illuminate newly created sign locations for each business. A Special Permit is required. The application may be viewed in the Municipal Services Department between the hours of 8:00 a.m. and 4:00 p.m., or by appointment. Any individual with a disability may request accommodation in order to participate in the public hearing and may request the application and any accompanying materials in an accessible format. Such requests should be made at least three business days in advance by contacting the Municipal Services Department.

**Members present:** Wayne Dennison, Kathleen Muncey, Emmett Sheehan & Philip Thorn

**Members Voting:** Wayne Dennison, Kathleen Muncey, Emmett Sheehan & Philip Thorn

**Other persons present at the hearing:** Lauren Haché, Administrative Assistant

- Wayne Dennison opens the Public Hearing, reads the Public Hearing Agenda notice and asks who is here on behalf of the Applicant.
- I am, Jessica Williams, 1243 Tremont Street
- Wayne Dennison responds Hi Jessica, we will ask you to present and then we will open it up for comment. Wayne Dennison continues by reading the other town boards responses. Asks, Lauren is there anything else?
- Lauren Haché responds we have a letter from the Design Review Board
- Wayne Dennison states oh right, they're in favor, I believe, something along the lines of it being perfectly fine
- Lauren Haché states perfectly acceptable
- Wayne Dennison asks Jessica Williams to proceed
- Jessica Williams shares her screen and shows the proposal images of the goose neck lighting and states this is strictly for lights, not signs. Each tenant will be responsible for obtaining sign permits from the Building Department
- Wayne Dennison asks so we're trying to determine whether we grant a special permit for lighting
- Jessica Williams responds that is correct, exterior lights

- Wayne Dennison states so goose neck lights, they don't spill over – only illuminate the sign
- Jessica Williams states yes, they may spill over slightly onto the glass store front or sidewalk, but all lighting is contained within the property.
- Wayne Dennison asks if there is anyone from the Public that would like to comment or asks questions, does the Board have any questions
- Wayne Dennison moves to close the Public Hearing
- Philip Thorn seconds
- The Board votes 4-0 to close the Public Hearing.
- Wayne Dennison asks the Applicant if she is prepared to move forward with only four votes.
- Jessica Williams states yes
- Philip Thorn states he has one comment to make, the Bylaw reads that the lights only be lit during hours of operation of the businesses
- Wayne Dennison states yes that is correct
- Wayne Dennison makes a motion
- Philip Thorn second
- All in Favor

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

**Moved by: WD**

**Seconded by: PT**

**Number in favor: 4**

**Number opposed: 0**

## **BOARD OF APPEALS — MINUTES**

**Case No: 2020-08**

**Petitioner: Wolff Cottage**

**Address: 13 Lewis Court**

**Parcel #'s: 139-042-006**

**Date: July 23, 2020**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, July 23, 2020 at 7:30 p.m. to consider the application of Jacqueline Cavanaugh c/o Archia Homes for a Variance 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 add a second point of egress as required by 780 CMR 9<sup>th</sup> edition, to be breakaway stairs with open risers to a newly constructed home under special permit 2019-03. A Variance is required. The application may be viewed in the Municipal Services Department between the hours of 8:30 a.m. and 1:30 p.m., or by appointment. Any individual with a disability may request accommodation in order to participate in the public hearing and may request the application and any accompanying materials in an accessible format. Such requests should be made at least three business days in advance by contacting the Municipal Services Department.

**Members present:** Wayne Dennison, Kathleen Muncey, Emmett Sheehan & Philip Thorn

**Members Voting:** Wayne Dennison, Kathleen Muncey, Emmett Sheehan & Philip Thorn

**Other persons present at the hearing:** Lauren Haché, Administrative Assistant

- Wayne Dennison opens the Public Hearing, reads the Public Hearing notice and the packet contents. Wayne asks if the Applicant is here tonight or is someone here to represent them
- Yes Wayne, this is Peter Stames, Archia Homes, I will be here representing the Wolff's
- Jaqueline and Ken Wolff are also here, we're the property owners
- Wayne Dennison states ok, Peter, Mr. & Mrs. Wolff, we only have four Board members here tonight and in order to get the request you are seeking, you will need to get a vote from all four members; before we move down that path, is the Building Inspector here?
- Peter Stames states no, he's not
- Lauren Haché states that Jim Wasielewski is on vacation until July 30<sup>th</sup>
- Wayne Dennison states ok Peter, I'm going to ask you this question, straight up. Why do you need a variance?
- Peter Stames states well, the determination was that it's a special permit from Conservation
- Wayne Dennison states, well no, the Planning Board thinks you need an amendment to the existing special permit
- Peter Stames states so what happened was, we designed and built with a permit from the Building Department and when we got to the framing inspection, they decided that we need another set of stairs from the egress from the first floor to grade

- Wayne Dennison asks when is the Building Inspector back
- Lauren Haché states July 30<sup>th</sup>
- Mrs. Wolff exclaims Oh No, No, No
- Wayne Dennison states so the problem here, as I see it, is I think that the Planning Board is right and this is noticed wrong. Did other members of this Board look at this, Kathy did you look at this
- Kathleen Muncey responds I did. Was there a special permit that we granted
- Wayne Dennison states yes, it says 2019-03
- Kathy Muncey asked do you have a copy of that Lauren
- Lauren Haché states, yes, I can get that
- Ken Wolff says we have it here
- Jackie Wolff states that in May 2019 the Planning Board approved the plan as is
- Kathy Muncey states so the ZBA approved it; so we're not approving anything that increases setbacks or guidelines. It's completely underneath the building correct?
- Peter Stames states it will be off to the side
- Jackie Wolff explains it will be where our daughters ramp – we had a very severely handicapped daughter and we built, 35 years ago, a ramp for her and that is where these will be.
- Peter Stames states that is indicated on the site plan as well
- Jackie Wolff states it is on the side of our Abutters, who are in full support – so long as they don't go onto their property
- Wayne Dennison states ok, let me ask a question, it looks to me as someone is requiring a variance because that stairway got closer to the side lot (further in the setback) but the ramp had already been there in the same place. Was the ramp taken out with the 2019 special permit?
- Peter Stames states that it was taken out when the old house was demolished
- Wayne Dennison states and you didn't ask to add it
- Peter Stames states that is correct
- Kathy Muncey asks is there a site plan from 2019 that shows ...
- Peter Stames states yes, it's on the plans that were submitted
- Wayne Dennison states yes, the ramp is on the plans that were submitted
- Kathy Muncey states so the setback was 6 feet and not it's going to 3.3 but it's not going any further
- Peter Stames states I am sorry, I think the stairs do go a little further because of width; because of required width of the staircase
- Jackie Wolff states our daughter passed away, which is why we didn't include the ramp when we had to rebuild the house
- Peter Stames adds I might also add that I've done two other houses in this area, Gurnet Rd, both on pilings and neither of which needed a second point of egress from the first floor to grade, like this one is requiring. The Building Department didn't flag it when we went for our permit in the first place, granted the permit, we build the house and once we got it built, they decided we needed it to be installed
- Kathy Muncey asks an Conservation doesn't have any issues with this
- Peter Stames says nope, none
- Christine Murphy, 3 Lewis Court, hello, if I may speak up, I am a neighbor, I'm about 30 yards away from where the stairs will be built. I am 100 percent, I would love to have the stairs built and get my neighbors back in.
- Jackie Wolff states thank you Christine, we love you; we miss it there. This has been a huge hardship not only financially, but emotionally and we are getting old and the stress...
- Wayne Dennison asks so, Peter is the issue that you can't get a Certificate of Occupancy and move in until the Building Department signs off

- Peter Stames states yes
- Jackie Wolff states we were supposed to be in by April 30, then in early March we were told we had to add a second egress, which was news to us after approval...please help us
- Lawrence Dullea, 6 E Pine Rd. states my property is behind their home and I completely support this. I think the fairest thing would be to allow an Occupancy Permit while waiting for the Building Inspector to come back. The second set of stairs can be added, but let them move in. None of the neighbors have a problem with it. The issue is they should be able to move in, the house has been ready. I would appreciate any consideration.
- Jackie Wolff exclaims thank you, Larry
- Emmett Sheehan states this is Emmett, so Peter, the Building Inspector, I am assuming Jim Wasielewski, what did he say?
- Peter Stames states He's following the code book, he understands how it got to that point, but his hands are tied.
- Emmett Sheehan asks did he offer a temporary Occupancy Permit
- Peter Stames states he didn't, we spent a lot of time with Jim trying to come up with solutions and this is the best one we could come up with
- Emmett Sheehan asks did you ask
- Peter Stames states for a temporary, I believe we did
- Emmett Sheehan asks and he said no?
- Peter Stames states no, I don't believe we asked for a temporary, it actually didn't occur to me
- Emmett Sheehan states ok, I was curious
- Kathy Muncey states so the stairways, there's an issue on setback, is there also an issue on coverage?
- Peter Stames responds ah, potentially, it depends on how you look at the deck. If it's permeable or not
- Emmett Sheehan states well, they're not considered permeable
- Peter Stames states we have a slight coverage issue
- Wayne Dennison states but the house you ripped down already covered this area
- Philip Thorn asks so does the new house increase the coverage? Just the new house.
- Peter Stames states no
- Kathy Muncey states ok, and the ramp was in about the same place
- Jackie Wolff states yes, that's right
- Peter Stames states yes, we went to several meetings to get the plan approved, relating to coverage
- Wayne Dennison states so, I don't know what to do here. My thinking is that there would be a broad support as an amendment to the special permit; umm, Kathy do you think we can Amend the Special Permit even though it's noticed as a Variance
- Kathy Muncey responds I do, I think it's less of a standard and it sights the right sections
- Wayne Dennison states so my suggestion is that we vote to Amend the 2019 Special Permit 2019-03, to remit the new stairs, but deny the Variance
- Kathy Muncey states I would second that
- Emmett Sheehan states I would as well
- Wayne Dennison asks is there anybody else who wants to weigh in here before we close the Public Hearing
- Wayne Dennison moves to close the Public Hearing
- Emmett Sheehan seconds
- All in favor WD, KM, ES & PT aye
- Wayne Dennison states alright, so the Public Hearing is closed. We are entitled to make minor changes to pre-existing, non-conforming under recent SDC case law, this looks to me at most a

minor change to a pre-existing, non-conforming structure. So, what I propose is that we deny the Variance but Amend Special Permit 2019-03 to allow a staircase depicted on the May 6, 2020 site plan. So the site plan has the ramp on it?

- Peter Stames states there is also a site plan there that shows the stairs
- Wayne Dennison states so let's move to deny the Variance but Amend Special Permit 2019-03 to permit the stairway that's on the ...
- Kathy Muncey states how about the March 4, 2020 plans, is that the right one Peter
- Peter Stames stated yes
- Wayne Dennison states ok, March 4, 2020 plan
- Emmett Sheehan Second
- All In favor aye WD, ES, KM, PT

**Motion:** It was moved, seconded and unanimously voted to deny the Variance, but granted to Amend special permit 2019-03.

**Moved by:** WD

**Seconded by:** ES

**Number in favor:** 4

**Number opposed:** 0