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DUXBURY, MASS.

TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS

MEETING MINUTES

July 22, 2021 @ 7:30 p.m.

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

Other persons present at the hearing: Amy Kwesell, Town Counsel 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 Chapter 20 of the Acts of 2021 dated June 16, 2021, An Act of Extending Certain COVID-19 Measures Adopted During the State of Emergency regarding suspending certain provisions of the Open Meeting Law, , G.L. c. 30A, §18, 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 for information about Duxbury programming including streaming on Duxbury You Tube, to watch replays and Video on Demand.

ZBA Case #2021-06, Harlow Brook LLC (CONT'D): *The Board voted to continue the public hearing to September 23, 2021 at 7:30pm*

ZBA Case #2021-14, Erving, 6 Upland Road (CONT'D): *The Board voted to approve the special permit with conditions*

ZBA Case #2021-16, Pontiff, 184 Marshall Street (CONT'D): *The Board voted to approve the special permit.*

ZBA Case #2021-19, Palmisano, 40 Wadsworth Ln.: *The Board voted to continue the public hearing to October 14, 2021 at 7:30pm*

ZBA Case #2021-20, Duxbury Marketplace, LLC, 15, 19, 35 & 45 Depot St.: *The Board voted unanimously (5-0) to grant the special permit with conditions*

Administrative

2019-17, WB Builders, 1&25 Lincoln St.: *The Board deliberated with Town Counsel with regard to waivers*

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

BOARD OF APPEALS — MINUTES

Case No: 2021-14

Petitioner: Erving

Address: 6 Upland Road

Date: July 22, 2021 Time: 7:30 p.m.

(Continued from June 10, 2021)

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

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

Other persons present at the hearing: Amy Kwesell, Town Counsel & Lauren Haché,
Administrative Assistant

- Wayne Dennison re-opens the public hearing and states Lauren have we received any additional correspondence
- Lauren Haché states we did, we have received files from the building department, as Jim Wasielewski is not with us this evening, so he submit documentation and also a letter from Town Counsel, Amy Kwesell
- Wayne Dennison states alright, Amy is here this evening, so why don't we start with her
- Freeman Boynton Jr. states excuse me Mr. Chairman, I am going to opt out of this case and the rest of them on the agenda, with exception of the administrative matter
- Amy Kwesell states thank you Mr. Chairman, I put together a brief and I apologize that this came in so late, it required extensive research with the Town Clerk and Lauren. So, what we have here in your Bylaw 401.2 you have the standard non-conforming provision, stating any lawful structure that was in effect or in place when the zoning bylaw took place that is a legally pre-existing, non-forming structure. The next provision is 401.2.5 with more than one single dwelling on a single lot, you can issue a special permit, however it has to be pre-existing, non-conforming use. They have to show or prove that it is legally pre-existing use
- Emmett Sheehan states Amy, can I ask a question as we are going along
- Amy Kwesell state yes, sure
- Emmett Sheehan states so we have a home site wherever, with a second dwelling and it is conforming now but wants to get larger, can it do that by right
- Amy Kwesell states no, not by right, which brings me to where I am now, 401.4.4 which states there can be no more than one single family dwelling on one lot, which was put in the Bylaw in 2017, which states it is to clarify the bylaw. We do have 410.4 for Residential Compatibility District, where I read that as a use. So it starts with is the second dwelling a legal, pre-zoning Bylaw use. One single family dwelling per 40,000 sq. ft. I read that as a use regulation
- Kathleen Muncey states excuse me Amy, what makes it a dwelling

- Amy Kwezell states that the definition of dwelling unit states that it has to have living quarters for a single family, kitchen facilities, a stove plus either or both a refrigerator and sink not shared with any other unit or quarters
- Kathleen Muncey states so if the kitchen were removed on this particular expansion, then it's not a dwelling and they don't even need to be here
- Amy Kwezell states correct; there is a situation where it could be considered a guest house in the Bylaw, but it does not allow a kitchen
- Kathleen Muncey states but is the stove the determining factor
- Amy Kwezell states yes and continues that we then have if there is an original building permit allowing this second dwelling, then there can only be enforcement six years from the date of the notice in violation. After that we cannot enforce it. That doesn't mean it becomes legal. There is a big difference between a non-conforming use and a non-conforming structure. A non-conforming structure after ten years, will become legally a non-conforming structure
- Kathleen Muncey states even if it has a stove in it
- Amy Kwezell states no, because that is a use. That use does not afford a certain time to become lawful
- Emmett Sheehan states regardless of permitting
- Amy Kwezell states right, unless they have an original building permit; so even if there was a special permit granted, that does not qualify as an original building permit
- Emmett Sheehan states so in reality all of these sneaky apartment, after ten years become legal or we just can't enforce them
- Amy Kwezell states no, they are only legal if they have an original building permit. I have never seen a building permit allowing a second dwelling in Duxbury.
- Kathleen Muncey states so after the ten years, the only thing you can really do is make them take out the stove
- Amy Kwezell states correct, it has to not be a dwelling unit, because that is the use. So we also have to deal with use and only one dwelling unit per 40,000 sq. ft. of upland and none of the projects before you have 80,000 sq. ft. or upland, so the question becomes when did the project before you have the second dwelling and when did it become 40,000 sq. ft. in the Bylaw.
- Emmett Sheehan states when
- Amy Kwezell states so in 1954 the Zoning Bylaw states 30,000 sq. ft. in the RC district and amended to 40,000 sq. ft. So, with 6 Upland Road they are just shy of the 80,000 sq. ft. of upland, they have 79,400. They are looking to raze and rebuild and put into a new location
- Jessica Williams states that is not actually accurate. There is some shift, but it is very slight. We are moving inches
- Amy Kwezell States I am sorry
- Jessica Williams states I can share my screen with the plans and we have reviewed the Bylaws and have accepted that 401.2.5 we cannot prove, so the Home Owner will remove the stove and she uses this space primarily as guest quarters and proceed with

a pre-existing non-conforming structure with a little bit of an increase in area and continues to explain the project

- Wayne Dennison states can I ask you a question, you said towards and away the setback
- Jessica Williams states I apologize, we are decreasing area and increasing the rear setback slightly
- Amy Kwesell states that what I didn't understand, you are increasing the non-conformity in the rear
- Jessica Williams states yes slightly, aside from volume, we are becoming less non-conforming by inches
- Wayne Dennison states so Jessica, can you put up the plan
- Jessica Williams shares her screen
- Amy Kwesell states so her removing the stove, everything changes
- Jessica Williams explains the plan
- Wayne Dennison asks if there are any other members in the audience that would like to weigh in
- Amy Kwesell states so now this falls under 401.2.4 which allows for non-conforming dwellings to be altered ...one subsection to another subsection
- Wayne Dennison states what are the date of these plans Jessica
- Jessica Williams states well, I have to send Lauren the plans without the stove
- Wayne Dennison states what are the date of the plans currently before the Board
- Jessica Williams states these are dated 1/14/2021
- Wayne Dennison states so if we were to vote to approve these plans without the stove, is that consistent with what the Applicants would like
- Jessica Williams states yes
- Emmett Sheehan states I don't have a problem with all of this, but it should be recorded somewhere that it can't have a stove
- Amy Kwesell states yes, the Board is able to put those conditions on the special permit i.e. no stove or that the area never become a dwelling unit
- Wayne Dennison states are there any other members of the public to comment
- Wayne Dennison states I am going to move to close the public hearing
- Emmett Sheehan seconds
- All in favor WD, KM, ES, PT, JB
- Wayne Dennison asks if the Board wants to have any discussion
- Kathleen Muncey states I think we have covered everything
- Wayne Dennison moves to approve the special permit on the condition that there be no stove and that it never become a dwelling unit
- Judith Barrett seconds
- All in favor WD, JB, KM, BG, ES

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

Moved by: WD

Seconded by: ES

Number in favor: 5

Number Opposed: 0

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

Moved by: WD

Seconded by: JB

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: July 22, 2021 Time: 7:30 p.m.

(Continued from June 10, 2021)

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

Members Voting: Wayne Dennison, Judith Barrett, Kathleen Muncey, Philip Thorn & Borys Gojnycz

Other persons present at the hearing: Amy Kwesell, Town Counsel & Lauren Haché, Administrative Assistant

- Wayne Dennison re-opens the public hearing and states we have an opinion from Town Counsel, but before we get too far into this, you have concluded that we can approve this because it has become less non-conforming
- Amy Kwesell states yes, this one was also difficult, but I did try to find some case law and didn't, so this is purely my opinion. By attaching a non-conforming garage to the structure, then it makes the entire structure non-conforming
- Wayne Dennison states ok, great thank you. Did we also receive some additional memos in support of this petition
- Lauren Haché states yes, that is correct and reads an email from Susan Maycock, 196 Marshall Street in full support.
- Wayne Dennison states ok, thank you, did we get anything else
- Lauren Haché states we did receive a revised plot plan dated June 28, 2021, new architectural plans dated June 30, 2021 and lastly, the Design Review Board was able to meet and review the revised plans and submit a supplemental memo.
- Wayne Dennison states and they are fully in favor
- Lauren Haché agrees
- Wayne Dennison states ok, why don't we hear from the Applicants
- Robert Galvin introduces himself and tells the Board that the Architects are here, as are the Applicants and describes the request being sought, while sharing the screen with the new plot plan
- Wayne Dennison states so what is the date of the revised plans
- Robert Galvin states June 30, 2021
- Wayne Dennison states is there anybody from the public that would like to weigh in here or does any member of the Board feel like they need more information from the applicant
- Borys Gojnycz states I would just like to complement the Architect on the design of this home and presentation is terrific

- Wayne Dennison states alright, I am going to move to close the public hearing
- Judith Barrett seconds
- All in favor WD, KM, JB, ES, PT, BG
- Wayne Dennison states does anyone want to discuss this, it seems we have an opinion from Town Counsel and we have a very desirable plan
- Judith Barrett states I am always happy to see garages move away from the front of homes
- Wayne Dennison states I am going to move to approve the special permit consistent with the June 30, 2021 plans
- Judith Barrett seconds
- WD, JB, KM, BG, PT

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

Moved by: WD

Seconded by: JB

Number in favor: 5

Number Opposed: 0

Motion: It was moved, seconded and unanimously voted approve the special permit consistent with the June 30, 2021 plans.

Moved by: WD

Seconded by: JB

Number in favor: 5

Number Opposed: 0

BOARD OF APPEALS — MINUTES

Case No: 2021-19

Petitioner: Jane Palmisano

Address: 40 Wadsworth Lane

Date: July 22, 2021 Time: 7:30 p.m.

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

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

Other persons present at the hearing: Amy Kwesell, Town Counsel & Lauren Haché, Administrative Assistant

- Wayne Dennison opens the public hearing and reads the public hearing notice and continues to read the case response memos from the various town boards
- Tristan Partain greets the Board and introduces himself as the Builder on this project, representing the Applicant and asks Lauren to share the screen and describes the project. Removing sections of the main roof to add dormers to it, not increasing the roof height. We will be removing a portion of the back of the house and then reading that space in the same footprint and adding a 320 square foot addition that will meet all of the setbacks in the rear of the house as well. We will be meeting all the setbacks, we have to replace the foundation where that 320 square foot is to be placed. We will not be increasing the volume in any of the non-conforming areas
- Wayne Dennison states ok, I know Town Counsel has provided some guidance with respect to this as well, so Amy why don't you weigh in
- Amy Kwesell states sure, here we have two single family dwellings. We started with 40,000 sq. ft. constructed in 1928, however in 1974, the abutting property at the time, number 34, received a special permit to construct on an undersized lot because the ZBA in 1974 felt that it was previously a legal buildable lot. There was a land swap and then in 1994 they were purchased together and in 2011 they were formally brought into one lot by a deed. Both of the structures, 34 and 40, are non-conforming with regard to dimensions. Thirty-four, which we are not discussing is very non-conforming with both setbacks. Number 40, which is looking to expand, has a front yard setback non-conformity. Even if they were conforming as to use, they don't enjoy that relief under 401.2 that provides that if it is only the lot, but both lot and structures are non-conforming on 55,000 sq. ft. lot. There is no question that they didn't meet that when these lots merged, at the very least that intensity requirement existed in 2003. So it appears that we have two dwellings on one lot with no protections unfortunately.
- Wayne Dennison states ok, in the opinion of Town Counsel, can we approve this request
- Amy Kwesell states no, you can't because it does not enjoy the benefit of 401.2.5 which allows you to issue a special permit for two dwellings on one lot
- Wayne Dennison states do members of the board have questions

- Emmett Sheehan states not questions, but I have had clients and neighbors to this property, where they assumed a long time ago when this place was put together, that it was never going to be a second home on the dwelling and they were shocked to see it is a second dwelling, full time home and one of the questions was they thought the lots were put together so that the more southerly home could expand. Those are some questions for people that couldn't be here tonight
- Wayne Dennison states does any other Board Member have questions or comments
- Kathleen Muncey states Mr. Chairman, excuse me, I have to recuse myself from this
- Wayne Dennison states ok, any member of the public like to weigh in
- Daniel O'Connor, 18 Wadsworth Lane, I support what Emmett had mentioned, I was of the understanding that when the two lots were combined, the southern-most lot purchased the other lot so that they could increase the southern-most dwelling on the lot and that the existing dwelling they are looking to expand were to stay the same. I would support that notion
- Tristan Partain states I am confused, we just want to raise the roof slightly to add dormers and work on an existing addition
- Emmett Sheehan states how much are you expanding on the whole place, how many square feet
- Tristan Partain states 322 square feet, the rest of it is existing
- Emmett Sheehan states right so 322 sq. ft.
- Tristan Partain states the 322 sq. ft. is in the setback and is conforming
- Emmett Sheehan states this is a tricky one, that's why we need all of this information
- Tristan Partain states there is no increase in coverage here
- Emmett Sheehan states well, because the first property took square footage, I want to learn more
- Tristan Partain states it's an increase in volume not coverage
- Emmett Sheehan states I get that, but when Town Counsel states you don't have a right to do this, we have to listen
- Tristan Partain states I get that, but I am confused as to why we don't have a right to do this
- Amy Kwesell states so unfortunately it's the use that is not allowed
- Emmett Sheehan states so what's the deal, someone can't be in there cooking on a stove, which is occurring right now
- Amy Kwesell states right, its two single family dwellings on one lot and it is not a lawful use, where I point to the Gentry case. The structure is lawful, built in 1928, it's the use that is not lawful
- Emmett Sheehan states you look at this house and there has to be a stove in there
- Amy Kwesell states oh there is, this is a unique case where you had two single family dwellings and the lots merged into one and they legally merged them by deed in 2011
- Emmett Sheehan states but you look at this beautiful house and say they aren't going to omit the stove
- Amy Kwesell states right, I know. So this isn't a guest house situation, like the last case
- Jessica Williams states may I ask a question, I am not in any way related to this project, I am just curious, I am trying to understand some of the language. If the structures were built lawfully with a building permit, they are considered a second dwelling regardless or at what point does a

structure become a second dwelling when the properties merge, if they were built as dwellings at the time they were built

- Amy Kwesell states they were built on two separate lots
- Jessica Williams states so when they merged one needed to remove a stove
- Amy Kwesell states you're not distinguishing between structures and uses
- Jessica Williams states but there were two lawful buildings, two lawful dwellings, and then when they merged they are still dwellings, so two dwellings on one property
- Amy Kwesell states correct, they don't have 80,000 square feet of upland
- Jessica Williams states but they are two dwellings
- Amy Kwesell states correct
- Emmett Sheehan states but they were merged for a reason; to gain rights for this other home
- Amy Kwesell states the merger is the problem, if you merge properties or un-merge properties and you create zoning issues, that's subject to enforcement
- Judith Barrett states it's kind of like infectious in validity
- Wayne Dennison states alright, are there members of the public looking to weigh in here...does the Applicant have anything further
- Wayne Dennison states I would make a motion to close the public hearing
- Judith Barrett seconds
- All in favor I Wayne, I Judi, I Emmett...
- Tristan Partain requests a continuation
- Wayne Dennison states I don't think we got enough votes to close the public hearing yet, so I guess we could
- Emmett Sheehan states that would be wise Tristan
- Tristan Partain states yes, I would like to continue
- Wayne Dennison states I would move to continue this to what date
- Judith Barrett states that would be September correct
- Lauren Haché states September 9th or in to October
- Emmett Sheehan states what is on September 9th
- Lauren Haché states we have various cases
- Wayne Dennison states I do think this particular application is problematic in various ways, why don't we move it to October to give the Applicant all of the opportunity
- Judith Barrett states they could also submit a legal memorandum to review by Town Counsel arguing why they are eligible for relief
- Wayne Dennison states right
- Judith Barrett states and I think that's appropriate
- Wayne Dennison states I think that would be the best way to proceed, so why don't we move to continue to October 14th, 2021 at 7:30pm
- Emmett Sheehan seconds
- Wayne Dennison states all in favor WD, ES, BG, PT, JB

Motion: It was moved, seconded and unanimously voted to continue the public hearing to October 14, 2021 at 7:30pm.

Moved by: WD

Seconded by: ES

Number in favor: 5

Number Opposed: 0

BOARD OF APPEALS — MINUTES

Case No: 2021-20

Petitioner: Duxbury Marketplace, LLC

Address: 15, 19, 35 & 45 Depot Street

Date: July 22, 2021 Time: 7:30 p.m.

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

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

Other persons present at the hearing: Amy Kwesell, Town Counsel & Lauren Haché, Administrative Assistant

- Wayne Dennison states Lauren could you read the public hearing notice
- Lauren Haché reads the public hearing notice
- Wayne Dennison states ok, we received an application with a number of plans, we received case response from the Design Review Board, the Board of Health, the Conservation Commission and the Planning Board. Lauren did we receive anything else
- Lauren Haché states that is everything
- Wayne Dennison states alright, why don't we hear from the Applicant
- Jessica Williams states thank you, I am here on behalf of my Client and working with Paul from Zebra Visuals, who took my vision and made something stunning.
- Wayne Dennison states Jessica, can I stop you right out of the gate, there are two existing signs now, are you proposing to replace those
- Jessica Williams states yes and we are proposing to add two signs at the entrance/exits that do not currently have signage. The reason behind this is that the entrances are a little bit confusing currently, there are three entrances and one exit
- Wayne Dennison states you think
- Jessica Williams continues so in order to clarify where the entrance is and which tenant is in which location
- Wayne Dennison states my question with the four signs is, do they each comply with the square footage requirements
- Jessica Williams states I will have Paul weigh in on that
- Paul Luszc introduces himself and confirms that each of the signs is 25 square feet and the setbacks and height all meet the zoning bylaw and there is one sign on each plot
- Wayne Dennison states are you lighting this
- Paul Luszc states yes, there are lights on the ground existing, we are not at Zebra Visuals installing lights so I am not aware what light fixtures that may be added
- Jessica Williams states the light fixtures that currently existing are what we would like to keep, lighted from the ground

- Wayne Dennison states does the Board have questions
- Wayne Dennison states what hours do you propose to light these signs
- Jessica Williams states the latest the tenants stores are open are 10pm
- Wayne Dennison states does the application request that the signs be lighted
- Jessica William states the lighting is not currently included in the application
- Wayne Dennison states ok, does the Board or Member of the Public have questions
- Wayne Dennison moves to close the public hearing
- Judith Barrett seconds
- All in favor WD, JB, KM, BG, PT
- Wayne Dennison states I will start the discussion, I think the signage is entirely appropriate and I do think the entrance and exits are confusing and would be agreeable to condition this approval on the removal of the existing signage but I do not believe there is a request to light this before and if they want to light this, they will have to come back
- Judith Barrett agrees, if it's not in the application, we can't arbitrarily expand the scope of the application on our own
- Philip Thorn states I would like to state that I agree with both Wayne and Judi, I think it's unfortunate that the lighting wasn't included because it sounds entirely appropriate.
- Wayne Dennison states so my intention is to approve on the condition of the removal of the existing signage and any further would have to come before the Board
- Philip Thorn states I agree
- Borys Gojnycz states did they say there is existing lighting
- Wayne Dennison states there is existing lighting with respect to the existing signage and lighting
- Jessica Williams starts to speak
- Wayne Dennison states I am sorry to do this, but we closed this case
- Wayne Dennison moves to approve the signage conditioned on two things, that they remove the existing signage on all parcels and second in the event they wish to light it, they will need to come back before the Board with a proposal on how it is going to be lit and during which hours
- Judith Barrett seconds
- All in favor WD, ES, JB, KM, BG, (PT)

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

Moved by: WD	Seconded by: JB
Number in favor: 5	Number Opposed: 0

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

Moved by: WD	Seconded by: JB
Number in favor: 5	Number Opposed: 0