



TOWN OF DUXBURY  
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BOARD OF APPEALS

TOWN CLERK  
2021 FEB 12 AM 9:58  
DUXBURY, MASS.

DUXBURY BOARD OF APPEALS  
MEETING MINUTES

December 10, 2020 @ 7:30 p.m.

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

**Other persons present at the hearing:** James Wasielewski, Director of Municipal Services, 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 #2020-03, Larkin, 10 Pine Point Place (CONT'D):** *The Board voted to continue the public hearing until April 8, 2021.*

**ZBA Case #2020-14, Obey, 65 Ocean Road North:** *The Board voted unanimously to grant the special permit.*

**ZBA Case #2020-18, Magee, 8 White Street:** *The Board voted unanimously to grant the special permit.*

**ZBA Case #2020-19, Sam's Gas, 127 Tremont Street:** *The Board voted unanimously to grant the special permit with conditions.*

**ZBA Case #2020-20, Carlin, 8 Pine Point Place:** *The Board voted to continue the public hearing to January 14, 2021.*

**ZBA Case #2020-21, Sullivan & Maycock, 65 Samoset Street APPEAL:** *The Board voted unanimously to deny the appeal petition.*

**Administrative**

**ZBA Case #2020-22A, Winsor House, 390 Washington St.:** *The Board voted unanimously to transfer the special permit.*

**Webster Point Village:** *The Board voted unanimously to approve the invoice of legal fees incurred.*

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

## **BOARD OF APPEALS — MINUTES**

**Case No: 2020-14**

**Petitioner: Tony and Lisa Obey**

**Address: 65 Ocean Road North**

**Parcel #'s: 139-939-103**

**Date: December 10, 2020 (Continued from November 12, 2020 and November 19, 2020)**

The Board of Appeals will hold a public hearing via ZOOM on Thursday, ~~November 12, 2020~~ at 7:30 p.m. to consider the application of Tony and Lisa Obey c/o Jessica Williams for a Special permit under Article(s) 400 and 900, Section(s) 401.2 #4, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 65 Ocean Road North, Parcel No.139-939-103 of the Duxbury Assessors Map, consisting of 0.103 acres in the Residential Compatibility (RC) District, Flood Hazard Area Overlay District (FHAOD) and Dunes Protection District (DPD) owned by Anthony and Lisa Obey. The Applicant proposes to lift the pre-existing, non-conforming dwelling onto a pile type foundation and add a second story to a portion of the house that is currently one story. A Special Permit is required. The application may be viewed on the Town's website [www.town.Duxbury.ma.us](http://www.town.Duxbury.ma.us) under the Zoning Board of Appeals page. 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, Freeman Boynton Jr., Emmett Sheehan, Borys Gojnycz & Philip Thorn

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

**Other persons present at the hearing:** James Wasielewski, Director of Municipal Services & Lauren Haché, Administrative Assistant

- Wayne Dennison opens the public hearing, reads the Governor's preamble and proceeds with case 2020-14
- Jim Wasielewski the Building Commissioner, states he had several meetings with Jessica Williams and has approved the final design changes to the roof
- Jessica Williams asks to share her screen, showing the floor plan and the house plans, explaining how she changed the plan to abide to the Bylaw
- Wayne Dennison states so, this design was in greater conformance with the Bylaw than the previous design
- Jessica Williams states, the site plan originally showed that the re-construction rather than add on, would help the overall plan stay more conforming in area and setbacks and in a smaller footprint.
- Wayne Dennison states does the Board have any questions
- Kathleen Muncey states I do, what about the Design Review Board, Jessica, would they feel this is more to their liking?
- Jessica Williams states yes, I do. Based on the comments that they made and what is in their memo, they preferred to see the materials more simplified, which I have actually done. The

other item that was confusing for them were the dormers, so I took those off and I believe this would be more suitable for them. I did reach out to Stephen Williams with the revised drawing, but I don't believe this overall design is much different from that they have approved.

- Wayne Dennison states any other questions, any member of the public like to comment
- Wayne Dennison moved to close the public hearing
- Freeman Boynton Jr. seconds
- All in favor WD, FB, KM, ES, BG
- Wayne moves to approve the special permit
- Emmett Sheehan states I think it's a great plan and make a motion to approve
- Wayne Dennison seconds

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

**Moved by: WD**

**Seconded: FB**

**Number in favor: 5**

**Number Opposed: 0**

**Motion: It was moved, seconded and unanimously voted to grant the special permit for #2020-14.**

**Moved by: ES**

**Seconded: WD**

**Number in favor: 5**

**Number Opposed: 0**

## **BOARD OF APPEALS — MINUTES**

**Case No: 2020-18**

**Petitioner: John & Jennifer Magee**

**Address: 8 White St.**

**Parcel #'s: 099-959-130**

**Date: December 10, 2020**

The Board of Appeals will hold a public hearing via ZOOM on Thursday, December 10, 2020 at 7:30 p.m. to consider the application of John and Jennifer Magee for a Special permit under Article(s) 400 and 900, Section(s) 401.2 #4, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 8 White Street, Parcel No. 099-959-130 of the Duxbury Assessors Map, consisting of 0.230 acres in the Residential Compatibility (RC) District and owned by John and Jennifer Magee. The Applicants propose to construct a two story addition to a pre-existing, non-conforming dwelling. A Special Permit is required. The application may be viewed on the Town's website [www.town.Duxbury.ma.us](http://www.town.Duxbury.ma.us) under the Zoning Board of Appeals page. 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, Freeman Boynton Jr., Emmett Sheehan, Borys Gojnycz & Philip Thorn

**Members Voting:** Wayne Dennison, Freeman Boynton Jr., Emmett Sheehan & Philip Thorn

**Other persons present at the hearing:** James Wasielewski, Director of Municipal Services & Lauren Haché, Administrative Assistant

- Wayne Dennison opens the public hearing and reads the public hearing notice, states that we have an application, some drawings, a memo from the Board of Health stating a completed title V would need to be completed before moving forward with a building permit, a memo from the Planning Board stating they voted unanimously to recommend approval from the ZBA, a memo from Conservation Commission stating there are no wetlands or wetlands concerns considering this application and a memo from the Design Review Board stating they unanimously approve the petition, also we received several letters from neighbors, Lauren would you mind going through those.
- Lauren Haché reads the letters of support and opposition from the neighbors:
  - Angela Crowley, 15 White Street, in support
  - Kara Cleveland, 5 White Street, in support
  - David Bidenset, 22 Priscilla Ave., in support
  - Steven Meaney, 18 White St., in opposition
  - Ronald and Kathleen Johnson, 42 Priscilla Ave., in support
  - Anthony Allen, 16 Bradford St., in support
- The Applicants, John and Jennifer Magee thank the Board and begin to explain their desire to add on to their home, which was designed by Bob Burgess, who lives in the neighborhood and has worked on other projects in the neighborhood. They continue to explain their need for the added space for their special needs son.

- Wayne Dennison states you did a renovation about 3-4 years ago and you didn't need a special permit for that
- Jennifer Magee states when we bought this house, it was a bungalow with a small enclosed front porch. The Builder we hired took care of everything for us. At the time I wish that we had thought about doing this renovation then, but it wasn't in the plans. We also thought we could accommodate my parents for the short time, when they visit and our son for the long term future.
- Wayne Dennison states the Building Commissioner is on, Jim have you had a chance to look at this case and confirm that the only non-conformity is the front setback
- Jim Wasielewski states correct
- Wayne Dennison states what about the neighbors concern with respect to the accessory apartment
- Jim Wasielewski states we always view the inside of the home, where as long as there is common access through the home, you can have as many kitchens as you want, as long as it's not a separate unit, but as an extension of the home
- Wayne Dennison states do the Board Members have any questions
- Freeman Boynton Jr states I am wondering if there really are four bedrooms in the existing house
- The Magee's state yes
- Freeman Boynton Jr asks if the septic will accommodate the five bedrooms
- Jennifer Magee states that that was another reason why we can't build in the back yard, it would be too close to the septic
- Freeman Boynton Jr states it sort of looks like a 4 bedroom to me, but had you guys considered taking the addition and sliding it back on the house 11 feet
- Jennifer Magee stated that was her first suggestion but the roof line would look messy
- Freeman Boynton Jr states it is conforming with the 15% ratio
- Wayne Dennison states we often ask those that try to expand beyond the 15%, but this one is conforming on lot coverage even on frontage
- Emmett Sheehan states I agree, I am familiar with this street, things are changing.
- Wayne Dennison states are there members of the public who would like to weigh in here
- Peter Garran, 2 White St., states that he does like the design of the addition, but can sympathize with the Meaney's. I am a libertarian but also an architect.
- John Magee states Peter, we did tell you
- Peter Garran states right, over the summer, but I had no knowledge this was happening today
- Wayne Dennison states so Mr. Garren your home is 10 ft from White Street and is closer to the street than the Magee's
- Peter Garran states I don't really know, I've never measured it
- Freeman Boynton Jr states so this plan is mislabeled
- Wayne Dennison states are there other members of the public
- Allowette Alexander, 18 White St. states that realtors in town said this would create a hindrance and potential lower value
- Emmett Sheehan states why, what is your reasoning
- Allouette Alexander states because my home is an investment
- Emmett Sheehan states why would the Magee addition be a hindrance

- Allouette Alexander states because the house is positioned and is already quite large, to make it a 1/3 larger will impact the homes around it
- Paula Allen on Bradford Street, the house is beautiful, I am surprised that there is backlash
- Emmett Sheehan states I cannot see how this could detract from any investments around there, I would think that it would add value
- Wayne Dennison states ok, are there other members of the public that would like to make a comment
- Philip Thorn states I have a question for Jim, I am looking at the Bylaw 410.6 #2 not apply to this project?
- Jim Wasielewski states that is a good question, it has always been viewed – I believe it goes back to Mass general Law, where you cannot impose restrictions on what someone is allowed to do inside their home. As long as there is common access from within the home, you cannot restrict this. If the accessory apartment doesn't have access from within the house, if it has exterior entry only, would be considered an accessory apartment, so that's where the difference lies.
- Emmett Sheehan asks Jim doesn't it have to be isolated for an in law apartment
- Jim Wasielewski states yes
- Wayne Dennison states so Jim, 410.6 #1 starts with "no accessory apartment should be constructed within..."
- Jim Wasielewski states right, but this is not an accessory apartment, this has common access within it
- Kathleen Muncey states how many square feet does this addition add?
- Wayne Dennison states it's 422 times 2, but doesn't exceed 850
- John Magee states no, it doesn't
- Kathleen Muncey states but down the road they could make it an in law apartment, there's a time constraint on that by law
- Jim Wasielewski states it's one year, as long as the original structure was in existence more than 10 years
- Kathleen Muncey states but that would be a separate special permit
- Wayne Dennison states right, yes
- Wayne Dennison states so Phil, what part of the bylaw was problematic
- Philip Thorn states well, section b and c, but Jim's explanation was great. My question is down the road and I think that everything they've said is honorable and terrific, so I think I am clear here. My hesitation is what happens if they sell the home and the next owner wants to make it an accessory apartment
- Jim Wasielewski states that their lot is too small, the bylaw states the lot can't be less than 20,000 square feet
- Wayne Dennison states are there other members of the Board or Public with comment
- Borys Gojnycz states normally we would see if there were abutter's notices that were sent out, is there any analysis done for corresponding homes re: is the structure too big for the area. I am looking at the satellite view and theirs doesn't seem the largest
- Wayne Dennison states we do see that all the time, but when there is a restraint in lot coverage (15% + 3%) but this is a situation where they are within the 15% lot coverage limit.
- Phil Thorn states that Jim Wasielewski explanation is completely satisfactory
- Wayne Dennison moves to close the public hearing

- Kathleen Muncey seconds
- WD, KM, FB, ES, PT, BG
- Wayne Dennison states in terms of discussion I am extremely sympathetic to immediate neighbors and their concern of their property values. That said, the new addition is still more than 10 ft. off the lot lines and 10 ft. greater than the side yard setback. The plan is appropriate and consistent with the neighborhood and many of the neighbors are in support.
- Kathleen Muncey states I agree with Wayne, I don't see anything more detrimental
- Emmett Sheehan states I agree and would like to move to grant the special permit.
- Wayne Dennison states second

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

**Moved by: WD**

**Seconded: KM**

**Number in favor: 6**

**Number Opposed: 0**

**Motion: It was moved, seconded and unanimously voted to grant the special permit for #2020-18.**

**Moved by: ES**

**Seconded: WD**

**Number in favor: 6**

**Number Opposed: 0**

## BOARD OF APPEALS — MINUTES

**Case No:** 2020-19  
**Petitioner:** Sam's Gas  
**Address:** 127 Tremont Street  
**Parcel #'s:** 062-752-015  
**Date:** December 10, 2020

The Board of Appeals will hold a public hearing via ZOOM on Thursday, December 10, 2020 at 7:30 p.m. to consider the application of Sam's Gas for a Special permit under Article(s) 400, 600 and 900, Section(s) 421.1 #2, 424, 425.1, 601.3, 601.4, 601.6, 601.9 and 906.2 of the Duxbury Protective Bylaw. The property is located at 127 Tremont Street, Parcel No. 062-752-015 of the Duxbury Assessors Map, consisting of 0.580 acres in the Residential Compatibility (RC) District and Neighborhood Business District 2 (NB2) and owned by Salim Elias, S&M Gas. The Applicant proposes to construct an LED gas price sign. A Special Permit is required. The application may be viewed on the Town's website [www.town.Duxbury.ma.us](http://www.town.Duxbury.ma.us) under the Zoning Board of Appeals page. 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, Judith Barrett, Kathleen Muncey, Freeman Boynton Jr., Emmett Sheehan, Borys Gojnycz & Philip Thorn

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

**Other persons present at the hearing:** James Wasielewski, Director of Municipal Services & Lauren Haché, Administrative Assistant

- Wayne Dennison opens the public hearing and reads the public hearing notice, states that an application and photographs were included as well as a plot plan, input from various other Boards. The Planning Board voted to defer to the ZBA but mentioned that the Design Review Board is important. The Design Review Board states that they are of the opinion of a blue or white face to the sign instead of red and that the digital portion be lit only during hours of operation, the Conservation Commissioner said that there are no conservation issues. Lauren did we have others in for comment
- Lauren Haché states the Board of Health, but they have no comment
- Wayne Dennison states alright, let's hear from the Applicant and their proposal
- Habib Elias, the Owners son and the manager of the location, states the sign they have now is outdated, back to the 1980's and that it is unsafe to change the prices of the gas daily by ladder. Our other locations have the digital signs, they are safer and make the property look neater. He shares his screen to show the sign they use in Randolph at another station.
- Emmett Sheehan asks how tall this sign in
- Habib Elias states the same as the sign in Duxbury
- Emmett Sheehan states ok, a 60" sign
- Wayne Dennison states that is a similar question that I have, the drawing provided shows the dimensions of the new sign, but not of the old sign. Are you proposing to put up the exact same dimensions as the existing



- Habib Elias states that width may be wider for the LED's, but same height
- Wayne Dennison states in the example the sign for gas is 1.95 and in the proposal it's \$4.32
- The Board laughs
- Gilmar DaSilva, owner of Best Price Sign, the box is exactly the same size as the existing box, just a new background with digital numbers with low lumens
- Emmett Sheehan states so it will be a blue background, like the exact sign in this picture
- Gilmar DaSilva states yes
- Emmett Sheehan states that is even nicer
- Gilmar DaSilva continues that this new sign is for price purposes only, not for advertising
- Emmett Sheehan states I would like to go on record and state that I am in favor of this, provided that the sign is lit during hours of operation only
- Wayne Dennison states does the Applicant have further comment
- Freeman Boynton Jr states I have a question
- Wayne Dennison states I have a question too, I would like to give the Applicant all of the time they wanted to present
- Habib Elias states no, I don't have anything else to say. This is the exact sign I am proposing
- Wayne Dennison states Freeman do you want to go first
- Freeman Boynton Jr states yes, I want to ask what the difference is between a neon sign and this LED sign, in appearance
- Gilmar DaSilva states neon is high voltage, this is only 12 volt
- Freeman Boynton Jr states no, I am wondering just in appearance, how it looks, as opposed to a neon sign. I understand the technical differences, but in Duxbury we don't allow neon signs
- Gilmar DaSilva states neon is much brighter
- Freeman Boynton Jr states that is important, that it is not too bright
- Wayne Dennison states ok, I have another, different questions. 601.9 of the Bylaw states that you can illuminate signs and it does permit interior lighting rather than exterior lighting of signs, but it specifically says that interior lit signs shall have non-exposed white lights of reasonable intensity. I don't see anything in the Bylaw that would permit a sign with red lights interior lighted or a sign with green lights interior lighted. The Bylaw does say it should only be lit during the hours of operation, but I am not sure this proposal complies with the Bylaw.
- Wayne Dennison proceed that white lights, no colored or red or green lights.
- Freeman Boynton Jr states even if these were white lights, they are exposed so how do you get around that one if they were to offer to make them white
- Wayne Dennison states well, we don't have signs like this in the town, other than the Senior Center which thinks it can do whatever it wants
- Emmett Sheehan states the police station and the Fire Station
- Philip Thorns states Wayne, that's called the Read Amendment, where the Town Manager deems it appropriate to do as he pleases
- Judith Barrett states let's keep this not personal
- Philip Thorn states oh it's not personal and also 601.9 the non-exposed white lights, if there is a clear piece of plastic over the white lights, does that deem it non-exposed
- Wayne Dennison states then the Bylaw would require a constantly steady white light, there is nothing in this that permits colored lights

- Philip Thorn states I understand that, but should they change the colored lights to white and then cover with plastic, is that deemed acceptable
- Wayne Dennison states yes
- Habib Elias states yes, there is a clear plastic that goes over it
- Philip Thorn states can you make your LED lights white instead of red
- Habib Elias states well, umm
- Wayne Dennison states quite frankly this sign doesn't offend me in the slightest, I just don't think it complies with the Bylaw
- Freeman Boynton Jr states it's just in keeping with the neighborhood I guess to have the white, I mean we pushed Dunkin Donuts away from the pink and brown and if it were just white lights, we would know how much gas was...
- Wayne Dennison states I'm not sure if you were to apply for that sign again, if you would get it, I am happy to hear that it's the same size as the old sign.
- Judith Barrett states do we have comments from staff about the Bylaw question, whether this is allowed under the Bylaw
- Wayne Dennison states let's listen to Jim
- Judith Barrett states or Valerie, did the Planning Board comment
- Wayne Dennison states that the Planning Board deferred to us, except stated we should listen to the Design Review Board
- Emmett Sheehan states so if they had a blue background and white lettering, would that adhere to our Bylaw
- Wayne Dennison states yes
- Freeman Boynton Jr agrees
- Jim Wasielewski states it would to me, the only reason it is here is because it's an LED sign and colored. The only concern with the white, is the brightness and at night, it becomes a glare. If it is dimmable
- Wayne Dennison states well, the Bylaw actually speaks to this and states it has to be at reasonable intensity and in order to approve it, it would require to be shut off when the business is not operating it would put us in the situation where Jim would then be able to police the intensity of the light
- Jim Wasielewski states and I would see it every Monday night leaving work
- Emmett Sheehan asks for the Owners thoughts
- Habib Elias states I don't if I can even get one with white, these are made specifically made for gas stations
- Emmett Sheehan states ok, so you're not making it
- Habib Elias states yes, my guy makes them, the sign person makes the outside and the printing, but the actual price numbers are standard, maybe yellow like diesel, but we've never seen them in white light. It will be so much brighter than that red and that green
- Emmett Sheehan states I see your point
- Habib Elias states it would be like flashing a flash light in your face while you're driving....the fact that they are red and green are the reason you are able to look at that picture and be able to see the numbers
- Judith Barrett states the question is does the Bylaw allow us to approve this
- Emmett Sheehan states I think it does

- Wayne Dennison states I respect that opinion, I just don't see it in the Bylaw where it allows this
- Judith Barrett agrees and explains to Emmett that there has to be something in the Bylaw to allow this
- Emmett Sheehan states he gets it, the Bylaw is so old
- Habib Elias states I wanted to say something but didn't want to be disrespectful, it's 2020 and we're still going up on a ladder to change the price sign, where the gas prices change daily
- Gilmar DaSilva explains another case where in another town they allowed this for safety purposes
- Habib Elias states the Commissioner said he can police this
- Wayne Dennison states I am not concerned about the regulating, my sole concern is the Bylaw and the red, green and yellow
- Habib Elias asks would yellow be permissible
- Wayne Dennison states no
- Habib Elias states they don't make it
- Jim Wasielewski states he googled it and can see that they do make them, so I would ask the person who is making your sign, can these be made in a white light that can be dimmed
- Freeman Boynton Jr states yeah I see them also, but most are red and green
- Jim Wasielewski states from my experience from walking in the woods at night as a hunter, green and red does not destroy your night vision at all where white has a bigger impact. It's not allowable in the old Bylaw
- Emmett Sheehan states well those lights on an ambulance or police car and you can't see anything
- Kathleen Muncey states what about a variance
- Judith Barrett agrees
- Kathleen Muncey states the proximity to the road, safety, does it make it unique, but that's not what is before us
- Wayne Dennison states I hate to set a sign precedence, but we don't want to be DuxVegas
- Philip Thorns states that's Mayflower Street now
- Judith Barrett states well I don't think we can create authority that's not in the Bylaw, but job is to enforce the Bylaw, does the Applicant want to apply for a variance? I don't know how else to get around this
- Kathleen Muncey states at the very least we could continue this to find out if you can get white light
- Judith Barrett agrees
- Emmett Sheehan's states well, I wouldn't encourage him to go for a variance
- Habib Elias states he will get complaints about its brightness
- Freeman Boynton Jr states I think if you can control the brightness
- Wayne Dennison states the problem is we are really handtied around the notion that we can approve white lights without someone moving for a variance and so as much as I think rationally the Board would look at this, we value your business in town and we would like to help you, but we are sitting here with handcuffs on because of what the Bylaw says
- Judith Barrett states which we didn't write
- Freeman Boynton Jr states it's also like what we don't let Dunkin' Donuts use

- Moved by: WD
- Number in favor: 5

Seconded: ES  
Number Opposed: 0

## **BOARD OF APPEALS — MINUTES**

**Case No: 2020-20**

**Petitioner: Carlin**

**Address: 8 Pine Point Road**

**Parcel #'s: 139-941-024**

**Date: December 10, 2020**

The Board of Appeals will hold a public hearing via ZOOM on Thursday, December 10, 2020 at 7:30 p.m. to consider the application of Robin Carlin, c/o Peter Stames of Archia Homes for a Special permit under Article(s) 400 and 900, Section(s) 401.2 #4, 402, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 8 Pine Point Road, Parcel No.139-941-024 of the Duxbury Assessors Map, consisting of 0.330 acres in the Residential Compatibility (RC) District & Flood Hazard Area Overlay District (FHAOD) owned by Robin Carlin, Trustee of Carlin Family Realty Trust. The Applicant proposes to raze and rebuild a pre-existing, non-conforming dwelling. A Special Permit is required. The application may be viewed on the Town's website [www.town.Duxbury.ma.us](http://www.town.Duxbury.ma.us) under the Zoning Board of Appeals page. 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, Judith Barrett, Kathleen Muncey, Freeman Boynton Jr., Emmett Sheehan, Borys Gojnycz & Philip Thorn

**Members Voting:** Wayne Dennison, Freeman Boynton Jr., Emmett Sheehan & Philip Thorn

**Other persons present at the hearing:** James Wasielewski, Director of Municipal Services & Lauren Haché, Administrative Assistant

- Wayne Dennison opens the public hearing and reads the public hearing notice and states that the application included drawings, a site plan, photographs of the existing conditions and responses from other boards:
  - The Planning Board voted unanimously to defer to the ZBA, but notes that there is an error on the height in the plan dated October 7, 2020 and should be revised to reflect the proper height of the building to the ridgeline
  - The Conservation Director indicates that he reviewed the application and plans and determined that the property is located on a barrier beach and lands subject to coastal storm flowage and so the project falls under the jurisdiction of the Conservation Commission. The Applicant has applied with the Conservation Commission and has received orders of conditions which are attached.
  - The Health Agent has indicated that the project is connected to the Marshfield Septic and has no comment
- Wayne Dennison asks Lauren Haché if there are other comments
- Lauren Haché states no, just a support brief from Ross Engineering that we received yesterday
- Wayne Dennison states ok, why don't we hear from the Applicant

- Paul Mirabito with Ross Engineering states he is the Agent for the Applicant and explains the raze and rebuild of the home. The non-conformity is the side and front setback. The front setback is 26 feet and will increase to 36 feet. There are no grading changes and to address the Planning Board we used the Zoning Bylaw to use the average. The building height we came up with 28.59 ft., so under the 30 ft. in the Bylaw
- Wayne Dennison states don't you have to use the street level not average grade
- Freeman Boynton Jr states its 20 feet in front of the building
- Judith Barrett states it is
- Paul Mirabito states the Bylaw says it's the vertical distance from the average finished grade within 20 feet of the structure on the street side measured to the lowest and the highest points on the roof for a hip roof. So the lowest point is eave and highest is peak. The architectural plans show how we calculated the 28.59 feet
- Kathleen Muncey asks Jim Wasielewski if he agrees
- Jim Wasielewski states yes, I do. The numbers look good, the interpretation of the average grade at 20 feet in front of the house is correct.
- Wayne Dennison states so it's 8.5 average grade, 20 feet in front of the house
- Freeman Boynton Jr states yes, the height still makes the Bylaw. I am wondering what the average setback of the direct abutters is and whether or not those houses are closer to Pine Point than this one is and whether he needs a special permit at all, but we can give him the special permit anyways. Quite often in these neighborhoods the homes are closer to the street than the 45 feet that's required and the Bylaw allows you to average the Abutters setbacks and use that by right; I would think most of these homes are a lot closer than 25 feet from Pine Point
- Wayne Dennison states that raises an interesting questions. If you go out there and measure in the next few days and then go to Jim for a Building permit...
- Jim Wasielewski states I'd like to comment and I don't know the math, but because the way is smaller than a standard street, I believe it's 45 feet from the center line of the road
- Freeman Boynton states yes, but also the average setback of these Abutting properties, if it is less than 45 feet...then by right
- Judith Barrett states actually what it says is if buildings on the adjoining properties are less than 25 feet from the right of way line, new buildings may be placed as near the right of way lines as the average of buildings on said adjoining lots
- Paul Mirabito states we're actually increasing the setback from 28 to 36 feet
- Wayne Dennison states so, whether you need a special permit at all. You wouldn't have to wait for the decision and the appeal. If you ran some numbers on the property, you may be able to bypass this and go to Jim and get a building permit. That seems to be the case here...
- Jim Wasielewski states the reason I believe it is here for a special permit, although the average can be used, I believed that would always require a special permit
- Emmett Sheehan states ok, how does the rest of the Board feel about that
- Freeman Boynton Jr. asks who has the Bylaw in front of them
- Judith Barrett states I do, it's 410.4 Dimensional and Coverage Regs
- Wayne Dennison states I don't think that requires a special permit
- Freeman Boynton Jr states looking at the GIS map for Duxbury, all of the Abutting properties are closer to the right of way than what is before us and they are moving the property further from the right of way

- Wayne Dennison and Judith Barrett agree that it doesn't look like it needs a special permit.
- Jim Wasielewski states I agree
- Kathleen Muncey states what if he does and they find out tomorrow
- Wayne Dennison states why don't we continue this so they can measure. If the measurements show they don't need a special permit, then they can just withdraw without prejudice
- Jim Wasielewski states I would just need some averages of the measurements
- Judith Barrett states yes you just need the documentation
- Paul Mirabito agrees to continue so that they can measure each building and present the plan to the building department, if he agrees we will submit a letter to withdraw without prejudice
- Wayne Dennison states great, I move to continue this matter to the next available date, Lauren what is that date
- Lauren Haché states January 14, 2021
- Wayne Dennison moves to continue to 1/14/2021
- Freeman Boynton Jr seconds
- WD, KM, JB, FB, BG

**Motion:** It was moved, seconded and unanimously voted to continue the public hearing to January 14, 2021.

- |                      |                   |
|----------------------|-------------------|
| • Moved by: WD       | Seconded: FB      |
| • Number in favor: 5 | Number Opposed: 0 |

## **BOARD OF APPEALS — MINUTES**

**Case No: 2020-21**

**Petitioner: Charles M. Sullivan & Susan E. Maycock**

**Address: 65 Samoset Road**

**Parcel #'s: 126-997-042**

**Date: December 10, 2020**

The Board of Appeals will hold a remote public hearing via Zoom on Thursday, December 10, 2020 at 7:30 p.m. to consider the application of Charles M. Sullivan and Susan E. Maycock for an Appeal under Article 900, Section 906.1 of the Duxbury Protective Bylaw. The property is located at 65 Samoset Street, Parcel No. 126-997-042 of the Duxbury Assessors Map, consisting of 0.320 acres in the Residential Compatibility, Water Protection Overlay Districts & FEMA National Flood Hazard Layer and owned by Rebecca and Anit Patel.

The Applicant requests the Board of Appeals overturn the Zoning Enforcement Officer's decision to grant the building permit for the raze and rebuild of the a pre-existing dwelling, while part of the project, the raze and rebuild of a non-conforming garage, requires a Special Permit. The application may be viewed on the Town's website [www.town.Duxbury.MA.US](http://www.town.Duxbury.MA.US) under the Zoning Board of Appeals page.

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

**Members Voting:** Wayne Dennison, Judith Barrett, Emmett Sheehan, Borys Gojnycz & Philip Thorn

**Other persons present at the hearing:** James Wasielewski, Director of Municipal Services & Lauren Haché, Administrative Assistant

- Wayne Dennison opens the public hearing and reads the public hearing notice and states that along with the application there is an easement agreement and a letter from the Applicant, as well as an email from the council for the property owners stating the garage has been removed, as of today's date nothing has been poured relative to the foundation. Wayne continues and reads the case responses from other town boards as follows:
  - The Planning Board, in a memo dated November 19, 2020, voted unanimously to defer judgement to the Zoning Board of Appeal.
- The Applicant for this case, Charles Sullivan, presents his case to the Board. He explains that he owns 57 Samoset Rd with his wife for the past 25 years as a summer cottage. He asks to share his screen and continues to explain.
- Wayne Dennison states that this Board does not enforce easement, this is not within the purview, the ZBA uphold the Bylaw.
- Mr. Sullivan continues and shows an aerial view of the properties. He continues to explain the easement and grading and that the Owners of 65 Samoset did not inform them of the intended work to be done on their property. The nature of our objection is not to the house, but to the proposed garage. The building permit included the new garage and that due to the setbacks, we think that the garage should not be included in the building permit. The demolition and excavation for both the new house and garage proceeded at the same time. Roots of trees were cut and the trees fell into our yard, having since been removed. Boards have been placed for the



new footings, we don't object to the location of the new garage but we do object to the proposed height.

- Dennis Murphy, Counsel for the Applicant, states he did submit a letter, but they never meant to imply that the foundation has been poured, but it has been demolished and excavated. Based on the conversation that I had with the Attorney for the Patel's, they don't believe they need a special permit at all. Based on what the Building Permit states, the garage does in fact require a special permit or ZBA approval. They do not object to the house, they object to the garage, but both of these –the house and garage were applied for under a single building permit. This is why we are here tonight.
- Wayne Dennison states thank you, the part that confused me is they obviously have the right to rip down that garage correct
- Dennis Murphy states if they don't intend to replace it, sure
- Wayne Dennison states right, but even if they hope to replace it, they can rip down that garage
- Dennis Murphy states I am a Zoning Attorney, wouldn't advise my client to do so without a permit in hand for its replacement. They are certainly at risk, but could they do so, yes
- Wayne Dennison states ok, so let's hear from the Building Commissioner Jim Wasielewski
- Jim Wasielewski states it is a complicated process, the reason why the garage was not listed on the building permit, is because the proposed height increases by about 4 feet. They are grandfathered by right to rebuild the garage as is, but that was separated out from the permit. I am pulling up the demo permit to see if that includes the garage.
- Emmett Sheehan states do you see any problem with that Jim
- James Wasielewski states I don't know why we are sitting here today to be honest with you
- Emmett Sheehan states ok, thank you
- James Wasielewski states I guess the only reason I could is that they speculate that they are just going to go ahead and build this garage without a special permit, but if that occurred, we would be out there with a stop order. It's not permitted for that
- Emmett Sheehan states however they could rebuild that with the exact dimension of the previous garage without a special permit
- James Wasielewski states correct and because they don't have an existing permit that includes the garage, they would have to pull a separate permit for that, as long as it's the same size and same location.
- Wayne Dennison states alright, we've heard from the Applicant, their counsel and the Building Commissioner, I think we ought to hear from the land owner or the land owner's Counsel.
- Jed Ruccio, the Attorney for the Patel's, introduces himself and addresses the Board. It has been conceded that there is no basis for appealing the building permit, from a legal standpoint this is very straight forward, Massachusetts General Law Chapter 40A section 8, the basis of appealing the Bylaw as reflected in this chapter, is a violation of either 40A or a violation of the zoning Bylaw, none of that has been alleged nor could that happen. I do hear some concern with the garage, but it has been stated that they will either need a building permit or special permit to proceed and they fully intend to comply with that process and I think that will fully protect their neighbors as well.
- Jim Wasielewski states the original demo permit did include the garage

- Wayne Dennison states right, that is the question I asked Dennis Murphy and to the Applicant, you can take your garage down, but the question is if you take your garage down, can you put it back up-that's the part that puzzles me here
- Emmett Sheehan states not without an additional permit
- Wayne Dennison asks of anyone would like to ask questions
- Charles Sullivan states we really regret being here and perhaps it was a communication problem, we didn't hear about this project until we had a Conservation Commission. Dr. Patel never shared his plans with us, even when he was asking permission to take down the trees on the property. We have made several offers to Dr. Patel to accept a slightly larger garage, but not a 22 foot garage, but we never had any communication back, that is why he decided to pursue this. We like their house and we wish them well, we hope that this project can continue on in a way that will not damage our property. The lack of communication is what brings us here.
- Jim Wasielewski states that based on my discussions with the Builder and the Patels', is that we gave them a permit to demo the house and the garage, a permit to rebuild the house and that a special permit is required for a height increase on the garage, where you would be dually notified should they proceed with that. The question that was posed to me was, can we pour the foundation since it will be in the same spot. This is where I said no.
- Wayne Dennison states so, how does somebody come in for a special permit for an expansion for a pre-existing, non-conforming structure that no longer exists?
- Dennis Murphy, Counsel for the Applicant, states he can address this. What I see is the original sin with this, the bifurcation of the building permit. My clients are not interested in contesting the house, the garage is what impacts them. The only plan at town hall is the one the Building Inspector said needs a special permit. The setbacks would need to be complied with and we will most likely be back here having this same conversation in a few months. I have never seen a single building permit to keep things moving, but this has left us in a zoning issue.
- Wayne Dennison states so Jim, the reason the house permit was issues was because it was a raze and rebuild that is less impactful than the previous house
- James Wasielewski states correct, it has less impact than the previous house, he states that the only other thing is that we have a certified plot plan showing the existing garage size and location, so we know the garage was demo'd along with the permit, the location and size to rebuild shouldn't be an issue, it's the increased height.
- Wayne Dennison states ok, does anybody else want to weigh in here
- Emmett Sheehan states well, the garage is gone, the house is permitted to be built and I would propose we deny the Appeal at this point.
- Wayne Dennison states I actually think that this raises some fairly thorny questions about the next time appear before this Board relative to this application. In terms of the existing permit, I don't see a problem.
- Dr. Anit Patel states I just wanted to make a couple of quick points. Attorney Murphy's letter stating we had proceeded without a permit. I want to make sure the Board understands we are not trying to anything to disrespect the Board. Also, we had a meeting at the Sullivan's home prior to the construction with my wife and I, Mr. Sullivan and his wife, we were going to explain the plans, but when we walked into their home with the, we saw their Attorney was there and we were a little blind sighted. We want to do the neighborly thing, we have lived in Duxbury for twenty years; we want to make sure we respect the Sullivan's property as well.

- Jed Ruccio states we think the phased approach with rebuilding the garage still preserves rights with rebuilding a non-conforming structure, at the same time, there is full intent to work with the neighbors to avoid thorny issues coming before you in the future.
- Wayne Dennison states ok, thank you. I am going to move to close this public hearing
- Emmett Sheehan seconds
- WD, ES, JB, BG, PT
- Wayne Dennison states in terms of discussion, I don't see anything wrong with the building permit, I do see some potential fights down the road with the garage going back up and in what form. In terms of the Appeal, I personally don't see any problems with that at all. That's my view
- Judith Barrett states yes, I don't see a problem with what has happened. I do understand why this application is in front of us and do see some potential issues in the future as well, but as an appeal, I don't see any problems with the building permit.
- Emmett Sheehan states I agree
- Wayne Dennison asks Phil and Borys for comment
- Phil Thorn states he has no issue with the permit and what's been built so far
- Wayne Dennison states I am going to move to uphold the Zoning Enforcement Officers determination with respect to the issuance of the building permit. I expect before the garage goes back up, we will hear from these folks again.
- Emmett Sheehan seconds
- WD, JB, BG, PT

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

- **Moved by: WD** **Seconded: ES**
- **Number in favor: 5** **Number Opposed: 0**

**Motion: It was moved, seconded and unanimously voted to deny the Appeal of the Building Commissioners Permit.**

- **Moved by: WD** **Seconded: ES**
- **Number in favor: 4** **Number Opposed: 0**