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TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS

MEETING MINUTES

March 8, 2018 @ 7:30 p.m.

ATTENDANCE: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

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

- **ZBA Case #2018-01, Ross, 191 Washington St:** *The Board moved to grant the withdrawal request without prejudice. All in favor (5-0).*
- **ZBA Case #2017-13, Barry, 275 Marshall St. – APPEAL (Cont'd):** *The Board moved to deny the appeal, voting to uphold the zoning enforcement. All in favor (5-0).*

ADMINISTRATIVE:

- **2017-05 SSHH (DAHT), 0 Lake Shore Drive:** *The Board deemed the proposed changes substantial and asked to have the applicant re-open a public hearing to review.*
- **307 Bay Road, Brogna for Sullivan:** *The Board approved the reconstruction of a pier.*

Wayne Dennison makes a motion to close the public hearing for 275 Marshall Street. Emmett Sheehan seconds. All in favor (5-0).

Wayne Dennison makes a motion to uphold the zoning enforcement and deny the appeal for 275 Marshall Street. Emmett Sheehan seconds. All in favor (5-0).

The Board administratively agreed, unanimously, to approve the reconstruction of a pier at 307 Bay Road without the need for a new special permit.

The Board administratively agreed that the changes proposed by SSHH are indeed substantial and require the opening of a new public hearing.

Kathleen Muncey makes a motion to approve the meeting minutes of December 14, 2017. Emmett Sheehan seconds. All in favor (3-0).

Emmett Sheehan makes a motion to approve the meeting minutes of January 11, 2018. Dimitri Theodossiou approves. All in favor (4-0).

Kathleen Muncey makes a motion to adjourn the public meeting. Emmett Sheehan seconds. All in favor (5-0).

BOARD OF APPEALS — MINUTES

Applicant: Joseph & Beth Ross
c/o Paulette O'Connell, Agent
Property Address: 191 Washington Street
Case No: 2018-01
Date: March 8, 2018 Time: 7:30 p.m.

APPLICATION WITHDRAWN

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, March 8, 2018 at 7:30 p.m. to consider the application of Paulette O'Connell, representing Joseph & Beth Ross, for a Special Permit under Article(s) 400 and 900, Section(s) 401.2, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 191 Washington Street, Parcel No. 120-199-204 of the Duxbury Assessors Map, consisting of 25,265 S.F. in the Residential Compatibility District and owned by Joseph & Beth Ross. The applicant proposes to construct an extension to a pre-existing non-conforming structure within the prescribed setbacks. A Special Permit is required.

Members present: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

Members Voting: Wayne Dennison, Kathleen Muncey & Borys Gojncyz

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

- Wayne Dennison, Chairman, called the meeting to order.
- Wayne Dennison stated that the applicant requested to withdraw their application for a Special Permit.
- The Board unanimously agreed to the withdrawal.

BOARD OF APPEALS — MINUTES

Applicant: Mark Barry

Property Address: 275 Marshall Street

Case No: 2017-13

Date: March 08, 2018 Time: 7:30 p.m

CONT'D from 1/11, 1/25 & 2/8

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, January 11, 2018 at 7:30 p.m. to consider the application of Mark Barry for an Appeal under Article(s) 300, 400 and 900, Section(s) 302, 410.1, 410.4, 906.1 and 911 of the Duxbury Protective Bylaw. The property is located at 275 Marshall Street, Parcel No. 124-096-142 of the Duxbury Assessors Map, consisting of 7,841 SF in the Residential Compatibility District and owned by Mark P. & Michele Nejaime-Barry. The Applicant contends that the Town's By-laws have been incorrectly interpreted and applied to his property and disputes a zoning violation notice and citation.

Members present: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

Members Voting: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

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

- Wayne Dennison opens the public hearing and reads the public hearing notice into record.
- Wayne Dennison cites & reads, some in part, the correspondence received - the application, zoning violation letter from Jim Wasielewski, letter from the Barrys to the Town dated 10/2, a letter dated 10/16 from the Town responding to Barry's letter dated 10/2 disagreeing on several points & an As-built plan from Grady Consulting with a drawn-in designated storage location.
- Mr. Dennison goes on to cite additional correspondence from various Town Boards - a Memo from the Board of Health dated 11.6.17 stating that it has no comments, a Memo from the Conservation Commission that states there are no wetlands and no wetlands issues of concern, a Planning Board Memo stating that the Planning Board voted unanimously to uphold the Building Department's determination and uphold the zoning violation.
- Mr. Dennison continues, citing and reading in part - a letter of support from Steve Bolze, an email from Mark Barry to Gregory Roche with attached pictures, an email from Evelyn Drake and Peter Burnham of 321 Marshall Street in support, an email from Sue Coombs in support, a chart from Barry received 1/22/18 with an overview of the by-law and discussion and analysis, a letter from Jim Wasielewski to the Board dated 3/6/18, a revised chart submitted at the meeting 3/8/18, noting that the applicant provides definition of a shed from the Town of Kingston by-law, a letter from Greg Roche at 271 Marshall noting that the gist of his letter is that the shed detracts from the value of his property and his view.
- Mr. Dennison goes over the procedure of the hearing, explaining that it's typical to hear from the Applicant first, the Board may have questions, and then they open it up for public comment.
- Mark Barry of 275 Marshall Street apologizes for the delay of the hearing, explaining that his mother was in hospice care and has since passed. Mr. Barry goes on to state that he disagrees with the article in the Clipper.
- Emmett Sheehan asks what it was about, that he didn't see it.
- Mr. Barry states that it was a front page headline of shedding light on a vexing issue. Mr. Barry continues, stating that the argument he makes in his revised chart is right, that if they meant to prohibit uses like this it would be clear in the by-law as it is in Kingston's. Mr. Barry states that the precedent in this case is important in that it talks about very

specific language and that being on a Town Commission he is counseled by Town Counsel and the Planner not to read more into the by-law than necessary and he believes that Scott has read more into the by-law than is necessary and he doesn't feel it is relative to his situation, that our by-law is ambiguous and that a structure that is purposely not permanent, he wonders how it is not allowed.

- Emmett Sheehan states he has three questions and that the first is what is his site coverage. 25.1.
- Emmett Sheehan asks where the shed came from.
- Mark Barry states Pine Harbors
- Dimitri Theodossiou asks if they are a manufacturer of sheds. Yes.
- Emmett Sheehan states that he has an issue with site coverage as he's way over, that this is a structure as it has a roof, and that Pine Harbor is a shed company and a building company.
- Mark Barry disagrees, stating it's not a building, it's a structure.
- Emmett Sheehan states it's absolutely a structure, your way over your site coverage and you didn't include the shed in your special permit.
- Dimitri Theodossiou states that is his question, there was a special permit? He goes on to ask why it wasn't included in the special permit request.
- Mark Barry stated that he was more focused on the house and that walking up out of the basement was more difficult than they thought it would be.
- Kathleen Muncey asks don't we have a definition of an accessory structure that includes a shed.
- Mark Barry states that the language is not precise enough, that you'd have to decide if it is a structure to begin with and that he could move this himself.
- Emmett Sheehan disagrees.
- Mark Barry states he can, with a forklift.
- Emmett Sheehan states he can move his house too at 4,000 sf, but he had to bring in a couple of bull dozers to do it.
- Dimitri Theodossiou asks what happened with the neighbor, why did you change your mind about moving it.
- Mark Barry stated that it came down to an agreeable location; the spot he picked was unworkable for us.
- Dimitri Theodossiou asks what do you mean, your neighbor has a lot of points as to how impacts his house?
- Wayne Dennison asks if he intends to move the shed.
- Mark Barry states that he may, that might work for them in the future.
- Wayne Dennison states that as far as he's concerned that if he has no intention to ever move the shed, it's fixed.
- Emmett Sheehan agrees.
- Kathleen Muncey states that it also exceeds lot coverage and even if he came in asking for a shed after a special permit and if it exceeded lot coverage, wouldn't the building inspector say no.
- Wayne Dennison states that part of the issue is the argument is that a prohibition has to be clear, but a special permit says that under certain conditions you can do what you want and that is the opposite of a prohibition – you have to submit yourself to reasonable conditions if you want to do x,y, or z – NOT a prohibition.
- Mark Barry states that the violation letter did not mention the special permit.
- Kathleen Muncey states that he would have to do a variance.
- Wayne Dennison states he could've asked for a special permit for a shed
- Emmett Sheehan states that on his property in Nantucket he has to go for 4 different approvals to put his shed up and if one of those Boards says no, then I would never dream of just plopping one on there.
- Dimitri Theodossiou states that his problem is that he knows the process and how it works; he's not ignorant to the process.
- Emmett Sheehan agrees.

- Wayne Dennison asks if there is anyone else that would like to speak to this.
- Greg Roche states he is the abutter that submitted the letter and he wrote what he would've liked to say.
- Kathleen Muncey asks if he felt the 5ft was acceptable despite it violating the Town law.
- Greg Roche states that he thought if he moved it back he would get more privacy by perhaps putting in some hedges in between. He states that they raised their property and put in a retaining wall changing the height and he has a view of their property from his back deck, the lots are quite close together.
- Dimitri Theodossiou asks if retaining wall was existing or if it was part of renovations.
- Mark Barry states that it was part of renovations.
- Dimitri Theodossiou states that it seems to him that it was built to accommodate the shed, why else put in a retaining wall.
- Mark Barry states it was to level the lot and that was the intention.
- Dimitri Theodossiou states that is the foundation right there, the structure doesn't have to be tied down to make it and asks if it made it through the storm.
- Mark Barry states that it did.
- Dimitri Theodossiou states that foundation worked.
- Mark Barry states it was sheltered by houses plus proximity and that he offered the Roches a landscaping plan and they rejected it and when they rejected the plan it matched up with our losing interest in moving the shed.
- Greg Roche states that he did not reject that, he told Mark that he hated to see him spend that kind of money and he knows that Mark recalls him saying that.
- Mark Barry states that yes, you did but...
- Greg Roche goes on to state that the problem is that you couldn't put a hedge in because your shed is on the property line so the hedge would have to be on my property which is now roughly three feet lower than where you put the retaining wall and if we assume that we put in a 6' hedge it still would've been roughly 3' above your property where you built up and lower than where your shed was.
- Wayne Dennison states that they need to focus on what the by-law provides and states he's ready to vote on this if others are. All on the Board agree.
- Wayne Dennison makes a motion to close the public hearing. Emmett Sheehan seconds. All in favor (5-0). No discussion.
- Wayne Dennison states that he agrees with all the officials in this Town – the Planning Board, the Building Inspector & the Building Department that all believe this to be an impermissible use and he therefore moves to sustain the Zoning Enforcement letter and uphold it.
- Emmett Sheehan asks if that can be added to, that the shed needs to go away.
- Wayne Dennison and Kathleen Muncey concur that the Building Dept. will take care of that.
- Borys Gojncyz asks if there are any fines.
- Wayne Dennison states that it is his experience that fines aren't assessed until after the appeal is decided.
- Emmett Sheehan seconds the motion by Wayne Dennison. All in favor (5-0).

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

Moved by: WD
Number in favor: 5

Seconded by: ES
Number opposed: 0

Motion: It was moved, seconded and unanimously voted to uphold the Zoning Enforcement letter and deny the appeal.

Moved by: WD
Number in favor: 5

Seconded by: ES
Number opposed: 0

BOARD OF APPEALS — MINUTES

Applicant: South Shore Habitat for Humanity
Property Address: 0 Lake Shore Drive
Case No: 2017-05
Date: March 8, 2018

ADMINISTRATIVE MATTER

Members present: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

Members Voting: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

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

- Wayne Dennison states that the next matter is administrative and identifies the case as #2017-05 for South Shore Habitat for Humanity (SSHH) and that they are here to explain their proposed changes.
- Martine Taylor of SSHH states that they are building a house at 66 Lake Shore Drive and some building changes came up that were not on the original design and although they think they are simple, they would like them to see them. Martine introduces Ron Waitt, the construction manager, and then hands out plans to the Board.
- Dimitri Theodossiou asks if this is an alteration to the plan.
- Martine Taylor states that yes it is an alteration as it calls for stairs and they'd like them to consider two other alterations.
- Ron Waitt states that originally approved was a 4x6 deck and a set of stairs, but after they started building the house the elevation was what caused them to reconsider the stairs and the placement.
- Wayne Dennison asks if this is what was built (referring to the plan in-hand).
- Martine Taylor and Ron Waitt state no. Martine Taylor states that the house currently has no stairs.
- Ron Waitt explains that what they'd like to do is move the door to the side of the house and have only six steps made out of trex.
- Wayne Dennison asks how close to the lot line will they be moving.
- Ron Waitt answers, stating that it's maybe 64' to the lot line.
- Wayne Dennison states that it isn't close to the lot line.
- Ron Waitt states they moved it as it was a safety issue too.
- Borys Gojncyz states that if you are looking at the house from the street it is a lot closer to the entrance.
- Ron Waitt states that's another good thing as it's a lot closer to the driveway and easier for bringing in groceries.
- Emmett Sheehan asks if that is the only way in.
- Ron Waitt states that no, there is the front door.
- Dimitri Theodossiou asks if it's a two-family house.
- Martine Taylor states no, it is a single.
- Kathleen Muncey asks if there will be no door in the back now.
- Ron Waitt states that is one of the other changes actually, but since they had a slider donation they'd like to do the slider with the pond view.
- Kathleen Muncey states that where the door was in the back it's gone now and is a window or something?

- Ron Waitt states that yes, it is a window and it's a safety issue being that high up off the ground.
- Kathleen Muncey states that it makes sense.
- Wayne Dennison states that the question is if they can amend a comprehensive permit administratively.
- Borys Gojncyz states that his concern is having the view from the street now change.
- Ron Waitt states that they included what the stairs would look like, they aren't built.
- The Board, Martine Taylor & Ron Waitt discuss the plan drawings.
- Dimitri Theodossiou states he thinks that Scott should review the plans.
- Martine Taylor states that she asked Scott and he advised them to come back to the ZBA.
- Wayne Dennison states that we are trying to determine if they can even do this without a public hearing.
- Kathleen Muncey states that if they were going to make a huge change that'd be one thing, but I think the side makes more sense.
- Wayne Dennison states that should they notice it and have an opportunity for the public to comment on it.
- Kathleen Muncey asks Martine Taylor if they went to Design Review on this.
- Martine states that she didn't since the permit was issued here.
- Wayne Dennison asks if there is a copy of the Comp. permit.
- BREAK FOR ADMIN. TO RETRIEVE A PAPER COPY OF COMP PERMIT
- RESUME TO..
- Board reviews comprehensive permit and resumes discussions regarding reasoning to come back.
- Kathleen Muncey asks Martine Taylor if she has a sense if there is neighborhood concern.
- Martine Taylor states that their goal is to stay within the character of the neighborhood and there are really only 4 small changes – the stairs being the major one, a top light door to a side light door, a slider door vs just a walk out and a window on the second floor.
- Kathleen Muncey asks if there was something about the location of the house originally.
- Martine Taylor states that originally it was the septic location and whether it could be put and not have it affect the water.
- Ron Waitt states that he met 3 or 4 of the abutters and all are very friendly and even have offered to help build and that he assumes if there was any animosity he would know it.
- Wayne Dennison states that the question is if they deem it an insubstantial change they can approve it now but if it is substantial then they have to come back with a public hearing and have it noticed and he thinks an opportunity to have the Design Review Board review any changes would be a good thing. Mr. Dennison states that overall he is inclined to ask them to come back for a full public hearing.
- The Board and admin discuss dates available for SSHH to come back.
- Borys Gojncyz discusses changes to the door and what that means for vista views.
- Martine Taylor states that really the concern is safety with the change to the stairs.
- The Board and SSHH agree to re-open the public hearing to give opportunity for all to hear about the proposed changes.

BOARD OF APPEALS — MINUTES

Applicant: Paul Brogna, Agent
Property Address: 307 Bay Road
Case No: 2002-15
Date: March 8, 2018

ADMINISTRATIVE MATTER

Members present: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

Members Voting: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

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

- Wayne Dennison invites agent Paul Brogna to present.
- Paul Brogna identifies himself and states that back in 2002 the Sullivan's received a special permit for their pier. He states that at the time they permitted the pier there was a walkway there that was re-decked by Joe Grady and a boy scout back then, but over the years the pier has deteriorated and the walkway is not up to today's standards. Paul Brogna distributes pictures to the Board of what it used to look like and what it looks like now.
- Paul Brogna states he went before the Conservation Commission et al and they'd like to rebuild the whole structure to today's standards, which will be typical of many others and issue is do they need a new special permit?
- Wayne Dennison states that he thinks it's an insignificant change.
- Paul Brogna states that the difference is in the width, this one is 4' in width and the length will be shorter.
- The Board discusses that this one will be shorter and wider and taller at the end. Paul Brogna concurs and also states that it has undergone repairs but with the storms it needs the rebuild.
- Kathleen Muncey asks if Conservation has already approved it. Paul Brogna states yes.
- Borys Gojncyz asks if there will be a holiday tree at the end of it.
- Paul Brogna states he hopes so.
- Dimitri Theodossiou states that he is wondering what the design is, how does he determine if the changes are minimal.
- Paul Brogna gives the Board updated plans as of 2017. The Board and Brogna discuss the new dimensions and materials.
- Wayne Dennison asks if there is any more discussion, a new special permit, any sense of concern? None.
- Wayne Dennison and the Board agree that the plans are di minimus, no need for a new special permit to reconstruct. All in favor.