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DUXBURY, MASS.

# TOWN OF DUXBURY

## BOARD OF APPEALS

### DUXBURY BOARD OF APPEALS

#### MEETING MINUTES

May 24, 2018 @ 7:30 p.m.

**ATTENDANCE:** Wayne Dennison, Freeman Boynton, Jr., Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

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

- **ZBA Case #2018-07 Facchini Bridgestone, 74 Bay Road:** *The Board moved to approve the Applicant's withdrawal request. All in favor (5-0).*
- **ZBA Case #2018-07 Island Creek Oysters, 397 & 405 Washington St:** *The Board moved to approve the Special Permit. All in favor (5-0).*
- **ZBA Case #2018-08, Wei-Chi, 106 Harrison Street:** *The Board & the Applicant agreed to continue the hearing until June 14, 2018.*

*The Board unanimously agreed to accept the withdrawal of the application for 74 Bay Road. All in favor (5-0).*

*Emmett Sheehan makes a motion to close the public hearing for 397&405 Washington Street. Wayne Dennison seconds. All in favor (5-0).*

*Wayne Dennison makes a motion to grant the special permit, with conditions, for 397&405 Washington Street. Emmett Sheehan seconds. All in favor (5-0).*

*The Board unanimously agreed to continue the hearing for 106 Harrison Street to June 14, 2018.*

*Borys Gojncyz makes a motion to adjourn the meeting. Wayne Dennison seconds. All in favor (5-0).*

## BOARD OF APPEALS — MINUTES

**Applicant:** Mike Facchini/Bridgestone Development  
(Agent, Mark Casey; Atty Paul Driscoll)  
**Property Address:** 74 Bay Road  
**Case No:** 2018-07  
**Date:** May 24, 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### *APPLICATION WITHDRAWN*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, May 24, 2018 at 7:30 p.m. to consider the application of Michael Facchini of Bridgestone Development, Inc. for an Appeal of a denial of building permit or in the alternative, a Special Permit under Article (s) 400 and 900, Section (s) 401.2.4 (a), 401.2 #5, 404, 410, 906.1 and 906.2 of the Duxbury Protective Bylaw. The property is located at 74 Bay Road, Parcel No. 110-830-003 of the Duxbury Assessors Map, consisting of 10.9 acres in the Residential Compatibility & Wetlands Protection Overlay Districts and owned by Darin P. Eddy, M.L. Henry and J.J. O'Donnell. The Applicant appeals the denial of a building permit proposing construction of two dwellings on one lot; and in the alternate, should the denial be upheld, would request a Special Permit for the same proposal.

**Members present:** Wayne Dennison, Freeman Boynton, Jr., Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

**Members Voting:** Wayne Dennison, Freeman Boynton, Jr., Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

**Other persons present at the hearing:** Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Assistant

- Wayne Dennison, Chairman, called the meeting to order.
- Wayne Dennison stated that the applicant requested to withdraw their application and reads a letter from Mark Casey of South Shore Survey Consultants dated May 21, 2018 stating as much.
- The Board unanimously agreed to the withdrawal.
- Emmett Sheehan makes a motion to approve the withdrawal without prejudice.
- Borys Gojncyz seconds. All in favor (5-0).

**Motion:** It was moved, seconded and unanimously voted to approve the withdrawal without prejudice.

Moved by: ES  
Number in favor: 5

Seconded by: BG  
Number opposed: 0

## BOARD OF APPEALS — MINUTES

**Case No: 2018-09**

**Applicant: Christopher Sherman/Island Creek Oysters**

**Property Address: 397 Washington Street**

**Date: May 24, 2018 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, May 24, 2018 at 7:30 p.m. to consider the application of Christopher Sherman/Island Creek Oysters for a Special Permit under Article(s) 400 and 900, Section(s) 421.3, 421.4 #2, 424, and 906.2 of the Duxbury Protective Bylaw. The property is located at 397 Washington Street, Parcel No. 119-405-148 of the Duxbury Assessors Map, consisting of 9.07 acres in the Residential Compatibility & Neighborhood Business Districts and owned by Ditch Digger LLC. The Applicant proposes to operate a quick-serve raw bar and retail establishment on the farm campus. A Special Permit is required.

**Members present:** Wayne Dennison, Freeman Boynton, Jr., Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

**Members Voting:** Wayne Dennison, Freeman Boynton, Jr., Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

**Other persons present at the hearing:** Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Assistant

- Wayne Dennison, Chair, reads the public hearing notice into record.
- Wayne Dennison cites and reads, some in part, the correspondence received: - the application + brief and he summarizes the details; A site plan that includes parking details; a Memo from the Conservation Commission dated May 16, 2018 with a negative determination; a Memo from the Board of Health dated May 9, 2018; And a Memo from the Design Review Board dated May 7, 2018.
- Mr. Dennison states that the Planning Board voted to approve the application and then cites that there is an email from Fire Chief Nord with recommendations to meet fire code. Mr. Dennison reads the email dated May 18, 2018 in full and then states that it was suggested that these conditions would be better put in the ZBA permit and asks Scott Lambiase if he recommended that.
- Scott Lambiase confirms that he did.
- Wayne Dennison cites more correspondence received – an invite from Island Creek Oysters (ICO) to see the property and a support letter signed by abutters of the property.
- Wayne Dennison explains the order of the meeting, that the applicant will present, then they will hear from Scott, after that the public and then he directs all to please use the microphone supplied.
- Chris Sherman of 942 Washington Street /President of Island Creek Oysters states that one of the primary intentions of purchasing Battelle was to provide an accessible place for Duxbury and the surrounding areas to enjoy & participate in Duxbury Bay. Mr. Sherman states they have a great product that's renowned nationwide and they want Duxbury residents to be able to enjoy that on the water with a glass of wine, etc. Mr. Sherman states that they'd like to operate on this site and will get their feet wet and hope to succeed as they have with other ventures. Mr. Sherman states they intend to do 12 noon to twilight hours and will close before dinner, that their menu will be tapas style with other ready raw bar items, no cooking in truck is planned, that the truck won't be mobile and they don't intend to serve meals. Mr. Sherman states that they want a place

for people to enjoy casually and to visit after the farm that they have ample parking and in looking to the future they want to anticipate more use of the property so there is enough for that.

- Mr. Sherman points to the site plan and explains the parking area, stating that in the Southeast corner of the property there are 32 striped spots in the gravel area near the Winsor Street border on the south side and additional spots near the admin building and the white shore house in the middle of the property, that the parking will be there well off of Washington street and there will also be a guided path with signage and lighting in order for patrons to make their way to the property. Mr. Sherman goes on to explain that patrons will enter the patio on the south side and there will be a second egress facing the bay and it'll be surrounded by a roped perimeter that'll also be the alcohol boundary, that the patio will be made of stone dust so it will drain. He states that the bathroom plan is to have porto-potties for this year and have an ADA hand washing station and it'll be the plan to move into the building and operate year round in the future, whereas this summer we will operate on a more mobile basis. Mr. Sherman states they have engaged with the neighborhood and Town Boards and thus far all have been supportive and we think they are looking forward to things, but they are here to make sure the Board is in
- Wayne Dennison asks the Board if there are questions.
- Dimitri Theodossiou asks if the power for the cooler will be coming from the building.
- Chris Sherman states that the power will be from the building, there's a 30amp shore hookup for the truck and that they have additional refrigeration inside the building in the form of walk in refrigerators.
- Dimitri Theodossiou asks if the beer and wine will be in the building.
- Chris Sherman states it'll be in the building under lock and key.
- Freeman Boynton, Jr. asks if they are going to exceed 100 people if they'll have a certified crowd manager.
- Chris Sherman states that if that should arise, and they anticipate that it might, they have that in their staffing plan and will man the door to manage that flow and have designed the door to help with that execution. Mr. Sherman states that they also plan on using bracelets for ID-ing.
- Dimitri asks what a crowd manager is.
- Scott Lambiase states that it is a certified crowd manager and it's a course you can take online and it is that someone there is responsible for getting people out if there is a problem.
- Chris Sherman states that their manager, Jess Cagle, is certified.
- Wayne Dennison states that he can envision that on a summer night they'll be way more than 100 people there and asks what the plan is.
- Chris Sherman states that they have experience there, that they opened a place in Portland, ME over Labor Day last year and we were able to keep the numbers at bay and we do have our headquarters on site so if we find we need more resources for parking management, etc. we have it there. Mr. Sherman states that they are also open to seeing how it goes and utilizing plans like reserved seating, etc.
- Dimitri asks where the 120 number is derived from.
- Chris Sherman states that they got that from using the patio dimensions and square footage requirements and we looked at it with our planner.
- Wayne Dennison asks Scott if he can explain the fire pit.
- Scott Lambiase states that subsequent to the email that was read, he suggested to the Selectmen that they not make anything contingent on the liquor permit because despite a liquor permit they might be in there after the liquor permit goes away; they did meet with the fire chief and he has changed a few of the conditions which they probably have a copy of here.
- Taylor Imrie states she has it there and asks if he'd like her to read it. Yes.
- Taylor Imrie states that they sent an email to the Fire Chief last week requesting that we review his permitting process for fire pits and me and Jess met with them and they then sent an email, which was cc'd to Nancy O'Connor and Siobhan back at the Fire Station.

- Taylor goes on to read the email, stating that they met with us and reviewed the request for the a fire pit for entertainment purposes and at the conclusion of the review open air burning in an open air fire pit for entertainment purposes will be allowed with the following conditions: 1. Island Creek will attain a seasonal burning permit, 2. Pits will be 75 feet from any structure, 3. Pits be constructed upon a noncombustible surface, 4. Fire burning not exceed 3 feet in diameter and 3 feet high and 4. Applicant adheres to the Mass Open Burning Regulation (310 CMR 7.07).
- Wayne Dennison and Scott Lambiase agree that those conditions will be part of it.
- Borys Gojncz asks what plan is in terms of access from the water, that it seems like that could attract quite a crowd.
- Skip Bennett of 11 White Street and the owner of Island Creek states that he spoke with the Town Harbormaster Jake Emerson to see if the Town would like to set up a system where people visiting by boat could pick up a mooring and pay a fee to the Town and he was interested in that as a source of revenue for the Town. Mr. Bennett states that also the customer could pick up a mooring and then pay the launch service to bring them to our dock, but so far we do think that we don't want people tying up our dock for a host of reasons.
- Borys Gojncz asks if they are relying on only oysters for the bay and what happens if the beds are shut down.
- Chris Sherman states that they would like to have it be from this area all the time, but he cannot always guarantee that.
- Wayne Dennison asks if the public has any questions.
- Adam Earle of 387 Washington states that he'd like to voice his support of the project, that Chris and Skip have been great neighbors so far and they've had information sessions for the neighborhood which I found extremely helpful.
- Wayne Dennison asks if anyone in public or the Board has any questions. No.
- Wayne Dennison states that in order to grant a special permit, they have to make findings like whether the activity type and site design appropriately considers a variety of impacts and that one of them addresses seasonal consequences and he asks what the plan is for the near term, do they intend for this to be only seasonal.
- Chris Sherman states that the near term plan is seasonal and they hope to operate until October, weather permitting, but they anticipate shutting down in November.
- Wayne Dennison asks about employment opportunities.
- Chris Sherman states that they'll be employing current staff or transitioning part-time to full-time and they are also hiring, that they hired a Duxbury resident today.
- Emmett Sheehan makes a motion to close the hearing. Wayne Dennison seconds. All in favor (5-0).
- Wayne Dennison makes a motion to approve the special permit, subject to each of the conditions that have been imposed by the Fire Chief and based on the findings consistent with 906.2 of the protective by-law.
- Emmett Sheehan seconds. All in favor (5-0).

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

Moved by: ES  
Number in favor: 5

Seconded by: WD  
Number opposed: 0

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

Moved by: WD  
Number in favor: 5

Seconded by: ES  
Number opposed: 0

## BOARD OF APPEALS — MINUTES

**Applicant:** Dennis Jodoin/Chiu Wei-Chi/  
**240 Harrison Street Realty Trust**  
**Property Address:** 106 Harrison Street  
**(Duxbury Yacht Club)**  
**Case No:** 2018-08  
**Date:** May 24, 2018 **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, May 24, 2018 at 7:30 p.m. to consider the application of Chiu Wei-Chi for an Appeal under Article (s) 400, 600 and 900, Section (s) 430, 611, 615 and 906.1 of the Duxbury Protective Bylaw. The property is located at 106 Harrison Street, Parcel No. 107-008-003 of the Duxbury Assessors Map, consisting of 52.34 acres in the Planned Development District #1 and owned by the Duxbury Yacht Club. The Applicant contends that land clearing requires a Special Permit as defined in Section 611 and appeals the Zoning Enforcement Officer's opinion that it is within the Duxbury Yacht Club's right to maintain the golf course; therefore a Special Permit is not needed.

**Members present:** Wayne Dennison, Freeman Boynton, Jr., Emmett Sheehan, Dimitri Theodossiou & Borys Gojncyz

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

**Other persons present at the hearing:** Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Assistant

- Wayne Dennison states that the next matter on the agenda is a petition by the Trustees of the 240 Harrison Street Realty Trust relative to 106 Harrison Street. Mr. Dennison states that there are some constraints tonight and that as a result of advice from Town Counsel, Freeman cannot sit, so there are only 4 members available to consider the application. Mr. Dennison goes on to state that he received a call from an attorney asking if those that were Duxbury Yacht Club members could sit and he did present that question to the Town's counsel and it was advised that those members could.
- Mr. Dennison goes on to explain that they can proceed tonight with the four members there or continue to another night where Kathy Muncey, who is a yacht club member would be available or Judi Barrett, who is not a yacht club member, could sit as a 5<sup>th</sup>.
- Wayne Dennison states that Town Counsel advised that mere membership, unless you're a trustee officer, director or have a direct financial interest, is not enough to require recusal, but that those who are members of the Yacht Club should file a disclosure form.
- Wayne Dennison states that he is a member of the Yacht Club and he filed a disclosure.
- Emmett Sheehan states that he is also a member and has filed a disclosure as well.
- Wayne Dennison goes on to state that we can only move forward with 4 tonight and asks when the next time we could have 5 is.
- Angela Ball states that the next time is either June 14<sup>th</sup> or June 28<sup>th</sup>.
- Wayne Dennison asks what is on the agenda for June 14<sup>th</sup>.
- Angela Ball states it will be the Duxbury Animal hospital continued and Webster Point Village.
- Wayne Dennison asks if they'd like to go forward with 4.
- Bill Apostle states he's an attorney and he's been trying to move forward with this but not many have been cooperative. Bill goes on to state that for the record he's surprised that Town Counsel says it's not a conflict of interest and it would be nice to resolve the issue and get into a special permit process rather than get into a land court procedure and

for the record he feels that there is a conflict of interest with those two sitting up there as he does with Conservation.

- Wayne Dennison states there isn't anything they can do about that.
- Bill Apostle states that if they want him to come back and wait for a quorum then sure they will come back and talk about it.
- Dimitri Theodossiyou asks if they can get five people with nobody being a member.
- Emmett Sheehan states they cannot.
- Wayne Dennison states they have a new person beign appointed June 4<sup>th</sup> who is not a member and that he thinks they could get 4, but not 5.
- Bill Apostle states that 4 could reverse and have them get a special permit.
- Dimitri Theodossiyou asks Wayne if he can explain what 4 means.
- Bill Apostle states its 3 non-members and 1 member.
- Dimitri Theodossiyou states that no as far as voting.
- Emmett Sheehan states that we could get 5 people here, but 4 out of the five would not be members.
- Dimitri states that if you have 4 members you need all 4 to vote in favor but if you have 5 you could do a majority.
- Wayne Dennison states he'd like him to choose which way to go.
- Bill Apostle states that it's a great legal challenge not being able to get a quorum without yacht club members and that seems to be a conflict.
- Wayne Dennison states there is a rule of necessity and we do have Town Counsel's opinion as well. He goes on to state that he is perfectly willing to continue this to June 14<sup>th</sup> and we'll have a new member then. Mr. Dennison states there is a statutory period in wich we have to act ona request to overturn the building inspector.
- Angela Ball states that it is 100 days from the date of filing and for his one that date is July 22.
- Wayne Dennison states that June 14<sup>th</sup> will work. Bill Apostle concurs.
- Angela Ball asks for signatures on forms.
- Wayne Dennison asks if there are any meeting minutes to approve, etc.
- Angela Ball states that there is not tonight, but will be next time.
- Borys Gojnycz makes a motion to close the public hearing.
- Freeman Boynton, Jr. asks if there is anything they need to do to appoint a new member.
- Wayne Dennison states that he did and the selectman will appoint.
- Wayne Dennison seconds the motion to close. All in favor (5-0).

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

Moved by: BG

Seconded by: WD

Number in favor: 6

Number opposed: 0