



TOWN CLERK
2018 JUL 30 AM 11:15
DUXBURY, MASS.

TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS

MEETING MINUTES

May 10, 2018 @ 7:30 p.m.

ATTENDANCE: Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan & Dimitri Theodossiou

CALL TO ORDER: Judith Barrett called the meeting to order.

- **ZBA Case #2018-06 Sanmarco, 48 Grand View Ave:** *The Board moved to approve the Special Permit. All in favor (5-0).*
- **ZBA Case #2018-05 Hebert, Duxbury Animal Hospital, 103 Depot St.:** *The Board & the Applicant agreed to continue the hearing until June 14, 2018.*

ADMINISTRATIVE:

- **2014-25 Webster Point Village:** *The Board agreed to continue the hearing from May 22, 2018 to June 14, 2018.*
- **ZBA Case #2010-20, Municipal Bay LLC (formerly Bay Communciations/T-Mobile), 421 Elm Street, Cell Tower:** *The Board granted an extension of the special permit for 6 months, to November decision.*

Emmett Sheehan makes a motion to close the public hearing for 48 Grand View Avenue. Judith Barrett seconds. All in favor (5-0).

Emmett Sheehan makes a motion to approve the special permit for 48 Grand View Avenue. Kathleen Muncey seconds. All in favor (5-0).

Dimitri Theodossiou makes a motion to close the public hearing for 103 Depot Street. Emmett Sheehan seconds. All in favor (5-0).

The Board motions to continue the public hearing for Webster Point Village until June 14, 2018. All in favor (5-0).

The Board motions to extend the special permit for #2010-20 from May 24, 2018 to November 24, 2018. All in favor (5-0).

BOARD OF APPEALS — MINUTES

Applicant: Mark & Elizabeth Sanmarco
(Paul Brogna, Agent)
Property Address: 48 Grand View Avenue
Case No: 2018-06
Date: May 10, 2018 Time: 7:30 p.m.

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, May 10, 2018 at 7:30 p.m. to consider the application of Mark and Elizabeth Sanmarco for a Special Permit under Article(s) 400 and 900, Section(s) 404.6, 404.7, 404.8, 404.9, 404.20 and 906.2 of the Duxbury Protective Bylaw. The property is located at 48 Grand View Avenue, Parcel No. 083-955-005 of the Duxbury Assessors Map, consisting of 67,953 S.F. in the Residential Compatibility & Wetlands Protection Overlay Districts and owned by Mark and Elizabeth Sanmarco. The Applicants propose to construct a new pier. A Special Permit is required.

Members present: Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan & Dimitri Theodossiou

Members Voting: Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan & Dimitri Theodossiou

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

- Judith Barrett, Chair Pro Tem, opens the hearing and reads the public hearing notice into record, stating it's for a special permit that has lapsed.
- Ms. Barrett cites and reads, some in part, the correspondence received: an application, building plans, Order of Conditions from Conservation Commission, Board of Health Memo, Conservation Commission Memo, Planning Board Memo and the Design Review Board Memo. Ms. Barrett invites the Applicant's Agent, Paul Brogna, to present.
- Paul Brogna of Seacoast Engineering identifies himself and his firm as Agent to the Applicants, the Sanmarcos. Mr. Brogna describes the pier application, stating it is essentially the same as the one approved by a special permit in 2015 that lapsed. Mr. Brogna states the pier dimensions and states that it is smaller than the usual and in compliance with the DEP and other board regulations. He cites the bylaw sections in the WPOD that are applicable to the application.
- Mr. Brogna states that the planned float is 2 ½' above the salt line and will float at low tide. He states that they've covered and complied with 906.2 of the bylaw as well and that the gangway and float will be stored in the off season, off site. Mr. Brogna proceeds to hand out photographs to the members of the Board and describes each, summarizing his presentation.
- Judith Barrett asks the Board if there are any questions.
- Freeman Boynton, Jr. asks if the plans are the exact same as the old one?
- Mr. Brogna confirms that it is.
- Judith Barrett asks if there are any questions. No.
- Emmett Sheehan makes a motion to close the public hearing.
- Judith Barrett seconds.
- All in favor (5-0).
- Emmett Sheehan makes a motion to approve the special permit as submitted.
- Kathleen Muncey seconds.
- All in favor (5-0).

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

Moved by: ES

Seconded by: JB

Number in favor: 5

Number opposed: 0

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

Moved by: ES

Seconded by: KM

Number in favor: 5

Number opposed: 0

BOARD OF APPEALS — MINUTES

Case No: 2018-05

Petitioner: Daniel Hebert

(Agent, Cavanaro Consulting)

Duxbury Animal Hospital

Address: 103 Depot Street

Case No: 2018-05

Date: May 10, 2018 Time: 7:30 p.m.

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, May 10, 2018 at 7:30 p.m. to consider the application of Daniel Hebert for a Special Permit under Article(s) 400 and 900, Section(s) 401.2 (3), 410.3 (6), and 906.2 of the Duxbury Protective Bylaw. The property is located at 103 Depot Street, Parcel No. 190-600-122 of the Duxbury Assessors Map, consisting of 0.95 acres in the Residential Compatibility District and owned by Daniel Hebert. The Applicant proposes to change the use of the pre-existing non-conforming dwelling from residential with a home occupation to a Veterinary Hospital use *only*. A Special Permit is required.

Members present: Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan & Dimitri Theodossiou

Members Voting: Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan & Dimitri Theodossiou

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

- Kathleen Muncey reads the public hearing notice into record.
- Judith Barrett, Chair Pro Tem, explains the order of events of the meeting.
- Judith Barrett cites and reads, some in part, the correspondence received: an application, renovation plans, a site plan, Board of Health Memo, Conservation Commission, Design Review Board Memo, email from Caroline Rees of Cavanaro Consulting dated May 1, 2018, Zoning memo and 2 affidavits. Ms. Barrett states she will go back to those docs if necessary, but for now know they are available if anyone wants to see/read them. Ms. Barrett goes on to read the Planning Board Memo, summarizing its contents.
- Nick Shapiro of Phillips & Angly identifies himself as representing the Applicant and states they are there seeking 2 special permits, the continued use and the extension of the barn with essentially the same lot coverage, but notes that other parts of the site have become conforming.
- Mr. Shapiro states that the 1983 special permit allowed not enough space to operate a modern animal hospital – just 800 s.f. He states we have John Cavanaro of Consulting firm and Dana Warren, architect, here with us and that John will describe how the new plan will improve workflow and Dana will be able to describe how space will be improved. Mr. Shapiro goes over the need for more space, the miscellaneous details that will improve the space for clients and their animal patients and clarifies that no new zoning is being proposed, they just want to change the use.
- John Cavanaro of Cavanaro Consulting states that the project has gone through several boards and site plan has changed due to those comments. Mr. Cavanaro addresses bylaw parking and describes the new, stating that it will provide conforming spaces, a separate delivery area, a dedicated and fully compliant ACC space, a sidewalk added (paved) and that from a storm water management perspective, we are hitting on those areas including water pollution. Mr. Cavanaro emphasizes that they do not anticipate any increase in use, just a more efficient use of the use already in place. Mr. Cavanaro states that with respect

to the Board of Health comment, we want to be clear that the 8 kennels will be fully vetted by the BOH and we are coordinating with abutters regarding landscaping or fences and we did talk with the Conservation Commission about enhancing the buffer from parking to the WPOD line. Mr. Cavanaro states he will turn it over to Dana.

- Dana Warren states that what they have presented here is conceptual and the details will be finalized along the way. She states that 2 primary points are that the front of the building has extra aesthetics but keep it in character with the neighborhood and the greatest change here is to the back. She states that an elevator is a key component here and is needed to comply with ADA and for larger dogs, that the ADA space requirements change those renovations, that ADA is everything. Ms. Warren goes on to state that 800 s.f. is not enough and she cites many different reasons, i.e. equipment, etc. and that the goal is not to increase his business volume, but to increase
- Judith Barrett asks if there are any questions so far. No.
- Nick Shapiro states that we provided a zoning memo, and goes on to state that 80-90% of his clients are Duxbury residents and the purpose is to serve Duxbury and we're hard pressed to see any community detriments that will arise. Mr. Shapiro states that Dr. Hebert has gone to great lengths to inform his abutters and just be a good neighbor.
- Judith Barrett asks what the difference is between the proposed use and a medical office or clinic.
- Dana Warren states that difference would be from the building code and that the medical doctor is in the same business district and that this is not a kennel.
- Judith Barrett asks how the use is different.
- Dana Warren states that the use is similar – waiting rooms, office, labs, storage,.
- Kathleen Muncey states that a medical office or clinic is not a hospital.
- Nick Shapiro cites from a submitted zoning memo and states that regarding the Framingham case, that it supports that hospital can be construed as this and from a legal perspective, I think this is allowed.
- Judith Barrett states that this is in the NB district and we have a specific set of rules for it. Ms. Barrett reads from the bylaw surrounding NB and states that when examples refer to human care it's hard to find the similarities and she's wondering what the appropriate use category for this because it would take
- Nick Shapiro states that if we had to pick, I'd say it's more of a hospital.
- Dana Warren states that she rarely has a project compared to human facilities that it's almost always allowed by a special permit.
- Judith Barrett states that some disagree and say animal hospital is different in neighborhood business and it's a little more difficult to say whether or not it's a special permit use, but that in residential compatibility a hospital of use is allowed by special permit, but the sequence of uses that follow that all refer to human health care, so I need to find where I would put this as an allowed use.
- Dana Warren states that often because these are such an anomaly and often they become attached to the extension, we have often chosen to go for a public hearing to rewriting the zoning language to redefine.
- Nick Shapiro states that if you look at the services, they might as well be things in a human hospital – radiology, post-operative, lab service – all very similar.
- Emmett Sheehan states that he can see his way to calling it a hospital.
- Kathleen Muncey states it's always been a residential use and now you want to go exclusively to that business only.
- Nick Shapiro states that the size of facility now, 800 s.f., is what's driving this need and that a hospital is allowed in this district, that it'll be the same patient load, no intensification, just more properly serving the patient base.
- Kathleen Muncey states that this is about the use and goes on to state that if an attorney starting out in one office then wants to have the whole house be a law office, is that allowed?
- Nick Shapiro states that Section 6 allows for expansion.
- Judith Barrett states that it does, with review by the granting authority.

- Nick Shapiro states that's why we're here and this project poses a lot of benefits to the community in terms of traffic issues and service to the animals.
- Kathleen Muncey states it's a great purpose for the community, but I'm struggling with the use and if it will set a precedent.
- Judith Barrett states that I see the bylaw listing specifics and is this intended in the bylaw and this board has to interpret and apply and in the bylaw in the RC district I see an intent to provide for healthcare for people.
- Daniel Hebert states that this is his last choice to keep the hospital in town, he looked around town and this is it, that he can't have his employees eating their lunch in the furnace room and working within such a small space. He went on to state that this is far from ideal, not his dream hospital, but would allow it to stay in Duxbury.
- Freeman Boynton, Jr. states that he thinks that it's a hospital, serves the same needs animal or not and thinks it's allowed in the NB district. He asks if there will be a change in hours of use.
- Daniel Hebert states that no, but his primary intention is to bring another doctor in but hours will be the same and notes that he doesn't intend to do any overnight or boarding, no 24 hour emergency.
- Freeman asks what time they start in the morning.
- Dr. Hebert states about 7.
- Judith Barrett asks if there are any overnight patients.
- Daniel Hebert states that there is zero, he does surgery in the morning, they are not meant to stay overnight and if necessary we'd transport to Buzzards Bay or Weymouth.
- Freeman asks if we can condition the special permit.
- Judith Barret states that if we determine it's an allowed use, then yes we can impose reasonable conditions.
- Freeman Boynton, Jr. asks if the special permit was issued in '67 when the facility first opened.
- Daniel Hebert states that as far as he knows, no there was no zoning, it was just allowed and the past doctor was able to operate out of the basement.
- Judith Barrett states that we had zoning in '67, but I have no idea what it said.
- Nick Shapiro states that we did track it out and home occupation was as of right at that point, but the 25% limitation didn't come until the late 70's and then in 1983 they got a special permit.
- Freeman wonders aloud why one of the members of the planning board was opposed to it.
- John Cavanaro states he's paraphrasing, but he thinks the concern was confusing the zone one and zone two and that he felt it was more beneficial to pave the entire parking lot and that I believe he voted in favor of the recommendation for the special permit and against the administrative site plan.
- Dimitri Theodossiou states he doesn't see how this is not a hospital.
- Judith Barrett states that without overnight care how can this be called a hospital, it's more like a clinic.
- Freeman Boynton, Jr. asks if the pictures are just conceptual and would it go back to the DRB.
- Dana Warren states that we will go back to the DRB if necessary; they are here today primarily for use and will absolutely consult as they go.
- Emmett Sheehan states that the general concept will stay.
- Dana Warren confirms.
- Freeman states that they value the DRB opinion.
- Dana Warren states that they have met with them and will absolutely go back
- Freeman states that it appears the lawn area runs right down to the wetlands, can we improve and have another buffer.
- John Cavanaro states that yes, we've been in discussions with the Conservation Commission about adding landscaping and a fence perhaps.
- Freeman asks if that will eliminate the lawn as a buffer. John Cavanaro confirms.

- Dimitri asks what is meant by a garage that will be slightly bigger.
- Dana Warren describes that it's less than 10'.
- John Cavanaro states it's under site coverage.
- Dana Warren states we have to stay at height.
- Emmett asks if there will be any change on the north side with hedging to break up the properties.
- Dan Hebert states that yes, we will work as one side wants one thing and the other another.
- Judith Barrett asks if anyone would like to speak.
- Laura Bulman of 84 Depot Street states she believes a new hospital is needed but agrees with the analogy made about businesses popping up and setting a precedent and asks the board to consider this is a neighborhood.
- Judith Barrett asks Laura what the Board could do to minimize the impact on her.
- Laura Bulman states that the signs seem to have increased and the lighting goes all night.
- Judith Barrett asks if anyone else would like to speak.
- Kevin McSheffery of Valley Street states his support for the proposal, noting that Dr. Hebert has been in town for years and the community will not be happy if he leaves town.
- Crystal White of 95 Depot Street voices her concern, stating she wonders what will happen if it's sold, that Dr. Hebert is very agreeable, that she's concerned about lighting and the barn structure.
- Dana Warren explains the details of the garage area and the aesthetics.
- Crystal White states she is in favor.
- Steven Fuller of 111 Depot states he is a new owner and is concerned about volume and if property sells, then business could change.
- Dr. Hebert states he can address the lighting with timers, that his plan will address the parking issues. He also talked about his business and that he is working in too small of a space, that the goal is not to increase the volume, but to increase efficiency.
- Judith Barrett asks when it will close.
- Dr. Hebert states its M-F and then Sat 8-12.
- Kathleen Muncey questions if all veterinary offices are hospitals.
- Dr. Hebert explains they are not, but he intends to be in the middle
- Kathleen asks if it's a hospital because he does surgeries.
- Dr. Hebert states he hopes to provide emergency services in an appropriate space.
- Dimitri wonders if the doctor leaves, can another change occur.
- Judith Barrett states we can limit it with a special permit.
- Dr. Hebert states he's planning for his successor, as the only other option would be to sell to a corporation.
- Kathleen Muncey questions if we limit it to only him, then financing might be an issue.
- Dimitri asks if any are overnight.
- Dr. Hebert states that no, it'd have to be special circumstances as I cannot keep them overnight.
- Kathleen Muncey asks if we put that as a condition, he could live with it.
- Daniel Hebert states he cannot do overnight, so that is ok with him.
- Judith Barrett asks if there are any other questions. No.
- Dimitri Theodossiou makes a motion to close the hearing.
- Emmett Sheehan seconds. All in favor (5-0).
- Judith Barrett asks the Board if we are determining that the use is allowed or is this non-conforming use because it's two different paths of analysis.
- Kathleen Muncey states that she's concerned about the use part.
- Freeman Boynton, Jr. states that he thinks it'll have less of an impact than a hospital.
- Emmett Sheehan states that if it's a hospital, he's got to be licensed by the state, right.
- Dimitri Theodossiou states he thinks it's a hospital.
- Judith Barrett states it's the language of the bylaw that she is struggling with.
- Dimitri asks if there is any language that separates animals from humans.

- Kathleen Muncey states that the definition refers to individuals aged 62 or older.
- Dimitri wonders if the zoning takes into account the change to medicine with respect to animals today.
- Judith Barrett states the language she is struggling with is this: "By a special permit, subject to site plan approval, we allow a professional office for dental, Professional office for dental, architectural, engineering, renewable and alternative energy research and development, legal, medical, and other similar recognized professions; medical and dental clinics, including retail uses accessory thereto."
- Freeman states that we could have this facility in an NB district but he'd have to get a special permit.
- Judith Barrett agrees, and then states that it's about building upon what is allowed in RC is allowed in NB, but clarifies the difference.
- Freeman states we make an exception for facilities treat people who are sick, not animals.
- Judith Barrett et al discuss if this qualifies as a hospital and is this use allowed, within the meaning of hospital within the RC district.
- Kathleen Muncey wonders if they should ask Town Counsel.
- Judith Barrett concurs that Town Counsel opinion is a good idea.
- Freeman states that an actual hospital would have a greater impact.
- The Board agrees to get an opinion from Town Counsel.
- The Board and the Applicant agree to continue the meeting until June 14, 2018.
- Freeman suggests working on possible conditions now, while they are fresh in their minds.
- Freeman and Emmett mention lighting and lawn.
- Judith Barrett clarifies that they have not voted on this, but are simply talking about what might come up as conditions if they did.
- The Board discusses that if it were to be approved, the following would be good conditions to have – lighting, hours of operation, no increase in volume, no overnight guests on a regular basis, dog statue, fencing along the neighbor's property, that it's non-transferable perhaps, that they go back to the DRB, no outdoor kennels.
- The Board concludes discussion and reiterates that the hearing is continued until June 14, 2018.

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

Moved by: DT
Number in favor: 5

Seconded by: ES
Number opposed: 0

BOARD OF APPEALS — MINUTES

Applicant: Webster Point Village LLC
Property Address: 0 Tremont Street
Case No: 2018-11
Date: May 10, 2018 **Time:** 7:30p.m.

ADMINISTRATIVE MATTER

Webster Point Village requested to Modify the Comprehensive Permit for the Webster Point Village 40B Project, as modified through August 6, 2015, by replacing the required Conservation Restriction for the Restricted Area (“CR”) from a permanent CR under c. 184, s. 31 to a 30-year CR under c. 184, s. 23. The property is located at 0 Tremont Street (Rt. 139) and Duck Hill Road, Parcel No. 104-002-003 of the Duxbury Assessors Map, consisting of 18.40 +/- acres in the Residential Compatibility District and owned by Ferrante Gioioso and Francesco Gioioso. *On April 19, 2018, the Board of Appeals determined that the Applicant’s proposal requires a public hearing as it constitutes a substantial modification to the existing permit. The date for a public hearing was to be May 22, 2018 and the Applicant requested a June 14, 2018 date, the vote for which is below.*

Members present: Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan & Dimitri Theodossiou

Members Voting: Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan & Dimitri Theodossiou

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

- Judith Barrett states that the request is from Attorney Shelmerdine for Webster Point Village to continue the hearing until June 14, 2018.
- Judith Barrett reads a letter from Attorney Shelmerdine into record.
- The Board all agrees to continue the hearing until June. All in favor (5-0).

Applicant: Bay Communications II LLC
(Transferred from T-Mobile Northeast LLC)
Property Address: 421 Elm Street
Case No: 10-20
Date: 05/10/2018
(Cont'd from 4/27/16, 11/10/2016, 4/28/17, 9/28/17 et. al.)

ADMINISTRATIVE MATTER

The Board of Appeals held a public hearing in the Mural Room at Town Hall, 878 Tremont Street on May 10, 2018 at 7:30 p.m. *after which administrative matters were heard, one of which was to consider the request for an extension of a special permit*, regarding the application of Bay Communications II LLC (transferred from T-Mobile Northeast LLC) for a special permit and variance under Articles 400, 600 and 900, Sections 406, 610.4, 6.10.5(2), 610.7(2), 906.2 and 906.3 of the Duxbury Protective Bylaw. The property is located at 421 Elm Street, Parcel No. 100-043-000 of the Duxbury Assessors Map, consists of 2.09 acres in the Residential Compatibility and Aquifer Overlay Protection District and is owned by Stuart and Leslie Lee, 421 Elm Street, Duxbury, MA 02332. The applicant requested and was granted a special permit and variance in order to construct a 100-ft. unipole, wireless communication facility on the property and is asking for an extension on the special permit from May 24, 2018 until November 24, 2018.

Members present: Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan & Dimitri Theodossiou

Members Voting: Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr., Emmett Sheehan & Dimitri Theodossiou

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

- Michael Dolan, representing Municipal Bay LLC, states he's there to request an extension of the special permit for this new holder of the special permit, that he has a new client that he believes will make something happen in the next 6-12 months or this may be over.
- Kathleen Muncey asks how he transferred the permit.
- Michael Dolan states it was a full assignment.
- Judith Barrett asks if this will be the last time.
- Michael Dolan states he has explained to his client it cannot keep being extended and that his hope is this will be the last.
- The Board all agree to extend the permit until November 24, 2018. All in favor (5-0).