



TOWN OF DUXBURY
BOARD OF APPEALS

TOWN CLERK
2022 JAN 18 AM 9:59
DUXBURY, MASS.

DUXBURY BOARD OF APPEALS
MEETING MINUTES
November 18, 2021 @ 7:30 p.m.

ATTENDANCE: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton Jr., 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 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 #2021-27, Krugger, 449 Washington Street (CONT'D): *The Board voted unanimously (5-0) to approve the special permit as requested.*

ZBA Case #2021-34, Upham, 125 Abrams Hill: *The Board voted to continue the public hearing to December 9, 2021 at 7:30pm.*

ZBA Case #2021-35, Tremblay, 2 Barn Swallow Lane: *The Board voted 4-1 to grant the special permit, with conditions.*

Administrative:

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

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

BOARD OF APPEALS MINUTES

Case No: 2021-27

Petitioner: Richard Krugger

Address: 449 Washington Street

Date: November 18, 2021 Time: 7:30 p.m.

(Continued from October 14, 2021)

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

Members Voting: Wayne Dennison, Kathleen Muncey, Freeman Boynton Jr., Philip Thorn & 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 the Board sent the Applicant home with homework the last time we were here with respect to redesigning a more workable parking lot, as well as some elevations on the plan relative to the buildings proposed height. So, Paul will you start with those
- Paul Brogna with Seacoast Engineering, the Agent for the Applicant. We revised the plan, dated November 9, 2021. Briefly, we have addressed each open items consisting of drainage, garage issue, parking reconfiguration and building height. I met with Mr. Wasielewski with regard to some of these items after the last meeting. We basically revised the plan to show the building height and calculated the height – existing 22 feet and the new proposed height will be 26.14 feet. Next item, the Town came out and repainted the crosswalk, so we changed the existing conditions plans. We moved the parking spaces back and labeled the corner spot as no parking to open up the intersection a little bit better. We moved the existing garage from the left rear corner and stuck it in the right rear corner, proposing to rebuild this with the same height and dimensions as the existing garage. By moving the garage over and reconfiguring the spaces, we now are proposing six spaces as opposed to the six we were proposing last meeting. There will be four spots in the back and three on the side.
- Wayne Dennison states how would one get out of the parking spot next to the garage
- Paul Brogna states this is the most challenging space, but a three point turn will be needed and most this spot will be filled by the hairdressers that are working there for the day
- Freeman Boynton Jr. states do you have a handicapped space Paul
- Paul Brogna states we are not required by Law to have one, there is one in front of the post office and we do have a handicapped ramp in the rear of the

building. Since we don't have fifteen spaces, we aren't required to have one by code. The last item about possibly paving the parking lot. The existing site coverage is 35.9% and we are proposing to reduce it to 31.6% coverage. There is 3,151 square feet of surface already and this would increase this coverage and put us over 75% and NB1 district caps it at 50%.

- Freeman Boynton Jr. states what about pervious asphalt
- Paul Brogna states that again, this would put us over the coverage
- Freeman Boynton Jr. states how tall is the wall on the right hand side Paul
- Paul Brogna states the railing is right here and point to the plan. Those are the major items we were asked to address
- Freeman Boynton Jr. states have the neighbors been made aware of the changes
- Paul Brogna states I haven't spoken with anyone, but the drainage issues in the back with the rain garden extension
- Freeman Boynton Jr. states has Mr. Kent with Bayside been made aware of this change with the garage
- Paul Brogna states I haven't spoken with him
- Wayne Dennison states well, I do believe we suggested they move it there
- Kathleen Muncey agrees, we did
- Richard Krugger, the property owner states Deb Keller is online here and she is actually working on both projects
- Deb Keller, Merrill Engineers states I did provide these plans to JR and he has no issues with this project
- Wayne Dennison states thank you that was helpful. Does the Board have further questions for the Applicant? Does anyone in the public have comments?
- Wayne Dennison states is there anyone remotely looking to speak
- Borys Gojnycz states is there anything pertaining to the sign
- Wayne Dennison states well, there is a sign on the building, but ...
- Paul Brogna state the sign will be updated but comply with the Bylaw
- Wayne Dennison states great, I am going to move to close the public hearing
- Philip Thorn seconds
- All in favor WD, PT, KM, FB and BG
- Wayne Dennison states okay, I guess I will start the discussion. This is a project where we have a very thoughtful application where the Applicant spent time and effort and money to be responsive to the Boards suggestions. I do feel the parking is a little difficult, I believe they made the best of a difficult situation. I would be inclined to approve the special permit consistent with the most recent plan
- Freeman Boynton Jr. states I concur, I think they did a great job also
- Wayne Dennison moves to approve the special permit as requested consistent with the most recent plan
- Kathleen Muncey seconds
- All in favor WD, KM, PT, FB, BG

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

Moved by: WD

Seconded by: PT

Number in favor: 5

Number opposed: 0

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

Moved by: WD

Seconded by: KM

Number in favor: 5

Number opposed: 0

BOARD OF APPEALS MINUTES

Case No: 2021-34

Petitioner: Nowell Upham

Address: 125 Abrams Hill

Date: November 18, 2021 Time: 7:30 p.m.

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

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

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

- Wayne Dennison states for this next matter we have five members here tonight and one of them, Mr. Boynton, has recused himself from this case, so moving forward with this case tonight we only have four Members voting, in which case would require a full 4-0 vote. Would the Applicant like to proceed?
- Nowell Upham states I am not sure how to answer this question, but I may roll the dice
- Wayne Dennison states well, I have reviewed this case and there are some questions that came up and I think you may fair better with a full Board
- Nowell Upham states then lets wait for a full board
- Wayne Dennison states lets continue this hearing to Decemebr 9, 2021
- Philip Thorn seconds
- All in favor WD, KM, PT, BG

Motion: It was moved, seconded and unanimously voted to continue the public hearing to December 9, 2021 at 7:30 p.m.

Moved by: WD

Seconded by: PT

Number in favor: 4

Number opposed: 0

BOARD OF APPEALS MINUTES

Case No: 2021-35

Petitioner: Jane and Michael Tremblay

Address: 2 Barn Swallow Lane

Date: November 18, 2021 Time: 7:30 p.m.

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

Members Voting: Wayne Dennison, Kathleen Muncey, Freeman Boynton Jr., 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 reads the public hearing notice, the case response memos from the Board of Health, Planning Board and the Design Review Board. So, let's hear from the Applicants, who initially came before us with a previous application for a Bed and Breakfast and there seemed to be respect for the Applicants but opposition among the neighbors for the Bed and Breakfast. You may proceed in which ever way you may like, but has there been any conversations with your neighbors with respect to this new proposal
- Michael Tremblay states we have not had any communications with our neighbors either before or after the previous application. We are basically trying to get this available to rent long term and we believe based on the comment in made at the previous Board meeting, that this apartment should be grand fathered in as an accessory apartment and that is all we are seeking tonight
- Wayne Dennison states I know we had extensive testimony with respect to the previous application
- Freeman Boynton Jr. states Shawn Dahlen lived there with most of his children while he was building his house out back
- Wayne Dennison states ok
- Kathleen Muncey states and it meets all of the dimensional requirements
- James Wasielewski states yes
- Wayne Dennison states so...
- Michael Tremblay states I would be happy to give you a virtual tour of the apartment as well
- Wayne Dennison states that is great, but the photos are great and really well done. So the question that is before us is a question raised by the planning board is a restriction that states you won't rent the apartment for less than thirty days
- Michael Tremblay states well, if that's the requirement than we are certainly agreeable to that, it is nothing we had planned on doing anyway
- Freeman Boynton Jr. states so cut off at thirty days

- Wayne Dennison states well that is the question that was raised with Town Counsel. Short-term rentals aren't an accessory use under Massachusetts Law.
- Michael Tremblay states well what are short term rentals under Massachusetts Law
- Wayne Dennison states the question that was asked in the court was whether a short-term rental was an accessory use; the question that was asked of Town Counsel was whether we could condition this that required no rentals less than thirty days. Town Counsel indicated that we could put that condition on the special permit and this seems to be consistent with what the Planning Board was asking. If you folks are agreeable with this, I think I would personally be supportive of this
- Michael Tremblay states that's fine, that's fine
- Wayne Dennison states are there any members of the public looking to weigh in on this, Borys do you have any questions
- Borys Gojnycz states I am curious about the bed and breakfast a number of years ago and I don't recall limitations, why now with the 30 days
- Wayne Dennison states I can only answer to the best of my recollection of this, but the other issue is if you have a zoning Bylaw that does not authorize a particular use, then you can't do it. If he Applicants are.
- Michael Tremblay states I have a questions about all of the other air b&b and VRBO short term rentals in town aren't being regulated, then why regulate me
- Wayne Dennison states well, they are being regulated and they are attempting to get these regulated.
- Michael Tremblay states I just want an apartment, so why regulate me and who is going to come in here and say you have been here too long etc.
- Wayne Dennison states well, I would be hard pressed to presume someone is going to be looking over your shoulder and regulate unless you start advertising on a website and you expressed a desire to do long term rentals anyways but the state of play as it is right now is that you are not supposed to do short term rentals in this town
- Michael Tremblay states that is fine. Okay, thank you
- Philip Thorn states I think we ought to leave the 30-day language out entirely. The Bylaw doesn't state 30 day, 45 days or 10 days. I don't believe it is up to us to define us what a short-term rental is. The Planning Board states the accessory apartment is to be used as a dwelling and not short-term vacation rental. Why not leave it at that and not include the 30-day language. If town meeting chooses to define a short-term rental is in the future then so be it.
- Kathleen Muncey states I would leave it out all together, let them be treated the same way anyone else in town has been treated but I would want a restriction that it could not become a condominium. I think the Bylaw speaks to that in particular. You treat it like any other accessory apartment and if the Town limits short term rentals, let them decide that
- Wayne Dennison states they are limited in town already, Jim?

- Jim Wasielewski states based on the interpretation from Town Counsel, anything less than 30 days is considered transient in nature. The accessory apartment is typically more than 30 days. As a zoning enforcement officer, I will receive a complaint and then I can inspect the situation. With a condition in place, I would most likely keep a log of tenants to verify length of stay
- Kathleen Muncey states so you would do that anyways, with or without a condition
- James Wasielewski states well without the condition the zoning Bylaw doesn't give me that authority.
- Wayne Dennison states if they advertise the apartment on Air B&B tomorrow, you can go up there and enforce
- Jim Wasielewski states well, it is suggested by Town Counsel that the ZBA can set the 30 day limit to help define the non-transient nature
- Michael Tremblay states well, we can't advertise on Air B&B at this point, moving forward with that, Massachusetts states that Air B&B must notify all abutters and we already know that the Abutters do not want this. So, we have no intention of doing this.
- Freeman Boynton Jr. states can you list on air b&b for 30 day rental
- Wayne Dennison states Judi you just joined in, what do you think?
- Judith Barrett states are you asking about the limitation that the Planning Board suggested
- Wayne Dennison states yes
- Judith Barrett states so, I think the only concern that I have is how are we going to define a short-term rental. I apologize for joining late, you may have already suggested this
- Wayne Dennison states we are still at it with this, so why don't you make your suggestion
- Judith Barrett states well the Commonwealth of Massachusetts has developed a definition for purposes of the short-term rental tax, so you might want to revert to that for purposes of any other definition. That is a readily available definition.
- Wayne Dennison states how long is it, how many days
- Judith Barrett states I will look this up
- Kathleen Muncey states Jim, what do they do out at the beach
- James Wasielewski states they typically rent their whole house, so there is nothing that mentions that in the Bylaw because it is not considered an apartment
- Michael Tremblay states this is not completely true, I have found many one room or an auxiliary apartment rentals on the beach in Duxbury.
- Kathleen Muncey states so when it's a house as a whole, you can't restrict?
- Jim Wasielewski states not that I know of
- Judith Barrett states I am unable to find this as quickly as I had hoped, but one of the issues to keep in mind is that it is always owner occupied
- Michael Tremblay states we live here, it is always owner occupied

- Judith Barrett states I am trying to speak. Owner occupancy really has an impact with neighbor issues, we should definitely keep that in mind
- Judith Barrett states a short-term rental is an occupied property that is not a hotel, lodging house or bed and breakfast establishment where at least one room or unit is rented out by an operator for use of advance reservations. A short-term rental includes an apartment, house, cottage or condominium. It does not include tenancies at will or month-to-month leases. It also does not include time-share properties or bed and breakfast homes. It actually doesn't define a number of days Mr. Chairman
- Wayne Dennison states this was very helpful and raises an issue that hasn't been fully regulated in this town and will ultimately need to be.
- Judith Barrett states well to be fair, the Commonwealth definition relates to a tax system, which was developed only in the last 18 months
- Michael Tremblay states I don't know how this applies to us
- Judith Barrett states we're looking for a definition and Planning doesn't have one
- Wayne Dennison states is there anyone else that would like to weigh in on this
- Jim Wasielewski states I would like to just state for further clarification that in section 410.6 item number 2 subsection E, it states that it needs to be owner occupied in the main unit or the house.
- Wayne Dennison states alright, ok.
- Judith Barrett states that is a good point Jim, thank you
- Jim Wasielewski states so, you don't need to condition that, it is already part of the zoning Bylaw.
- Freeman Boynton Jr. states I am concerned for the neighbors who didn't want the air b&b and if they call and complain to Jim, he will need something to stand by.
- Wayne Dennison states that is why we had Town Counsel weigh in with 30 days
- Judith Barrett states I agree with that, that is reasonable
- Michael Tremblay states I also think that this apartment has been in existence since the 70's at least
- Jim Wasielewski states this same scenario has come up, just because you purchase it that way doesn't mean it was an approved and permitted accessory apartment.
- Michael Tremblay states I think there was a letter in the registry that the previous owners went before the ZBA and were allowed to keep an oven in. Our realtor looked into all of this before we bought the house
- Judith Barrett states that documentation is not in this record, you have to provide that
- Jim Wasielewski states I apology I don't recall that
- Judith Barrett states well we don't want to discourage this, but we are obligated to protect the neighborhoods and an obligation to provide housing diversity
- Wayne Dennison moves to close the public hearing
- Freeman Boynton Jr. seconds

- All in favor WD, KM, BG, PT, FB
- Wayne Dennison states Borys are you still with us
- Borys Gojnycz states I am here
- Wayne Dennison states any discussion
- Philip Thorn states I just want to state again that I am against the 30 day limit on there
- Freeman Boynton Jr. states what don't you like about the 30 day
- Philip Thorn states the Bylaw doesn't specify
- Kathleen Muncey states if something changes in town, they can come back and amend the special permit
- Wayne Dennison states my inclination would be to move to approve the special permit conditioned on no conversion to condominium and no short-term rentals less than 30 days. Is there a second
- Kathleen Muncey seconds
- All in favor WD, KM, FB, BG
- Phil Thorn Nay and to clarify I am against the 30 day limitation, not the accessory apartment

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

Moved by: WD

Seconded by: FB

Number in favor: 5

Number opposed: 0

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

Moved by: WD

Seconded by: KM

Number in favor: 4

Number opposed: 1