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DUXBURY, MASS.

TOWN OF DUXBURY
BOARD OF APPEALS

DUXBURY BOARD OF APPEALS
MEETING MINUTES
February 10, 2022 @ 7:30 p.m.

ATTENDANCE: Wayne Dennison, Kathleen Muncey, Freeman Boynton Jr., Emmett Sheehan, Borys Gojnycz and Tanya Trevisan
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 #2021-15, McKeag, 39 Shipyard Lane (CONT'D): *The Board voted unanimously (3-0) to continue the public hearing to March 10, 2022 at 7:30 p.m. due to a lack in quorum.*

ZBA Case #2021-39, Enggasser, 1 Bumblebee Lane: *The Board voted unanimously (5-0) to approve the Special Permit, with conditions.*

ZBA Case #2021-40, Campbell, 5 E. Marginal Road: *The Board voted unanimously (5-0) to continue the Public Hearing to April 28, 2022 at 7:30 p.m.*

ZBA Case #2022-02, Shoham, 39 Shipyard Lane APPEAL: *The Board voted unanimously (4-0) to continue the Public Hearing to March 10, 2022 at 7:30 p.m.*

Administrative:

Wayne Dennison makes a motion to approve the meeting minutes from December 9, 2021. Tanya Trevisan seconds.
Wayne Dennison makes a motion to approve the meeting minutes from January 13, 2022. Tanya Trevisan seconds.
Wayne Dennison makes a motion to approve the meeting minutes from January 27, 2022. Tanya Trevisan seconds.
Wayne Dennison makes a motion to adjourn. Emmett Sheehan seconds (5-0)

BOARD OF APPEALS MINUTES

Case No: 2021-39
Petitioner: Justin and Jodi Enggasser
Address: 1 Bumblebee Lane
Date: February 10, 2022 Time: 7:30 p.m.

Members present: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Borys Gojnycz & Tanya Trevisan
Members Voting: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Borys Gojnycz & Tanya Trevisan
Other persons present at the hearing: James Wasielewski, Director of Municipal Services & Lauren Haché, Administrative Assistant

The Board of Appeals will hold a REMOTE public hearing via zoom on Thursday, February 10, 2022 at 7:30 p.m. to consider the application of Justin and Jodi Enggasser for a Special Permit under Article(s) 400 and 900, Sections 401.2 #4, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 1 Bumblebee Lane, Parcel No. 119-085-000 of the Duxbury Assessors Map, consisting of 0.46 acres in the Residential Compatibility District (RC) and owned by Justin and Jodi Enggasser. The Applicants propose to add on to a pre-existing, non-conforming dwelling by adding a covered porch to the entrance of the dwelling. A special permit is required.

- Wayne Dennison opens the public hearing and reads the public hearing agenda and states we received an application, a letter from the Applicants, a series of plans, a plot plan and case response from the Board of Health, the Planning Board, the Design Review Board had no objections but does recommend two pillars for support and esthetic purposes. There is a letter of support from the Biggs of 342 Washington Street, a letter in support from the Furnicito's of 11 Bumblebee Lane, a letter in support from the Nuland's of 318 Washington Street, a letter in support from Nancy Regal or 14 Surplus Street and WH Wheeler Jr. or 14 Surplus Street.
- Emmett Sheehan asks the Chairman who is sitting on this case
- Wayne Dennison states myself, Kathy, Emmett, Borys Gojnycz and Tanya Trevisan
- Justin Enggasser, the Applicant, presents the case to the Board and shares his screen to show the conditions of where the porch addition is proposed. A single story porch with the same roofline with the lower section of roof and recessed back from Washington Street. The coverage on the property will remain within the 15% for maximum coverage.
- Wayne Dennison states so the only non-conformity with respect to this property is it's too close to what you call the shared lot line
- Justin Enggasser states correct
- Wayne Dennison states ok, does the Board have any questions
- Borys Gojnycz states I do, I think this would be a great addition but I thought any new non-conformity would require a variance

- Wayne Dennison states you are correct if we are talking about a new non-conformity. In this instance there is an existing non-conformity, the structure is already too close to the lot line, we are talking about expanding not adding a new one. We have to determine if it substantially impacts anyone, I don't think this creates a new non-conformity
- Emmett Sheehan states I think it's neat, providing it doesn't get enclosed at some point
- Kathleen Muncey states what about the Design Review Board asking about another pillar, is that something to be considered
- Justin Enggasser states it's a great suggestion and I do intend to follow their recommendation
- Wayne Dennison states anyone from the public have a comment
- Wayne Dennison states does the Board have any further questions
- Borys Gojnycz states did the DRB state where the second pillar would be; I think it looks fine without it
- Justin Enggasser states my understanding was that there could be a symmetric pillar where it attaches at the home. I don't believe we would need it structurally, but I am open to adding a second pillar.
- Wayne Dennison moves to close the public hearing
- Emmett Sheehan seconds
- WD, KM, ES, BG, TT
- Wayne Dennison states any discussion between the Board
- Kathleen Muncey states I think it looks like a good project
- Wayne Dennison states Emmett do you want to condition it that it doesn't get enclosed
- Emmett Sheehan asks the Applicant how they feel about it
- Justin Enggasser states I have no problem with that, I don't intend to ever enclose it
- Wayne Dennison states I am going to move we approve the special permit with the condition that the porch not be enclosed
- Borys Gojnycz seconds
- All in favor WD, ES, BG, KM, TT

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: BG
Number in favor: 5	Number opposed: 0

BOARD OF APPEALS MINUTES

Case No: 2021-40
Petitioner: Alexander & Lorraine Campbell
Address: 5 E. Marginal Road
Date: February 10, 2022 Time: 7:30 p.m.

Members present: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Freeman Boyton Jr., Borys Gojnycz & Tanya Trevisan
Members Voting: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Freeman Boynton Jr., Borys Gojnycz & Tanya Trevisan
Other persons present at the hearing: James Wasielewski, Director of Municipal Services & Lauren Haché, Administrative Assistant

The Board of Appeals will hold a REMOTE public hearing via zoom on Thursday, February 10, 2022 at 7:30 p.m. to consider the application of Alexander and Lorraine Campbell for a Special Permit under Article(s) 400 and 900, Sections 401.2 #4, 402.4, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 5 East Marginal Road, Parcel No. 139-939-186 of the Duxbury Assessors Map, consisting of 0.07 acres in the Residential Compatibility District (RC) and the Flood Hazard Area Overlay District (FHAOD) and owned by Alexander and Lorraine Campbell. The Applicants propose to raze and rebuild a pre-existing, non-conforming dwelling. A special permit is required.

- Wayne Dennison opens the public hearing and reads the public hearing agenda into the record. We have an application, photos, a plot plan and some architectural plans. Mr. Dennison continues with reading the case response memos from the Board of Health, the Planning Board, Conservation Commission and the Design Review Board. Mr. Dennison asks the Applicant to present their case.
- Alexander Campbell, the homeowner and Applicant introduces himself and states Paul Spiro is going to represent us this evening
- Paul Spiro introduces himself and explains the project to the Board. The existing house is from 1941 and the lot is 3600 feet and it has been challenging. The house is 2.9 feet from the side lot line on the East Marginal side. The Applicant shares their screen to show the plot plan and describes the proposal. The proposal pushes the house back to allow for parking in the front of the house. Mr. Spiro continues to explain that they are trying to add four parking spaces off the street and still propose a comfortable house for the Campbell's. We are becoming more conforming on the front and rear and we propose to take a small increase on the Lewis Court side. As for calculations, the existing house covers 778 square feet and the proposed house will cover 958 square feet. Our architect is here for any design questions and I am here as are the Campbell's for any other questions
- Wayne Dennison states don't you want to know what Con Comm. is going to require before you ask us for approval

- Paul Spiro states generally the Conservation Commission, in my experience will see that we are building with the recommendations from the FEMA code etc.
- Wayne Dennison states so you expect the Con Comm. will be in agreement
- Paul Spiro states well we expect the Con. Comm. to agree with the way the house as we have applied for conforms to both the State Building Code and Conservation regulations
- Emmett Sheehan states according to the dimensional plans, currently they are at 25.4% coverage and they are asking for 31.3% from what I can see, which is more than 3% in coverage
- Freeman Boynton Jr. states can somebody do the math for us
- Kathleen Muncey states it is on the plot plan
- Emmett Sheehan states it's almost 6% more in increase
- Wayne Dennison states I am not even sure, given recent advise from Town Counsel, that we are even talking about the 3% coverage rule in this case
- Wayne Dennison states my recollection of this is if it is already over in coverage, that part of the Bylaw does not apply and we have to then determine if this is a substantial increase in the non-conformity and then whether it is more detrimental
- Kathleen Muncey agrees
- James Wasielewski, Building Commissioner, states if they are below of what would be allowed by special permit with the 3% increase then they could not go over the 3%, but if it already existed over the 3% then we have to make sure that it is not more detrimental
- Wayne Dennison agrees and explains that this issue was just sent to Town Counsel and you recollection is the same as mine; the 3% rule does not apply in this instance. So, let me ask this, I didn't see anything in the record from Abutters or neighbors, what efforts were made to determine whether the neighborhood approves
- Alexander Campbell states we sent out drawing to the neighbors via email, the neighbors who we had contact information for and we did have a conversation with the Mann's who live directly next door and they had some concerns and we were waiting to see what we would be allowed in order to work with them, they are here and we're hoping to work with them
- Wayne Dennison states what about the neighbors on the side that you are getting closer to, the Burns'
- Alexander Campbell states we had sent plans out to them and have not heard anything back in response
- Wayne Dennison states the plans states the existing dwelling is 30 feet high
- Alexander Campbell states the existing building is a single story building
- Wayne Dennison states okay, so one story, Where is the depiction of the 30 feet on the proposed plan
- The plans is shares and Wayne Dennison asks if Jim reviewed the plan
- Jim Wasielewski states I have reviewed the plan and I do agree with the point, I am not 100% clear on for height calculation and I would have this before I issue a permit done by their land surveyor, but from this their midpoint I do agree on

- Wayne Dennison states so what we have shown the midpoint of the roof, but there is nothing on file sufficient in showing the grade
- Jim Wasielewski states that is correct, it needs to be done by a land surveyor
- Wayne Dennison states what about grade 20 feet from the road
- Jim Wasielewski states I don't see that listed in the plan, that's what I require done by a land surveyor
- Wayne Dennison agrees and states does the Board have other questions
- Emmett Sheehan states why did you draw it so much larger
- Paul Spiro states we were trying to get a comfortable full time home for the Campbell's and to add more additional parking
- Emmett Sheehan states you made this way more non-conforming and a possible detriment to the neighborhood
- Wayne Dennison states let's hear from the public
- Kathleen Muncey states I have a question, this is creating a new non-conformity, it's not an extension
- Wayne Dennison disagrees and states it was already non-conforming
- Kathleen Muncey states it is getting closer to the lot line
- Emmett Sheehan and Freeman Boynton Jr agree with Kathy
- Freeman Boynton Jr states the existing house is a lot further from Lewis Court than the proposed
- Wayne Dennison states correct, but the existing house is already in the setback and if it's already in the setback, that's not a new non-conformity
- Christine Murphy, 3 Lewis Court and I have some questions. They are using to the middle of the road; we all own halfway to the middle of the road. They are a foot and a half to the one way of Lewis Court. Therefore, my concern is for Town vehicles and emergency vehicles would have a hard time getting down the road. I have confusion on the parking situation. Also the view changes, but I am mainly concerned about Lewis Court
- Wayne Dennison asks Ms. Murphy where she lives in reference to the proposal
- Christin Murphy explains where her home in on Lewis Court
- Wayne Dennison asks for other public comment
- Mike Clifford of 4 Lewis Court states my property is the property directly on the ocean, next door to Christine and she has captured my concerns with regard to fire and emergency vehicles access. I also want to point out that this area is prone to storm damage, we have the low seawall and it's about every other year that we need equipment to come in and clean up storm damage
- John Mann of 241 Gurnet Road states I am a direct abutter to the west of the Campbell property. We met with the Campbell's privately via zoom and we reached no resolution. We left it as they were going back to the architect to work out some mechanical changes. We have not heard any more since the meeting. The building is too tall, too wide and far too close to me at 2.7 feet. We have extreme concerns with how this building will be built, be it foundation or pilings. This project is a detriment to the neighborhood.

- Wayne Dennison states thank you, are there other folks that would like to comment on this project. Why don't we hear from the Applicant in response to the neighbors' concerns
- Alexander Campbell states we did meet with the Mann's but we didn't know what type of approval we were going to get, so it was difficult for us to tell them what was going to happen. According to my existing land survey, Mr. Mann's fence is on my property
- Jim Wasielewski states can I make a comment regarding the volume increase in the setback and the massing here
- Wayne Dennison agrees and I think that it will be discussed; one of the comments the Applicants just raised was that they did not know what was going to be approved so they did not want to make any promises. So this board gets applications and consider them as submitted, we are not tasked with redesigning the plan for you; we try to be helpful where we can. The Design review Board has asked you to redesign and come back, you do not have guidance yet from Con Comm. and every single neighbor that spoke today has concerns or is opposed. We would have to make a finding that this is not deleterious to your neighborhood while all of your neighbors say it is. I have heard from Board Members sitting on this case that they have concerns about the greater non-conformity with respect to the lot coverage. We like to give the Applicants the opportunity to withdraw the application rather than be denied and be barred from applying for two years. Alternatively, we permit Applicants to continue the case, go back to the drawing board and come back to us.
- Paul Spiro states at this time we will probably withdraw and come back with a better solution.
- Wayne Dennison states that is a good plan, I would move to permit the Applicant to withdraw without prejudice
- Freeman Boynton Jr states can I make a comment
- Wayne Dennison states yes
- Freeman Boynton Jr states I am looking at the flood map and it appears to me that we are in a flood zone with an AO depth of 3 feet as opposed to an AE with a flood elevation of 10, so I would imagine all of these panels on the garage and basement levels would have to be breakout or something to that nature
- Wayne Dennison states would this be an issue that the Con Comm. would address
- Freeman Boynton Jr agrees
- Jim Wasielewski states we would review that as part of the building requirements once we get the plan
- Freeman Boynton Jr shares is screen and shows the map and states it appears to me that an AO depth of 3 feet, the building really needs to be at elevation 13.
- Emmett Sheehan states my suggestion would be to downsize this project in square footage and volume
- Jim Wasielewski states I would like to explain to the Applicant the difference between a continuance and a withdraw
- Wayne Dennison explains the scenario
- Paul Spiro states let's continue to a later date and go back to the drawing board

- Wayne Dennison states that is appropriate and asks Lauren for a date two months out
- Lauren Haché states April 28th
- Wayne Dennison states great I move to continue this hearing to April 28, 2022 and if you need more time moving forward, we can continue the case out again
- Paul Spiro states fair enough Thank you
- Alexander Campbell states may I ask another questions, where the DRB made recommendations, if we go in that direction would that be favorable
- Wayne Dennison states well, we cannot give that advice, but we will have to let you fiddle with this to the extent that you feel is appropriate
- Kathleen Muncey seconds
- All in favor WD, KM, ES, FB, BG (TT)

Motion: It was moved, seconded and unanimously voted to continue the public hearing to Thursday, April 28, 2022

Moved by: WD	Seconded by: KM
Number in favor: 5	Number opposed: 0

BOARD OF APPEALS MINUTES

Case No: 2022-01
Petitioner: Antonia Shoham
Address: 39 Shipyard Lane APPEAL
Date: February 10, 2022 Time: 7:30 p.m.

Members present: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Borys Gojnycz & Tanya Trevisan
Members Voting: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Borys Gojnycz & Tanya Trevisan
Other persons present at the hearing: James Wasielewski, Director of Municipal Services & Lauren Haché, Administrative Assistant

The Board of Appeals will hold a REMOTE public hearing via Zoom on Thursday, February 10, 2022 at 7:30 p.m. to consider the application of Antonia C. Shoham for an Appeal under Article 900, Section 906.1 of the Duxbury Protective Bylaw. The property is located at 39 Shipyard Lane, Parcel No. 120-199-212 of the Duxbury Assessors Map, consisting of 0.178 acres in the Residential Compatibility (RC) District and owned by Jennifer Doherty McKeag.

The Applicant requests the Board of Appeals overturn the Zoning Enforcement Officer's decision to grant the building permit for a ninety-four square foot two-story addition citing inaccurate lot coverage calculations, which would result in the requirement of a Special Permit.

- Wayne Dennison states that we only have four Board Members available to sit on this case tonight, due to a few Board Members with conflicts. The Applicants can choose to move forward tonight or can choose another night. Because this application raises numerous legal implications, we are going to send this all to Town Counsel for their opinion.
- Attorney Robert Galvin states I represent the Appellant Antonia Shoham and we would like to go forward tonight with the understanding that this will be continued for further review.
- Wayne Dennison reads the Public Hearing notice into the record and asks the Applicants to present their case
- Attorney Robert Galvin explains the case due to a building permit being improperly issued for the McKeag property at 39 Shipyard Lane; we do not feel the lot meets the approvable lot coverage requirements. The title for the property and the deed have different dimensions. We believe that there is a lot coverage problem and that they would need a special permit.
- Wayne Dennison states would you give us a bit of a preview on the legal issues
- Attorney Galvin states Mr. Webby, the certified site engineer, notes the Derelict Fee Statute notes you cannot determine who owns the land, I can tell you the appeals court case with Marshfield. The area that falls within a private lane, even if McKeag owns it, is not includible even if it falls within the area requirements, but it is subject for others to pass and repass. I have not researched who owns the land behind the McKeag's to tell

you who owns the fee interest, but I can tell you that it was never conveyed into the McKeag title. I do not think this is a Derelict Fee case.

- Wayne Dennison states does the Board have questions for the Applicants Counsel
- Kathleen Muncey states I do, did you do a full title on both parcels
- Robert Galvin states I did not, I did it only on the McKeag property
- Kathleen Muncey states did you know that the land behind is owned by Sheehan and is a different chain in title. No one owns to the centerline.
- Robert Galvin states I didn't suspect it was owned by McKeag
- Kathleen Muncey states it was formerly owned by Walker, both parcels go back to land of Walker. The McKeag parcel has the four bounds put in when it was created which bypassed the way, I do not think it is used as a way. There should be four concrete bounds. Has any surveyor gone out there to try to place the bounds
- Robert Galvin states I think Mr. Phinney did, the McKeag's surveyor, but I am not sure
- Kathleen Muncey states nothing is shown, but the McKeag parcel goes back to land of Walker and that is the monument that controls, so behind the right of way and the old proposed easement. I think that the 16 feet is part of that and every lot along that way. Wherever the bound if, it states Walker and that controls over distances.
- Robert Galvin states there are restrictions in the McKeag deed and the Shoham deed
- Kathleen Muncey states they were released
- Robert Galvin agrees
- Wayne Dennison states so Kathy, do you feel you have run this to ground sufficiently
- Kathleen Muncey concurs, but states I think we should have Town Counsel, I am a Board Member, and should I be giving an opinion on title?
- Wayne Dennison states you are certainly empowered to use your experience and knowledge but it was my inclination to ask Town Counsel
- Kathleen Muncey agrees
- Wayne Dennison states is there anybody else here tonight that would like to ask questions or comment
- Charles McKeag, 39 Shipyard Lane states we received the letter written by Mrs. Shohams attorney less than 24 hours ago and we would like our Surveyor to go over things and weigh in, we just did not have adequate time to allow for this
- Wayne Dennison agrees and states we should push this case out about a month so that Town Counsel can look at this
- Jessica Williams states I represent the McKeags, if we push this past our Special Permit application, we will have it continue for the seventh time, may we still proceed with this, we have this plot plan stamped and surveyed by a professional land surveyor.
- Wayne Dennison states Lauren when is an appropriate time to continue this appeal out to
- Lauren Haché states a month from now is March 10th , which is full
- Wayne Dennison states is March 10 the night for 39 Shipyard
- Lauren Haché states yes
- Robert Galvin states I have the citation for that court case for Town Counsel, it's Sears vs. Town of Marshfield 9/13/2009

- Selden Turst, King Caesar Road, states I am curious about what is happening here, what would happen if the Applicants tore down their home, would they have to go through this
- Wayne Dennison states we actually consider applications as they come, in all likelihood this Board would take it as a case to case. I would like to continue this case to March 10, 2022 but I would like all additional submissions in the next ten days so that I can get those to Town Counsel as well.
- All parties agree
- Wayne Dennison moves to continue to March 10, 2022
- Borys Gojnycz states who is sitting on this, Wayne states Wayne, Borys, Kathy and Tanya
- Borys Gojnycz seconds
- All in favor WD, KM, BG, TT

Motion: It was moved, seconded and unanimously voted to continue the public hearing to Thursday, March 10, 2022.

Moved by: WD	Seconded by: BG
Number in favor: 4	Number opposed: 0