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DUXBURY, MASS.

**TOWN OF DUXBURY**



**BOARD OF APPEALS**

**DUXBURY BOARD OF APPEALS**

**MEETING MINUTES**

June 10, 2021 @ 7:30 p.m.

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

**Other persons present at the hearing:** James Wasielewski, Building Commissioner, and 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. (CONT'D):** *The Board voted to continue the public hearing to June 24, 2021 at 7:30pm*

**ZBA Case #2021-06, Harlow Brook LLC (CONT'D):** *The Board voted to continue the public hearing to July 22, 2021 at 7:30pm*

**ZBA Case #2021-14, Erving, 6 Upland Road:** *The Board voted to continue the public hearing to July 22, 2021 at 7:30pm*

**ZBA Case #2021-16, Pontiff, 184 Marshall Street:** *The Board voted to continue the public hearing to July 22, 2021 at 7:30pm*

**Administrative**

*Wayne Dennison makes a motion to approve the meeting minutes of May 13, 2021. Emmett Sheehan seconds. (5-0)*

*Wayne Dennison makes a motion to close the public hearing. Kathleen Muncey seconds (5-0)*

## BOARD OF APPEALS — MINUTES

**Case No:** 2019-17

**Petitioner:** WB Builders, Fieldstone Farm

**Address:** 1 & 25 Lincoln Street

**Date:** June 10, 2021 **Time:** 7:30 p.m.

(Continued from May 27, 2021, April 22, 2021, March 25, 2021 February 25, 2021, January 28, 2021, November 19, 2020, October 22, 2020, September 10, 2020, July 23, 2020, June 25, 2020, June 11, 2020, May 14, 2020, March 26, 2020, March 12, 2020 and January 23, 2020)

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

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

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

- Wayne Dennison re-opens the public hearing and states it is my understanding that Town Counsel is here tonight
- Amy Kwesell states I am here and continues to go over the draft decision and waivers. She continues that there is one waiver that is far too general. So, one of the things that we discussed, Attorney Freeman had quite a few waivers listed that he didn't need. We can either leave it on the waiver list or we can deny or remove from the waiver list. Then in the body of the actual decision, we had a few changes, there were three recommendations from Pat Brennan that weren't in the draft, so I added those in. Two were acceptable to the Applicant, one we have to discuss. As for the affordability, there are a few things we need to discuss with the Board. I want the Board to weigh in on the escrowing of the building permits. In my opinion, it can be done, but I don't recommend that. Also, an easement for the grading at 101 Modoc Street was suggested by Pat Brennan, so in his report the easement should be recorded prior to construction, Attorney Freeman would like that recorded before Certificate of Occupancy. That is up to you to change or alter that
- Wayne Dennison states ok, thank you very much, so there are still some issues that you and their Attorney need to work through. One of which is Mr. Brennan's recommendation that the Agent wasn't on board with, which one was that
- Amy Kwesell states in Mr. Brennan's February 23, 2021 report he had noted some conditions for approval should the Board approve the project, prior to construction, easement documents for the proposed grading onto 101 Modoc Street to maintain access and utilities to the cell tower site should be provided to the board, so I inserted that exact condition in and the Applicants counsel has an issue with that.
- Wayne Dennison states so



- Amy Kwesell states there were just as an update, we did have other outstanding items, did you want to go over them now
- Wayne Dennison states yes, my desire here is to move this along as efficiently as possible, given the back and forth with counsel, so go over whatever you need
- Amy Kwesell states we were waiting for a sidewalk plan so that we can put in a condition to reference that and a description of waivers and then Mr. Boynton's two items of six feet to ground water and the grading be pushed back on the southerly boundary. I have not seen any of those things
- Wayne Dennison states so we did receive some more materials, Lauren what have we received
- Lauren Haché states we have received a letter from Mr. Prone with the Sidewalk and Bike path Committee, we have received an email from Pat Brennan regarding the test pits and perc tests
- Wayne Dennison states ok, anything else, ok let's turn to the Applicants, but I thought we were going to see another plan
- Peter Freeman states thank you Mr. Chair, first Kyle Devinish with Outback will explain the plan and Mr. Boynton's request for the six feet separation to groundwater, Pat Brennan was present and Kyle can go into further detail about that. As for the sidewalk plan, we really think there are two concerns about having the sidewalk go the entire length of the property and having it leading to nowhere. We may have to go into some of the right of way beyond our property, so we'd like to discuss some of that also
- Wayne Dennison states so, I don't want us to be arguing over things the board didn't ask for, Mr. Boynton described in detail where the sidewalk should go and he knows more than anyone this area.
- Peter Freeman states Mr. Chair you don't have to make everything disruptive, so sincerely, I don't see the point of making things adversarial
- Wayne Dennison states you do not control this public hearing, I am happy to hear from your Engineers
- Greg Webb states I apologize, we have been thinking about the sidewalk and whenever I drive to the site I think about a kid on a bike and as the sidewalk ends, where does the bike go and so as a parent that makes me nervous
- Wayne Dennison states thank you very much for that, your concerns for safety are admirable and recognized. The issue is that every single person except for the applicant has been concerned about the road and how narrow it is. So the idea of a sidewalk even on a critical section of that roadway is important
- Greg Webb states I understand and I will let you guys decide that, I just wanted to explain how we're trying to figure things out
- Amy Kwesell states, so are there internal sidewalks
- Greg Webb states yes
- Amy Kwesell states and this is an over 55+
- Greg Webb states yes
- Amy Kwesell states so wouldn't Mr. Boynton's idea just loop and connect with those and wouldn't it benefit the homeowners that move in there

- Greg Webb states actually we proposed to loop it, that is simple and safe, but to continue to the cranberry bog...
- Amy Kwesell states he actually didn't say that at the last meeting, because past the infiltration basin is into the wetlands, why don't we ask Freeman
- Freeman Boynton Jr states yes from the southerly property line to the basin, but they make a good point about a bike rider comes to an ending sidewalk, what will the site distance be there. I did notice in the GIS map that the town owns a strip of land southerly, so maybe they could continue it onto that parcel to gain that site distance
- Amy Kwesell states sidewalks are never a bad thing
- Peter Freeman states we can come up with something satisfactory for a sidewalk, Greg would you be agreeable to close the hearing and have the sidewalk plan conditioned on approval
- Wayne Dennison states why don't we listen to what the Engineers have to say
- Kyle Devinish presents to the Board about the grading and the test pits, distance to ground water and then we'll calculate the ground to water and continues to summarize the septic plan from February 11, 2021.
- Emmett Sheehan states he would love to see the calculations without the nitrogen calculations from lawns
- Kyle Devinish continues to explain
- Wayne Dennison states why don't we have baseline nitrogen levels and why don't we have nitrogen test well
- Amy Kwesell states my biggest concern is how are we controlling this by the condominium documents through landscaping
- Peter Freeman states I have done many projects with these situations and the Trustees will monitor this
- Amy Kwesell states but ho controls them, the Board of Health
- Peter Freeman states or we can find something suitable for you
- Amy Kwesell states so you're putting it back on us
- Wayne Dennison states how is this addressed in the current draft decision
- Amy Kwesell states it is not
- Peter Freeman states well, this was sent out two months ago
- Amy Kwesell states I will add a condition
- Wayne Dennison states I cut you off Mr. Devinish, I apologize.
- Kyle Devinish continues to explain the denitrification system
- Kathleen Muncey suggests a condition in the decision and also state that it is in the condominium agreement and then they would report to the Board of Health every three years
- Amy Kwesell states yes, we can confirm with the Board of Health
- Wayne Dennison states foes the Applicant have any other things to discuss or present
- Freeman Boynton Jr states I am still trying to figure out the lawns of 32 units will be fertilized with one bag
- Kyle Devinish states he will come up with that calculation and it is a reduced not a full 35 lb bag of nitrogen



- Freeman Boynton Jr states ok
- Emmett Sheehan states how many pounds per fertilizer per unit
- Kyle Devinish agrees
- Emmett Sheehan states so a plan to show 2 lbs of nitrogen per or whatever the numbers are and put that in the condo documents
- Kyle Devinish agrees that is a good plan
- Freeman Boynton Jr states can the background nitrogen levels be determined with the well next door from Pete Mackin
- Kyle Devinish states the Mayflower wells 1 and 2, I can take a look at it with the nitrogen
- Wayne Dennison states ok, so why don't we open this up to public comment, I know Mr. Prone would like to speak
- Richard Prone speaks to the safety concerns and traffic issues and asks if Town Counsel heard this
- Amy Kwesell states yes, I have watched all of the public hearing
- Richard Prone continues to speak of the safety concerns
- Wayne Dennison explains the limitations of denying a 40B and asks Mr. Prone specifically how he would condition this application
- Richard Prone states build a sidewalk along the applicants frontage and exclaims that these are the two worst curves on Mayflower and Lincoln
- Wayne Dennison concurs and asks if there are other conditions
- Richard Prone states maybe a share the road sign and perhaps limiting the speed to 25 mph
- Wayne Dennison states thank you sir, we appreciate your submission
- Borys Gojnycz states I do have a few questions, one I'm generally concerned, I wouldn't want to encourage extra-curricular activity there; it's a challenging road. Also that southern abutter, it seems there was trimming on their rhododendron's and I don't know how much more trimming can be done there. Also with Modoc Street there is a trail up there but I read that they don't want anyone having access up there, but I believe that is a fire road. I think there is public access there now and think that that should remain public access
- Peter Freeman states we don't intend to limit access what so ever, we want to keep that the same
- Borys Gojnycz states ok, that's great
- Greg Webb states I did reach out to Eric the owner of the southerly most house where that rhododendrons are and he said we could remove the rhododendrons completely but about a week later I noticed a sold sign, so I'll have to reach out to the new owner
- Borys Gojnycz states that would be great, thank you
- Freeman Boynton Jr states I don't believe he owns the rhododendron, the town has a 60 foot width that the Town owns and continues to share his screen and shows where the town owns a  $\frac{3}{4}$  of an acre the Town owns and can clear cut and put your sidewalk in without impeding on their property, so perhaps you can extend the sidewalk an additional amount that would help

- Kathleen Muncey states Freeman you don't think it needs to go north of the entrance, the sidewalk
- Freeman Boynton Jr states you would be fighting with this cranberry bog and the road is pretty straight, so I think up to the retention basin, the retention basin to that corner to the south
- Emmett Sheehan states I agree, but most bicyclists aren't using a sidewalk
- Freeman Boynton Jr states true, but it improves that sight distance for cars and bikers
- Emmett Sheehan states yes, that would improve incredibly but I don't think bicyclists won't go on it
- Borys Gojnycz yes, but the sight distance will be opened up
- Emmett Sheehan states agreed
- Wayne Dennison states alright, do other Board members have any more questions. Ok, so to my understanding, there has been a draft of the comprehensive permit provided to Town Counsel and there has been lengthy discussion and Town Counsel has advised us to call out unnecessary waivers and then there is an issue around the nitrogen loading and future condo documents and Amy, one of the issues with the building permits held in escrow can you explain that
- Amy Kwesell states yes, the Applicant has asked to have building permits issued but then to be held in escrow with the Applicants Attorney while regulatory agreements are being signed and financing is completed. I haven't seen this before and the Applicant is aware that once the building permit is issued, they have to start within 6 months. This is a policy decision this Board needs to make. The most important thing is that we get our SHI units
- Peter Freeman states that it is a chicken and egg thing and we can tweak this and condition it something to the effect that when the Building Commissioner is satisfied and will issue
- Wayne Dennison states so, how long do you think it's going to take to build out this development
- Greg Webb states it depends on the market, maybe three years
- Wayne Dennison states I ask because if you put in escrow with a single Attorney, what happens is Mr. Freeman retires
- Amy Kwesell states we are constantly fighting with the SHI and units coming on and off and as soon as building permits are issued the clock starts ticking and we could lose that unit
- Wayne Dennison states so your point is this development doesn't have to comply with all of our zoning bylaws because it promises to provide affordable housing and if this is at risk with holding building permits in escrow then I don't have to further based on your advice
- Amy Kwesell states my fear is that and I understand Peter's predicament and we're the ones taking all the risk as a town and I don't think we should
- Peter Freeman states we can eliminate it completely, it's not a deal breaker for us and perhaps we can have the Commissioner issue a will issue letter once fees are paid etc.
- Wayne Dennison states ok, so there was a chat question



- Lauren Haché states yes Ms. Dimuzio had her hand up
- Theresa Dimuzio states yes, I am a resident on Mayflower Street and proceeds to speak about the traffic and safety concerns
- Wayne Dennison states so, Ms. Dimuzio thank you for that and I know you have been raised concerns at previous hearings about this case, we're in a position where State law chapter 40B states we can reasonably condition this permit, but we cannot fully deny the development, so what conditions would suggest
- Theresa Dimuzio states well, we have vehicles and accidents and sight clearance and creating more traffic. My second point is in reference to the endangered species on the 9.3 acres listed and I am wondering what is being done to protect that
- Kyle Devinish states there is conditioning of limited nitrogen fertilizers
- Wayne Dennison states my recollection regarding endangered species is that you folks have further permitting to do with that
- Peter Freeman states that's correct, that's the State
- Wayne Dennison states are there other members of the public that would like to speak, ok so it appears to me that we are very close to resolving this and there is limited further communication between the Applicants Counsel and Town Counsel and there seems to be a real willingness with the Applicant to work through the escrow building permit issue and this Board will rely on the advice of Town Counsel. My suggestion is that that important work conclude and that we need the sidewalk plan and the nitrogen analysis and one last cut through the documents so that we can conclude this at the very next hearing
- Peter Freeman states I understand and am confident that Amy and I can work it out
- Greg Webb states that is fine with me Peter, we can continue it again
- Amy Kwesell states Lauren, that is the 24<sup>th</sup> correct
- Wayne Dennison states correct
- Kathleen Muncey states in person
- Amy Kwesell states that is also Ice House Lane correct
- Lauren Haché states there are quite a few
- Amy Kwesell states ok, I am already scheduled for that night here
- Wayne Dennison moves to continue this to June 24, 2021
- Emmett Sheehan Seconds
- All in favor WD, KM, ES, FB. BG

**Motion: It was moved, seconded and unanimously voted continue the public hearing to June 24, 2021.**

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



## BOARD OF APPEALS — MINUTES

**Case No: 2021-14**

**Petitioner: Clarissa Erving**

**Address: 6 Upland Road**

**Date: June 10, 2021 Time: 7:30 p.m.**

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

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

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

- Wayne Dennison opens the public hearing and states will you waive the reading of the public hearing notice
- Jessica Williams states yes
- Wayne Dennison continues to state what the Board received, an application, some input from various boards, we have a plot plan. Wayne Dennison reads an email from Jim Wasielewski, the Building Commissioner regarding the two dwellings on the property but that we do not have sufficient documentation this is a legal second dwelling. The Board of Health states they will require a new Title 5 and the Planning Board memo deferring to the ZBA. The Design review Board memo states the exposed rafter tails on the eaves could be duplicated of that of the main dwelling. The submittal is complete and we recommend the special permit. Lauren, did I miss anything
- Lauren Haché reads the Conservation memo stating no wetlands concerns
- Wayne Dennison states Lauren did we get any public comment
- Lauren Haché states we did not
- Jessica Williams shares her screen showing the existing home and second dwelling, stating a tree fell on the garage, which has a finished apartment above. This was not a project until a tree crashed through the roof, you can see by the floor. The tree came through the roof and damaged the foundation. The plans does show a little greenhouse added onto the property.
- Wayne Dennison states is the greenhouse in the public hearing notice
- Jessica Williams states I don't believe so, I don't want to hold anything up, so if we need to take it off we will take it off the plans
- Wayne Dennison states so it looks like you have decreased the non-conformity on the side and rear setbacks
- Jessica Williams states the setbacks are an issue, but once we realized the ZBA would have to rule on the second dwelling, we decided to make some tweaking to make the new structure prettier. The total volume increases slightly
- Wayne Dennison states what are we going to do about Jim Wasielewski's burden of proof question

- Jessica Williams states great question, we have done some homework and we also have Frank Holden, the Applicants brother in law, who had a history with this property. The Applicant has always used this as guest quarters.
- Wayne Dennison states does the board have questions
- Philip Thorn states I would like to hear from Jim Wasielewski about this
- James Wasielewski states I am here, this is a burden to try to get clarity with legal existence. I do understand is that if we have a permit in our files that show this permitting, we do not have anything in our files
- Kathleen Muncey states or if it pre-dates zoning
- Jim Wasielewski states I believe 1947
- Wayne Dennison states when did this start in the Bylaw
- Jim Wasielewski states well, I have researched for a while and have not found this yet. If it existed with a kitchen or stove, that definition changed in 1987. In 1975, they added the language "not a dwelling" as an accessory structure. If we don't have a legal permit in the building dept. its use can continue but it can't be altered or changed. The removal of the stove would have to happen in order to rebuild.
- Kathleen Muncey states the assessors record states it was built in 1950
- Jim Wasielewski states yes, then there were some other permit and I don't recall the timeframe, where dormer's were added to the dwelling
- Jessica Williams states I believe we can ask Dr. Holden, the home owners brother in law, who can help answer some of these questions
- Dr. Frank Holden states thank you, my sister in law bought the property under the assumption it was a second dwelling and the assessors list it as that. In 1976 the Assessor noted the space above the garage as finished space. Dr. Holden tells the history of the ownership, noting that a relative of Susan Kelley, the Town Clerk knows the history as a rental as well. It is clear to us, who have been using the home as a second property for over 20 years.
- Jim Wasielewski states so about the assessors records, they assess on what they see it doesn't legitimize the use legally. It can be helpful for a timeline, but this doesn't pre-date zoning.
- Wayne Dennison states well, so Kathy pointed out that the entire unit doesn't pre-date zoning, right
- Jim Wasielewski states right
- Wayne Dennison states so what is wrong with just rebuilding what you have
- Jessica Williams states well, we are attempting to rebuild what we had, the small additional space on the first level was to attempt to make the garage a little more useful
- Emmett Sheehan states if they rebuilt it exactly as is, losing the stove, you wouldn't have a problem
- Jim Wasielewski states no...
- Kathy Muncey states then it's not a second dwelling
- Wayne Dennison states I think that's what they want
- Jessica Williams states well, this second dwelling worked for the homeowner, with separate electrical services and the homeowner would like to maintain what it was, it would be disappointing to have to take the stove out. We wanted to make sure the stairwell in the back was sufficient to handle a chairlift for later in life.
- Emmett Sheehan states but she doesn't have it



- Wayne Dennison states she does have it, all she has to do is rebuild what is there and she can continue to use it the way she wants. The only reason she is before is to find out if she can expand on something that our Director of Municipal Services states there is no evidence of this being a legal second dwelling. I am puzzled on this, Jim if they want to rebuild what is there, they can get a building permit and build it
- Jim Wasielewski states so as far as changes to this building at all, they can maintain it, but even if they raze and rebuild it, that doesn't mean it has a legal use
- Wayne Dennison states you're talking about they can maintain it, but a tree fell through the roof so they are going to put up a better building, that strikes me as maintenance
- Jessica Williams states Mr. Chairman, I would also like to note that if we had provided a permit, that was exactly the same structure, it would have come before the ZBA anyways as it is a second dwelling. I will add that there is nothing more detrimental to the neighborhood with the addition of an additional 75 square feet. Had it not needed to come before the Board as two dwellings on one lot, we would have designed it exactly the same as the existing. We can't build this without being before you
- Wayne Dennison states but can't we skirt the issue all together and not make a determination on whether it's a legal second dwelling, can we do that Jim
- Kathleen Muncey states I think we're legitimizing it, if we do that
- Jim Wasielewski states I can meet with Town Counsel again with this, my answer is I don't know. The only thing you can do is try to determine when this use came in as a second dwelling. When did the second electrical/utility service come in for that second dwelling
- Emmett Sheehan states but second services doesn't mean it is legit
- Jessica Williams states I believe we have an email from the former owner's granddaughter stating she remembers there being a stove and it being rented out as an apartment for years, as the second owner of the house, Ms. Erving is the third owner. I understand the difficulty, but the terminology of second dwelling is 1975 and the stove is clearly older than 1975...
- Wayne Dennison states but fundamentally, isn't that the Applicants burden to satisfy, it seems to me that Mr. Wasielewski has conferred with Town Counsel and he is telling this Board that he doesn't have enough information that this is a legitimate second dwelling
- Jim Wasielewski state that is correct
- Dr. Frank Holden states I understand the problem, but if we make the assumption that it turned into a second dwelling over the past 40 years. We have plenty of people that can attest that this was used as an apartment.
- Wayne Dennison states I think the notion that people have used it, is clear cut. We have to question, is it a lawful second dwelling and that is where I'm puzzled. Do other members of the board have questions
- Philip Thorn states would the Applicant agree to conditions, should we grant the special permit to be rebuilt. One being, that this second structure may not be rented and two, that this second building may not be the residence of any persons other than the property owner. That gives the property owner the freedom to use the guest cottage with a kitchen for comfort, wouldn't putting conditions on this would remove a lot of problems.
- Emmett Sheehan states Phil that is admirable, however homes get sold
- Philip Thorn states right, but the condition follows...
- Jessica Williams states...



- Philip Thorn states hang on just second, Emmett if we condition this that condition stays moving along down the road when the property is sold. If we have a condition on the permit, then it will be a guest cottage
- Jessica Williams states I understand the suggestion, but this is my client so I am trying to protect her. So, if we proceeded with a building permit, if we were to withdraw this permit application and build a replacement building without a special permit, not changing the volume, would we be able to do that or are we forced to this hearing due to the second dwelling on the assessor card.
- Wayne Dennison states that is the question I asked Jim earlier and Jim stated that what you are proposing is maintenance of the existing dwelling, you can do it, but if you are proposing to alter it you need a special permit
- Jim Wasielewski states that's right, it's the addition of the stove that makes it a second dwelling
- Jessica Williams states so if I were to withdraw now and submit an application for a building permit, without the stove or as long as we don't change the volume
- Jim Wasielewski states no, the second dwelling definition comes in with the stove, so during permitting, if there is a stove in there we would deny. If the stove were removed, it would become an accessory structure and a guest house. In years past, this has always been an issue with determining the legitimacy of that second dwelling
- Kathleen Muncey states Jessica, your expansion doesn't have anything to do with the sidelines
- Jessica Williams states no
- Kathleen Muncey states so if you are reconstructing a guest house, you wouldn't need a special permit but if you expand it or increase the setback, as a guest house you could do it.
- Jessica Williams states the issue is the stove that is existing
- Wayne Dennison states evening if you're rebuilding in the setback
- Kathleen Muncey states it's not a further violation, can't you reconstruct
- Jim Wasielewski states you can reconstruct
- Jessica Williams states it's a tough situation, we have this antique stove, the manufacturer doesn't exist anymore, we have a clear history of owners family stating it was a rented apartment and we have an unclear Bylaw. This structure was finished prior to 1975, the specifics of the stove weren't mentioned there. It's tricky, I am sympathetic to where the board stands; this is the third owner that considers it is a second dwelling.
- Wayne Dennison states well I am sympathetic but it's not rebuild what you have, if you have a meth lab upstairs you can't rebuild a meth lab upstairs.
- Jessica Williams states well, we have something that is used and rented
- Jim Wasielewski states I would like to make a suggestion to the Board, that I review this with Town Counsel and come back with a written answer
- Wayne Dennison states Jim, I was just going to suggest this, and I like this. I think Amy ought to figure this out, rather than the rest of us
- Kathleen Muncey states that is a great idea, this comes up a lot
- Borys Gojnycz states my only thought is what the assessors have and I am sure what they are assessing is for more and if we're not going to allow the multiple dwellings, then the assessment needs to be checked
- Jessica Williams states I agree and she should be checked for the years she has owned it
- Wayne Dennison states well, previous years she has been using it at a second dwelling



- Wayne Dennison states ok, I am going to move we continue this to a date that will give Town Counsel time to review, I think the next available is July 22<sup>nd</sup>
- Kathleen Muncey seconds
- WD. KM, BG, PT, ES
- Borys Gojnycz states is it too late to ask who the voting members are on this
- Kathleen Muncey states there's just enough of us

**Motion: It was moved, seconded and unanimously voted continue the public hearing to July 22, 2021.**

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

## BOARD OF APPEALS — MINUTES

**Case No: 2021-16**

**Petitioner: Eric and Janine Pontiff**

**Address: 184 Marshall Street**

**Date: June 10, 2021 Time: 7:30 p.m.**

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

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

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

- Wayne Dennison opens the public hearing and asks who is here for the Applicant
- Thomas McNeil with Hutger Architects introduces himself
- Wayne Dennison continues and reads the public hearing notice, states that we have received the application and reads memos from the Board of Health, the Planning Board and then the Design Review Board and their thoughts and recommendations and concerns about a new non-conformity. We also have received a full series of plans from Hutger, photos and a plot plan. Lauren what else do we have
- Lauren Haché states a memo from Conservation and reads the memo.
- Wayne Dennison asks the Applicant to present and asks if the design review board is correct that there is a new non-conformity created
- Thomas O'Neil states could I share my screen to explain, we don't believe we are creating a new non-conformity because the garage is already non-conforming. We would like to remove the front setback non-conformity. We would like to continue the landscaping on Marshall street and give back the front yard setback but the proposed new garage would be non-conforming in the side setback, but we don't believe we are adding
- Wayne Dennison states what was the front yard non-conformity
- Thomas McNeil states it is in the front setback
- Wayne Dennison states how far is it from the road
- Eric Pontiff, the home owner states with all due respect could we present the case and then answer questions
- Wayne Dennison states and who are you
- Eric Pontiff states the Applicant
- Wayne Dennison states I am going to proceed with what I asked
- Thomas McNeil continues, the existing non-conforming garage we would move it out of the front setback to actually better the neighborhood and shows the existing garage about four feet on the road, so we thought moving the garage back from existing about 75 feet back. We would like to reconstruct a new garage 75 feet back on the property



- Wayne Dennison states so you don't need a special permit for the house, only for the garage
- Thomas McNeil states correct, the new garage would be attached to the structure and the existing is detached
- Wayne Dennison states Jim are you still here
- Jim Wasielewski states yes, the issue is that the new garage changes the side setback, the house is outside the setbacks
- Thomas McNeil states the existing garage is 3'6" off the road/front setback and the proposed side setback would be reduced from 2'2" to 6'3", so there is an improvement in each case. We are also reducing the lot coverage that is non-conforming by 119 square feet. In addition the volume of the proposed structure is 133 cubic feet less than the existing
- Wayne Dennison states you mean 3'6" right
- Thomas McNeil states no 6'3"
- Wayne Dennison states it says right here 3'6"
- Thomas McNeil states I am sorry, in the submission the size of the garage and massing of the garage is to increase the setback
- Wayne Dennison states ok, I may be looking at the wrong plan, it's dated February 10 ,2021, is there an updated plan
- Kathleen Muncey states he's showing us a June 10, 2021 plan
- Thomas McNeil states we tried to offer clearer drawings and we made the decision to reduce the garage dimensions so it is not as non-conforming after the meeting with the Design Review Board
- Jim Wasielewski states I think it would be helpful to have the revised plot plan in front of us
- Eric Pontiff clarifies that we took some of the recommendations from the Design Review Board and those are the changes you see
- Wayne Dennison states perfect, that is great
- Emmett Sheehan states well, we like to see that ahead of the meeting
- Wayne Dennison states no, that is great that you took the DRB seriously and you have a new plan, excellent, we just need the plan in order to proceed
- Kathleen Muncey states did the Design Review Board see the new plan
- Thomas McNeil states no, not yet
- Jim Wasielewski states is there a revised certified site plan in the works
- Thomas McNeil states yes
- Wayne Dennison states do you think you can get that before July 22<sup>nd</sup>
- Thomas McNeil states I believe so
- Eric Pontiff states absolutely
- Wayne Dennison states we don't meet in August, so can you get back for July 22<sup>nd</sup>
- Thomas McNeil states I apologize
- Wayne Dennison states there is nothing to apologize for, we just don't have the plan to approve in front of us, but I would like to get the plan
- Emmett Sheehan states and maybe they can get it to the design review board before then and get their stamp of approval
- Kathleen Muncey states yes I bet they can and Mr. Chairman I don't think I've ever seen picking up a non-conforming structure, moving it back and attaching it to a structure and reconstructing it

- Wayne Dennison states but they can alter non-conformities
- Kathleen Muncey states I have just never seen this
- Wayne Dennison states well, maybe we should have Amy look at that too before the 22<sup>nd</sup>
- Kathleen Muncey states in theory it seems like it would work and seems like a good plan
- Wayne Dennison states are there any neighbors looking to weight in....I am going to move to continue this to July 22, 2021
- Emmett Sheehan second
- WD, KM, ES, PT, BG

**Motion: It was moved, seconded and unanimously voted continue the public hearing to July 22, 2021.**

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