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DUXBURY, MASS.

TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS

MEETING MINUTES

September 9, 2021 @ 7:30 p.m.

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

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 Chapter 20 of the Acts of 2021, this meeting will be conducted in person and, as a courtesy, via remote means in accordance with applicable law. Please note that while an option for remote attendance and/or participation is being provided as a courtesy to the public and board members, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast, unless required by law. 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 #2021-11, EJP Ice House LLC, Lot 7 Ice House Road-APPEAL (CONT'D): *The Board voted to continue the public hearing to October 28, 2021 at 7:30pm*

ZBA Case #2021-15, McKeag, 39 Shipyard Lane (CONT'D): *The Board voted to continue the public hearing to October 28, 2021 at 7:30pm*

ZBA Case #2021-18, Hadley, 57 Shipyard Lane (CONT'D): *The Board voted to unanimously (5-0) to grant the Special permit.*

ZBA Case #2021-21, EJP Ice House LLC, Lot 7 Ice House Road Variance: *The Board voted unanimously (5-0) to grant the Variance.*

ZBA Case #2021-22, Buckley, 55 Ocean Rd. North: *The Board to continue the public hearing to September 23, 2021 at 7:30pm.*

ZBA Case #2021-23, The Township Duxbury, 521 West Street: *The Board voted unanimously (5-0) to grant the Special Permit, with conditions.*

ZBA Case #2021-30, Duxbury Marketplace, LLC, 15, 19, 35 & 45 Depot St.: *The Board voted unanimously (5-0) to grant the Special Permit, with conditions.*

Administrative

Wayne Dennison makes a motion to approve the meeting minutes from May 27, 2021, Emmett Sheehan seconds (5-0).

Wayne Dennison makes a motion to approve the meeting minutes from June 10, 2021, Emmett Sheehan seconds (5-0).

Wayne Dennison makes a motion to approve the meeting minutes from June 24, 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: 2021-18

Petitioner: Warren and Dawn Hadley

Address: 57 Shipyard Lane

Date: September 9, 2021 Time: 7:30 p.m.

(Continued from July 8, 2021 and July 29, 2021)

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: Amy Kwesell, Town Counsel and Lauren Haché, Administrative Assistant

- Wayne Dennison re-opens the public hearing and states that this application had overwhelming neighborhood support, but that there was some discussion regarding the 3% lot coverage exception, Lauren did we receive anything else
- Lauren Haché states we received a revised plot plan dated September 7, 2021 and another revised plan today, September 9, 2021 and a letter from Sheila Lynch-Bettinon regarding the historical concerns, writing on behalf of herself and not the Historical Commission
- Wayne Dennison states this letter is stating that the efforts to restore the historical house have been exhausted and the desire to support this historic home. The Applicants have gone through the entire process with the Historical Commission and they are in a position that they can raze and rebuild it. The last thing I remember was that there was a question about the 3% rule and whether they were entitled to get the lot coverage they are requesting.
- Kathleen Muncey states Amy (Kwesell) has done some work on that
- Wayne Dennison states yes, Amy has done some work on that, the other issue that I have is that there is a new site plan in front of me
- Kathleen Muncey states that is most likely due to Jim Wasielewski, the Building Commissioner, requesting this
- Wayne Dennison states would someone on behalf of the applicant explain to me what the new site plan depicts and why we received it
- Chris Leamy with Duxbury Construction introduces himself and states the only difference with this plan as opposed to the previous plan is the more restrictive interpretation of the 3% rule. The original site plan showed the wider, more permissive interpretation to it.
- Wayne Dennison states ok, I am not sure I understand
- Chris Leamy states sure, so the main debate in the previous meeting was how to calculate the 3% rule. On the previous plan, we had used their existing coverage plus an additional 3%, so they were already over 15%
- Wayne Dennison states right

- Chris Leamy states now we are showing that same exact plan except listing what I believe Jim has chosen to interpret it as, meaning there is 15% of the lot, absolute, and you get the 3% difference on top of that; Not just on top of whatever you are coming with
- Wayne Dennison states ok
- Kathleen Muncey states so what are the coverage amounts now, what was it and what is it going to be
- Chris Leamy states I am going to share my screen and states the numbers have not changed, it's the same exact plan except where the line says the limit of coverage is this, previously it was a bigger number and now it's a smaller number. Just like the last plan, we are proposing 2,385 square feet
- Kathleen Muncey states and that's 18.03% correct
- Chris Leamy states that is correct
- Kathleen Muncey states where as the maximum amount with the 3% interpreted differently was 16.55%, so you're asking to increase to 18.03% beyond the 3%
- Chris Leamy states a slight difference, with the stricter interpretation, the limit on this lot would be 16.53% or 2,187.6 square feet
- Wayne Dennison states so Chris, we're talking about stricter interpretations and what not, but can we go back a little further than that, does the existing building exceed 15%
- Chris Leamy states yes, the existing building is 16.55%
- Wayne Dennison states so it's an existing non-conforming
- Kathleen Muncey states so it's a pre-existing, non-conforming that we are being asked to extend
- Chris Leamy states yes
- Wayne Dennison states alright, so Chris do you mind if I confer with Town Counsel for a moment
- Chris Leamy states sure, no problem
- Wayne Dennison states alright, Amy, this 3% rule has come up over and over again in various ways, but I am not even sure it applies here because we already have an existing non-conforming and if we have an existing non-conforming structure, my understanding, although it could be infirm, is that whether the proposed change is significant and whether if significant, whether it is detrimental to the neighborhood
- Amy Kwezell states correct, I agree, you have a pre-existing, non-conformity right now, which is they are over 15% right now, so you go away from 410 and go back to 401.2.4
- Wayne Dennison states so 410 is the 3% rule
- Amy Kwezell states right, the coverage, so, I think that the Board could recognize the 3% coverage rule as guidance or something, but in my opinion you are not held to that since this is a pre-existing, non-conforming structure that they are altering, so you are back to 401.2.4 and 40A section 6
- Wayne Dennison states alright, so under 40A Section 6
- Amy Kwezell states you can determine if it's more detrimental to the neighborhood; you have to look at what is being increased and by how much and that is all you look at
- Kathleen Muncey states and not more detrimental to the neighborhood
- Amy Kwezell states correct, you look to see if it's not more detrimental to the neighborhood
- Kathleen Muncey states Chris, do you have a sense this time that the coverage of surrounding house lots are in this vicinity
- Emmett Sheehan states the homeowner had a spreadsheet on that last meeting

- Warren Hadley shares his screen and shows the calculations based on the Assessors database that show in the range of 18-24% coverage
- Kathleen Muncey states there are a lot of houses over the coverage
- Wayne Dennison states so Lauren, was anyone complaining about this
- Warren Hadley states umm,
- Wayne Dennison laughs Lauren not Warren
- Lauren Haché states there was overwhelming support from the neighbors
- Emmett Sheehan states I think the only issue was with the Design Review Board
- Wayne Dennison states right, pertaining to coverage calculations but I think that they...
- Kathleen Muncey states and it's unfortunate that they can re-use the existing structure off site, but they did go to great lengths
- Wayne Dennison states my recollection is that there was a lot of support for this, the Design Review Board had concerns in terms of the application of what we call the 3% rule and we asked Town Counsel to look at that and my understanding is that Town Counsel has opined that given the fact that this was pre-existing, non-conforming that the 3% rule doesn't even apply here. We apply 40A section 6 (of Mass General Law). Alright, is there anybody else here that would like to weigh in with respect to this application. Alright, I am going to move to close the public hearing
- Kathleen Muncey seconds
- All in favor WD, KM, ES, PT, BG
- Wayne Dennison states ok, so for discussion, this obviously increases the level of non-conformity but I don't think that there is any good argument that it is more detrimental to the neighborhood than the existing non-conformity and I would move to approve the special permit
- Kathleen Muncey seconds
- All in favor WD, KM, ES, PT, BG

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

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

Motion: It was moved, seconded and unanimously voted grant the special permit as requested.

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

BOARD OF APPEALS — MINUTES

Case No: 2021-21

Petitioner: EJP Ice House LLC

Address: Lot 7 Ice House Road

Date: September 9, 2021 Time: 7:30 p.m.

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

Members Voting: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Philip Thorn, & Tanya Trevisan

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

- Wayne Dennison opens the public hearing and asks the Applicant to waive the reading of the public hearing
- Anthony Riley, the Agent for the Applicant, agrees
- Wayne Dennison states Lauren, what have we received for this case
- Lauren Haché states we have received a memo from the Board of Health stating we have an approved DSCP, the DRB has no objections for the Variance pertaining to the design of the proposed home, the Planning Boards memo defers judgement to the ZBA and the Conservation agent states they have no issues with the variance request. A letter from Abutter Marilyn Nalbach of 138 Elm Street states they are in opposition of the Variance and a letter of support from Abutter Michael Petronaci of 16 Ice House Road.
- Anthony Riley of Galvin and Galvin, P.C. presents the case, explaining that the APOD, Aquifer Protection Overlay District, was changed in 2002, thus encompassing most of Lot 7 Ice House Lane. The APOD requires 60,000 sq. ft. of upland, but that this subdivision had previous approval with 40,000 square feet lot size. All other requirements comply with this plan. The LLC purchased this lot believing it was a buildable lot, thus creating a financial hardship. Without a Variance, this would be a total loss. The Town zoning bylaw contemplates financial hardship and there is also some case law that exists out there referring to hardship of a previously approved buildable lot, not rendered unbuildable. This is residential and there is no risk to the neighborhood.
- Wayne Dennison states so this is fairly straight forward request to build a home on an appropriately sized lot, that complies with all the setback requirements but because the lot was subsequently drawn into the APOD district, you needed greater upland than the 40,000 sq. ft. and not you need 60,000 sq. ft.

- Anthony Riley agrees and states as you can see on the plan, the line of the APOD goes through a corner of the lot
- Wayne Dennison states so this property is uniquely located, there is a hardship
- Kathleen Muncey states is there a soil condition issue
- Anthony Riley states not that I am aware of
- Wayne Dennison asks the Board or Public if there is comment and asks Lauren who is sitting on this one
- Lauren Haché states this is a brand new case tonight, so everyone except Freeman
- Mike Shultz states I live two lots over, Lot 9 and I am in support of this variance and I feel that a home with neighbors would complete the neighborhood and it's an eyesore as it is right now
- Wayne Dennison states Lauren what was the ConComm's submission
- Lauren Haché states it meets all of their regulations
- Wayne Dennison states would anyone else like to weigh in on this
- Kathleen Muncey states so in addition to hardship, there is something unique about the lot shape or topography
- Amy Kwesell states I think it's the shape on the corner
- Emmett Sheehan states so there are a number of these places around the APOD since it has changed, this will start a precedence so we should keep that in mind
- Wayne Dennison states alright, is there anybody further that would like to weigh in on this application
- Borys Gojnycz asks are there services on the lot already put in with permits
- Anthony Riley states Town water
- Wayne Dennison states as far as I understand, this was an approved subdivision plan that didn't get built out before the APOD change
- Tanya Trevisan asks how the APOD is changed
- Emmett Sheehan states that the Town does this with a surveyor
- Tanya Trevisan states so is it an issue with septic
- Freeman Boynton Jr states it's 10,000 sq. ft. per bedroom
- Kathleen Muncey states how many other lots like this do you think Emmett
- Emmett Sheehan states I am not sure
- Wayne Dennison states anyone else to weigh in, alright I am going to move to close the public hearing
- Kathleen Muncey seconds
- All in favor WD, KM, PT, TT, BG
- Wayne Dennison states alright, let's have a little bit of discussion. In the entire time I have sat on this Board, I have never been in support of a Variance. This one I do support. This is a very unique circumstance. Every aspect of this lot is compliant irrespective of the APOD. It does seem like a hardship to me if you buy a house lot and can't build a house on it
- Kathleen Muncey states I agree with that and if it had not been in common ownership it would have not been buildable. It was assessed as a buildable lot
- Wayne Dennison states oh yes
- Emmett Sheehan states it's been taxed the whole time that way
- Wayne Dennison states yes, so I would like to grant this variance

- Kathleen Muncey agrees
- Philip Thorn states my concern is what sort of a floodgate are we opening here
- Kathleen Muncey states I think we would have heard about that
- Emmett Sheehan states they are out there
- Kathleen Muncey states in an approved subdivision
- Emmett Sheehan states no, single lots
- Kathleen Muncey states I wouldn't be inclined at all if it wasn't an approved subdivision to begin with, it makes it a bit unique
- Emmett Sheehan states individual lots
- Kathleen Muncey states but not in common ownership, that's also what makes this unique
- Wayne Dennison states Phil, your point is excellent and I do believe we have the capacity to look at these one by one and they must comply with State guidelines for a Variance and proving hardship. I just don't see us handing these things out like candy on Halloween. It really does appeal to me as an appropriate variance request
- Philip Thorn agrees, I just don't want to set a precedence
- Amy Kwesell states this is a unique, individual lot from a land use standpoint.
- Wayne Dennison states so Amy, is there anything here that stands out to you, if we were to grant a variance
- Amy Kwesell states no, not at all, the shape is the guiding factor, there is a hardship and because it is an approved subdivision
- Wayne Dennison states alright, I am going to move that we grant the variance as requested
- Kathleen Muncey states I am going to second
- All in favor WD, KM, PT, ES, TT

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

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

Motion: It was moved, seconded and unanimously voted grant the Variance for ZBA Case 2021-21.

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

BOARD OF APPEALS — MINUTES

Case No: 2021-22

Petitioner: Charles Buckley III

Address: 55 Ocean Road North

Date: September 9, 2021 Time: 7:30 p.m.

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

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

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

- Wayne Dennison opens the public hearing and reads the public hearing notice and states we received an application, plot plan and photos, a memo from the Health Agent indicating that the septic is tied to the Marshfield Plant, a memo from Planning Board to defer to ZBA, a memo from the Conservation Administrator Joe Grady indicating that Con. Comm. has jurisdiction and the Applicant will need to file a Notice of Intent and receive orders of conditions before moving forward with this project and I highly recommend that this review take place before the Zoning Board closes this hearing
- Kathleen Muncey states so it was review
- Freeman Boynton Jr. states it was reviewed but I think there are still outstanding issues
- Wayne Dennison states we have a memo from the Design Review Board indicating they made a few design recommendations pertaining to window styles. We received an email from Jim and Gail Duffy of Ocean Road North. 71, 46, 59 Ocean Road all support this project, an email from Marty and Maryellen Federici of 21 Hummock Lane are in support, an email from Jeff Deedi of 39 Ocean Rd. North and we support this fully, Tony Obey of 65 Ocean Rd. North is in full support, Brian and Allison Mackey of 71 Ocean Rd. North in support, Taren Leonard of 69 Ocean Rd. N in support and 63 Ocean Rd North in support, Sheila Spellman, Paul and Missy Leone of 60 Ocean Rd. North in favor. We have a set of plans
- Kathleen Muncey states are they the current plans
- Wayne Dennison states that is the big question, so let's hear from the Applicant, but two questions. First, why are we not waiting on Conservation Commission on this and have the plans changed
- Jessica Williams states so as for the Con Comm. the issue is strictly related to the desire of the homeowner to square off the deck and Con Comm. said you can't square off the deck, you have to keep the existing angles and continued the hearing. We do understand that Joe Grady will be sending a memo clarifying this, but he also wanted the architectural plans before they issue orders of conditions, so he continued
- Kathleen Muncey states when are you continued to

- Jessica Williams states September 21, 2021
- Wayne Dennison states can we continue this to October 28th and let Con Comm. do their thing
- Freeman Boynton Jr. states I think there was another issue Jessica
- Jessica Williams states the Site Engineer is handling this with Conservation and he mentioned that the only issue is to adjust the deck that is in the VE Zone and states Chuck Buckley is online
- Charles Buckley states sure, Jess I don't think any other issue was brought up by the Board, the main hold up was the deck
- Kathleen Muncey states so is the design going to change
- Jessica Williams states the only thing that is going to change and I have changed it on my architectural, is the site plan to indicate that adjustment
- Wayne Dennison states so here is my concern with this, there seems to be a lot of support for this project but in order to approve this project we have to site particular plans and we don't have the plans that the Con Comm. are requesting and approving, so I don't know how to move forward to approve this project
- Amy Kwesell states you also don't have an updated site plan it seems, so I don't know how you could
- Wayne Dennison states so it seems to me that we are 80% there, but we don't know have some elements and I think we should continue this to when we have the full details
- Jessica Williams states I understand, I am prepared but if I need to wait for the site plan through Con. Comm. so be it, I can wait
- Wayne Dennison states you have to keep in mind that this is a volunteer board and so when we get asked to rule on plans we haven't had a chance to see, it makes it a very difficult undertaking, so let's just wait for the site plan and let Con. Comm. work itself out and then we can consider this
- Emmett Sheehan states also, Joe Grady does not often ask us to wait like this
- Jessica Williams states I agree
- Wayne Dennison states what does the next meeting look like
- Lauren Haché states we have September 23rd with four cases
- Freeman Boynton Jr. states may I, so a portion of the house is in the velocity zone and Joe Grady mentioned that you cannot increase the number of stories within the velocity zone and you may have to take the second story and adjust and then the deck and the seawall easement
- Jessica Williams states ok, so we'll be prepared with a revised plot plan
- Kathleen Muncey states so maybe the 16th of October
- Jessica Williams states I would really prefer the earlier date and they are ready to build this, so I don't want to get into a delayed project
- Wayne Dennison states well Amy, what is the requirement for a decision after the close of the public hearing
- Amy Kwesell states you have 90 days
- Wayne Dennison states so while I hear what you are saying, this is a volunteer Board that has 90 days upon close of the public hearing to get these done
- Amy Kwesell states that drafts your own decision, you don't have staff
- Jessica Williams states I agree and it is valid, my wanting to save another week is at the end of this all
- Wayne Dennison states even after the permit decision there is 20 day appeal period

- Jessica Williams states that is why I would prefer the September date
- Wayne Dennison states alright, September 23rd
- Philip Thorn states his concern about Con. Comm. meeting only two days before we meet on September 23rd
- Freeman Boynton Jr. she has to have everything final in terms of plans for the Con. Comm.
- Wayne Dennison states alright, let's try to put this on for September 23rd and makes a motion
- Emmett Sheehan seconds
- All in favor WD, ES, KM, PT, TT, FB, BG

Motion: It was moved, seconded and unanimously voted continue the public hearing to September 23, 2021 at 7:30pm.

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

BOARD OF APPEALS — MINUTES

Case No: 2021-23

Petitioner: The Township Duxbury

Address: 521 West Street

Date: September 9, 2021 Time: 7:30 p.m.

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

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

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

- Wayne Dennison opens the public hearing and reads the public hearing notice and states we have received an application, a site plan, some photographs and drawings of the proposed sign. The Board of Health has no issues, the Planning Board deferred judgement to us, Lauren is there anything else
- Lauren Haché states we received a memo from the Design Review Board dated September 7, 2021 in full support of the proposed signs
- Wayne Dennison states who is here for the signs
- Paul Luszc states I am here on behalf of the Township, I am the owner of Zebra Visuals, the sign company, essentially, we are here because all free standing signs have to come before the ZBA, whether they are replacement signs or new signs, per the Building Inspector.
- Wayne Dennison states well, because of the proposal to illuminate as well
- Paul Luszc states so there are two signs existing now and we are planning to replace them with the same, equal size, the main larger sign exactly the same location and the other one a few feet away, moved back a bit so it is not blocking the mailboxes which is currently does. The larger sign is currently illuminated now and we plan to replace those lights. The smaller one is not illuminated now, but we are proposing to illuminate that now. If you are familiar with the property, there is a separate entrance for units 1-5, so the purpose of this sign is to keep you on track, if you aren't familiar with it, is to let the driver know this entrance is for units 1-5 only and the next entrance is for the rest of the units. The lights on both signs is to convey the same benefit for after dark. All of the lights on the property are for safety
- Wayne Dennison states is there a special permit for the previous sign
- Lauren Haché states the original special permit for the planned development does show the larger sign on the plan, but Jim and I did not see any language pertaining to illumination
- Wayne Dennison states what time do you propose to light the signs
- Paul Luszc states they would come on at dusk and stay on til dawn, just like the lighting in the parking lots. And just by the way, we are not talking about very bright illumination, I think 500 lumens for the whole things. It's just enough to see which sign to use

- Kathleen Muncey states at night
- Freeman Boynton Jr. states it probably makes it safer
- Kathleen Muncey agrees and states this isn't like a business lighting itself up, this is a residence
- Freeman Boynton Jr. states I don't see the dimensions for the signs and a site plan
- Emmett Sheehan states yes, what are all these pictures
- Paul Luszc states oh, that was in the requirements, the surrounding area
- Wayne Dennison states alright, so we know the size of the new sign is 54 x 36, so that is compliant, how high off the ground
- Paul Luszc states 30 inches, which is required
- Wayne Dennison states it looks like they are just replacing the existing signs
- Freeman Boynton Jr. states can we condition that it is
- Amy Kwezell states Mr. Chairman, if it's not 30 inches off the ground, they will need a variance and under 601.9 illumination, it states that lighted only during hours of operation, so I think that we need to clarify that in the decision, that it is residential and not a business
- Wayne Dennison states yes, that was my concern, it's hard to determine the operation of a residence
- Wayne Dennison states alright, so we will have to condition this with the height requirements, it looks like you already do have that done and then the hours of operation, I don't know, does the Board have any comments
- Emmett Sheehan states it is really dark out there
- Kathleen Muncey states I agree
- Emmett Sheehan states it would help the fire department as well I imagine
- Wayne Dennison states is there anyone else looking to weigh in. I am going to move to close the public hearing.
- Emmett Sheehan second
- All in favor WD, KM, ES, PT, TT
- Wayne Dennison states this seems entirely appropriate
- Philip Thorn states do other residential condominium developments in town have lighted signs
- Kathleen Muncey states yes, I suppose they do
- Freeman Boynton Jr states yes
- Kathleen Muncey states so are all signs coming here, we will be seeing a lot more signs
- Wayne Dennison states Jim has made it pretty clear to me that all free standing signs are coming here
- Wayne Dennison states I am going to move to approve the special permit subject to the condition that it complies with all area and height requirements and that we permit it to be lit at no greater than 500 lumens from dusk to dawn
- Philip Thorn seconds
- All in favor WD, PT, KM, ES, FB

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

Moved by: WD

Seconded by: PT

Number in favor: 5

Number Opposed: 0

BOARD OF APPEALS — MINUTES

Case No: 2021-30

Petitioner: Duxbury Marketplace, LLC

Address: 15, 19, 35 and 45 Depot Street

Date: September 9, 2021 Time: 7:30 p.m.

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

Members Voting: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Tanya Trevisan & Philip Thorn

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

- Wayne Dennison opens the public hearing and reads the public hearing notice and states we have an application, we have some illumination materials, the Planning Board voted to defer judgement to us
- Lauren Haché states the Board of Health has no issues
- Emmett Sheehan states are they just asking for lights or signs
- Wayne Dennison states no, we approved the new signs before the summer and now they are just asking to light them up
- Wayne Dennison continues, I have one questions, what time do the lights go off
- Paul Luszc states I am with Zebra Visuals, states they will go on at dusk and off when the stores close, which is no later than 11pm
- Wayne Dennison states alright, which stores are open until 11pm
- Paul Luszc states I do not know
- The Board Members all answer Tsang's
- Paul Luszc states the reason we had to come back for this was due to an administrative error that kept it out of the original application
- Wayne Dennison states is the existing signage illuminate now
- Jessica Williams states yes, it is
- Emmett Sheehan states the lights from the gas station over shadow it
- Philip Thorn states the lights from the senior center cast over on it
- Laughing ensues
- Tanya Trevisan states did the Design Review Board weigh in at all
- Wayne Dennison states I believe they did with the original application
- Wayne Dennison states how bright are these lights
- Paul Luszc states well, know you will truly know how dim the West Street lights are, these are 3,500 lumens
- Wayne Dennison states seven times as much

- Paul Luszc states this is a pretty standard illumination and there are shrouds that cover the lights so that only the signs are lit
- Emmett Sheehan states the data sheets says 4,500
- Paul Luszc states I am looking at 3,580 with light loss factor
- Wayne Dennison states that is going to be lit up like a Christmas tree
- Kathleen Muncey states the Brother's sign, what is that
- Philip Thorn states the Bylaw doesn't refer to lumens, it states non-exposed white lights of reasonable intensity, and I would be hesitant to approve a permit that in any way shows the amount of lumens allowed. I would stick with the Bylaw and stick with reasonable intensity
- Emmett Sheehan states right, they can switch out the bulbs if someone complains
- Amy Kwesell states I think this Board needs to determine what is reasonable
- Wayne Dennison states lumens is extremely difficult to determine. This looks bright to me
- Jessica Williams states would it be possible to condition the lighting
- Wayne Dennison states well, yes
- Emmett Sheehan states I have faith in the owner of the complex to do the right thing
- Wayne Dennison states I actually like Phil's suggestion that the lighting be conditioned as reasonable intensity and that they are lit no later than the latest closing time of any business within the shops. So do we need all of the signs illuminated until 11pm
- Jessica Williams states well, it is helpful for safety with entering and exiting, which is challenging
- Philip Thorn states I too think that we should not put a timed condition on this, if cracker jacks re-opens or Tsangs moves
- Wayne Dennison states no, no later than the closing of the last store
- Amy Kwesell states so, dark sky compliant, the average is 3,000, so they are right there
- Wayne Dennison states alright, so they are compliant with the Bylaw; I move to close the public hearing
- Kathleen Muncey seconds
- All in favor WD, KM, ES, TT, BG, PT
- Wayne Dennison moves to approve the special permit subject to the conditions that the lighting only be provided from dusk until the latest closing time of the businesses in the complex and that it otherwise fully complies with the Bylaw regulations with respect to lighting
- Emmett Sheehan seconds
- All in favor WD, KM, ES, PT, TT (BG)

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

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

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

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