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TOWN OF DUXBURY
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BOARD OF APPEALS

DUXBURY BOARD OF APPEALS  
MEETING MINUTES

April 14, 2022 @ 7:30 p.m.

**ATTENDANCE:** Wayne Dennison, Kathleen Muncey, Freeman Boynton Jr., Philip Thorn, 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](http://www.pactv.org/duxbury) for information about Duxbury programming including streaming on Duxbury You Tube, to watch replays and Video on Demand.

**ZBA Case #2021-33, Rice, 140 Marshall Street (CONT'D):** *The Board voted unanimously (5-0) to grant the Petitioners request to withdraw the application, without prejudice.*

**ZBA Case #2022-02, Weintraub, 87 Gurnet Road (CONT'D):** *The Board unanimously (5-0) to continue the public hearing to May 12, 2022.*

**ZBA Case #2022-05, Lefebvre, 33 Marginal Road:** *The Board voted unanimously to continue the public hearing to June 9, 2022.*

**ZBA Case #2022-07, Old Cape Realty, LLC, 5 Webster Road:** *The Board voted unanimously (5-0) to continue the public hearing to April 28, 2022.*

*Wayne Dennison makes a motion to approve the meeting minutes from February 24, 2022.*

*Kathleen Muncey seconds*

*Kathleen Muncey makes a motion to approve the meeting minutes from March 10, 2022. Tanya Trevisan seconds.*

*Wayne Dennison makes a motion to approve the meeting minutes from March 24, 2022.*

*Freeman Boynton seconds.*

*Wayne Dennison makes a motion to approve the meeting minutes from March 31, 2022. Philip Thorn seconds.*

*Wayne Dennison makes a motion to adjourn. Philip Thorn seconds (5-0)*

## BOARD OF APPEALS MINUTES

**Case No: 2022-02**

**Petitioner: Robert Weintraub**

**Address: 87 Gurnet Road**

**Date: April 14, 2022 Time: 7:30 p.m.**

**(Continued from March 10, 2022)**

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

**Members Voting:** Wayne Dennison, Kathleen Muncey, Freeman Boynton Jr., Philip Thorn and Borys Gojnycz

**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, March 10, 2022 at 7:30 p.m. to consider the application of Robert Weintraub for a Special permit under Article(s) 400 and 900, Section(s) 401.2 #4, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 87 Gurnet Road, Parcel No.137-901-003 of the Duxbury Assessors Map, consisting of 0.17 acres in the Residential Compatibility (RC) District, Wetlands Protection Overlay District (WPOD) and the Flood Hazard Area Overlay District (FHAOD) and owned by Robert Weintraub, TT. The Applicant proposes to raze and rebuild a pre-existing, non-conforming dwelling on a concrete pier foundation. A Special Permit is required.

- Wayne Dennison re-opens the public hearing and reads the public hearing notice and case response from the various town boards including the planning board, board of health, three letters from the Design Review Board and a memo from Conservation Commission. Chair Dennison reads one letter in support and several letters against the proposal
- The Agent for the Applicant, Attorney Steve Guard, introduces the team and explains the project to raze and reconstruct the home at 87 Gurnet Road. Attorney Guard discusses the Mulhern case of twenty years ago stating that the then Zoning Board of Appeals denied their special permit, Mr. Mulhern appealed that and the case was remanded back to the ZBA by the Land Court.
- Wayne Dennison states that is my first questions, you had a unanimous board that stated that the Mulhern proposal was inconsistent with the neighborhood and now you are proposing something almost identical. You have 10 houses in a row, what else has changed
- Attorney Guard states that in the last 22 years, decks and porches have been added to many of the 10 houses. The reliance on this particular matter being substantially more detrimental to a neighborhood, I propose would not be upheld by a land court judge.
- Wayne Dennison states what about the notion that all of these houses are aligned and you are proposing to move 20 feet closer to the street
- Attorney Guard states if all of these homes are in alignment, your bylaw does not have an average street setback requirement which we would use to move a house closer to the street. Your Bylaw allows for structures to be built close to the street than what we are proposing. This house is in compliance with all of your zoning bylaw requirements aside from the side yard setbacks. This proposal is within the 3% rule in your zoning bylaw. It is an unfair restriction to



restrict someone from rebuilding their home on their property within the setbacks that the people of Duxbury have determined because their neighbors don't have that setback. I believe that a Judge would find that this is not a detriment to the neighborhood given the fact that it complies with the bylaw. This is no

- Wayne Dennison states what is the current lot coverage
- Attorney Guard states 16.5 percent, 1238 square feet
- Wayne Dennison states and what is the proposed
- Attorney Guard states 18.9 percent which is within the 3 percent allowed by special permit
- Wayne Dennison states I don't think the 3 percent rule even applies here, you're starting at 16.5 you're already non-conforming
- Wayne Dennison states alright, please proceed thank you
- Attorney Guard continues and explains the proposal stating that the side yard setbacks are 7.1 and 13.9, both of which are non-conforming and will be less non-conforming with the new proposed dwelling at 7.4 and 14.2 with 2,847 square feet and no basement. We are proposing to improve the non-conformities with the exception of the coverage percentage.
- Discussions regarding the Mulhern case and the "10 sisters"
- Attorney Guard explains that the house will be above the flood plain and what the surrounding homes have in floor area and height to answer the question about volume. My position is that this home does fit in with the neighborhood based on the assessor cards for the surrounding properties.
- Wayne Dennison states so amongst the neighbors and Design Review Board there is something that has arisen regarding the 10 houses that are roughly in the same structure and in a line, it doesn't appear to me from the plans that you are changing the oceanside of the home
- Attorney Guard states we are building up to the velocity zone, we are not going closer to the ocean than what is existing
- Kevin Grady states the abutting structures on either side are closer to the seawall than what is being proposed
- Wayne Dennison states so all of the existing houses are all in alignment and you're moving this one a little closer to that alignment with the other houses
- Attorney Guard states the appearance of the house will be at the same depth and regarding the water side decks, you'll see that there are a couple of similar looking homes from the water. Attorney Guard continues, the Design Review Board makes a reference to the characteristic uniformity and regarding this, there isn't anything in the Bylaw that states this is something to be enforced. I dispute that characteristic uniformity. Also, we met with the Historical Commission and there is no historical significance with 10 sisters and there is no historical demo delay enacted.
- Philip Thorn states can you identify on this list that you provided which homes are part of the ten sisters
- Attorney Guard states I would have to guess but perhaps #87, 91, 101, 93
- Wayne Dennison states it may be useful to look at the people who sent in letters
- Freeman Boynton states what about #91
- Robert Weintraub the home owner states that that property sold
- Attorney Guard states the two I show are 101 and 91 and states that limiting the neighborhoods detriment to 10 houses is inelastic. The end result is that this proposal meets the finding that this proposal is not more detrimental to the neighborhood
- Kathleen Muncey states so tell us what happened with the Mulhern case, was it dismissed

- Attorney Guard states it was remanded and the case was settled and then an agreement for judgement was entered. There has never been an official agreement or decision from a Judge. This agreement is based on this property alone-Mulhern's
- Wayne Dennison reads the decision of 83 Gurnet Road
- Attorney Guard states right, I agree, it's an agreement between two land owners and not a judgement by a Land Court Judge.
- Tanya Trevisan states has construction started on 83 Gurnet
- Kathleen Muncey states that was 20 years ago
- Attorney Guard states I don't know
- Tanya Trevisan states it's important to take into consideration the need to raise up due to sea level rise if this is considered the 10 sisters
- Jim Wasielewski states what limits these properties, is there a covenant in place that restricts these properties from moving further from the setback line than what's allowed by the zoning bylaw
- Kathleen Muncey states not that we know of
- Wayne Dennison states that is not in evidence
- Attorney Guard states it is up to the Board if you would like me to address any bullet points in their letters
- Wayne Dennison states your Client seemed to take issue with some of the things in the letter from the Abutter at 91 Gurnet Road, Mr. Columbo. I think it would be helpful to address those issues
- Attorney Guard states speaks to the non-historical significance of the ten sisters
- Freeman Boynton Jr states and they don't all look the same, they are all mismatched
- Attorney Guard agrees
- Kathleen Muncey states well there is a uniqueness there that the Applicants seem to like and the Zoning Board agreed with them 20 years ago
- Attorney Guard states well, the Board back then made a determination that that particular proposal was detrimental to the neighborhood. We are here today 22 years later to state that this proposal is consistent with how the neighborhood has developed.
- Wayne Dennison states that these folks think that if you expand beyond the footprint, it is inconsistent with the character and that was an issue that Board raised back then
- Kathleen Muncey states have you looked at the lot coverages of the 10 house that are the 10 sisters
- Attorney Guard states they are close, but I have not looked into that further yet
- Kathleen Muncey states this house looks smaller, do you think they are all around 18.9 percent
- Attorney Guard states I can look into that and present that
- Wayne Dennison states how big is the property
- Attorney Guard states 7,500 square feet
- Wayne Dennison states let's do the math
- Attorney Guard states Kevin Grady did this, it's on the site plan
- Wayne Dennison explains the math
- Discussions ensue
- Attorney Guard states it's the difference between 1,422 and 1,238, so about 184 square feet
- Wayne Dennison states so the total you can get under the special permit 3 percent rule is 375 square feet, so that's within the discretionary grant of 3 percent
- Jim Wasielewski states they added it all together on the plan's calculations



- Wayne Dennison states does the Board have any more questions
- Attorney Guard states I would like to address Mr. Columbo's letter and first it states the proposed plan shows a bigger foot print, which we just acknowledged. The driveway expansion we heard the Design review Board's concerns and we are going to go back to keeping the original driveway. While we are on that topic, we met with the Design Review Board several times and we made changes with the roof stairway we removed that, we added the gables to add more architecture
- Wayne Dennison states what about the stairway on the southside
- Attorney Guard states yes, it is allowable in your bylaw because it doesn't include egress decks provided it doesn't exceed 30 square feet
- Freeman Boynton Jr states so the deck and stairs don't exceed 30 square feet
- Attorney Guard explains correct and these are the stairs to access the elevator, which is not for luxury, it is for handicap accessibility throughout the house.
- Wayne Dennison states stairs for an elevator
- Attorney Guard states it is for the elevator shaft not the actual elevator
- Attorney Guard continues and states that the driveway will remain as it is and states
- Wayne Dennison states what is the composition of the driveway
- Attorney Guard states currently broken up asphalt and we are proposing a seashell pervious driveway
- Wayne Dennison states Historical was fine with it
- Attorney Guard states the party deck characterization, this is not the intent of this, this is Mr. Weintraub's home not something he is flipping or renting
- Wayne Dennison states people can do whatever they want on their property
- Attorney Guard states this construction is a well needed improvement to the property
- Freeman Boynton Jr states do some of the adjacent properties have basements
- Attorney Guard states some of them do
- Freeman Boynton Jr states how about #91 Gurnet Rd
- Attorney Guard states no, they are on piles
- Attorney Guard states the DRB's letter about the ornamentation
- Freeman Boynton Jr states that we do take the Design review Boards opinion with high importance
- Attorney Guard states yes, but to say the ornamentation
- Wayne Dennison states well, we do have to consider detriment to the neighborhood and if it is considered to be ornamented in a such a way....
- Freeman Boynton Jr states can we look at the rest of the architectural plans while you go over this
- Attorney Guard states yes, you can see on the side elevation the architect added this gambrel style, the Design Review Board didn't like that, but the architect thought it necessary and you'll see the house to the right has this and I disagree with their analysis
- Wayne Dennison states I agree the house immediately to the left is similar. In reference to the steps, I understand you need them for the elevator but can't you put them somewhere else
- Attorney Guard states I don't think so, they have to be right there for the elevator access
- Freeman Boynton Jr states is there a floor plan (it is shared on the screen) and states so that's the only place that it goes into the setback on that side-the far-right hand side
- James Wasielewski states there are also a set of stairs on the front of the house that go into the setback also

- Freeman Boynton Jr states we're over 30 feet between the two stairways
- Kevin Grady states under the projection and continues to read the bylaws stating so the steps are individual units
- Attorney Guard states we spoke about this today
- Wayne Dennison states you are excluding it from coverage so it's a maximum of 30 square feet max even adding it up
- Attorney Guard states how many eaves can we have
- Kevin Grady states we are focused on the stairs but eaves and cornices read as individual units
- James Wasielewski states I do not agree that it is 30 square feet each, it is based on a total encroachment
- Attorney Guard states the front setback is 51.4 feet and, oh wait, they are in the side setback, never mind
- Jim Wasielewski states we have seen this before when it is a second means of egress but the bylaw as I interpret that
- Attorney Guard states we can move them out of the side setback and out them in the front where there is space
- Wayne Dennison states does the Board have any further questions for the applicant
- Freeman Boynton Jr states I am still curious as to where we stand with the Design Review Board
- Attorney Guard continues we talked about the ornamentation of the home, the decks
- Freeman Boynton Jr states what did they not like about the ornamentation specifically
- Attorney Guard states they didn't like the gambrel on the side
- Freeman Boynton Jr states it likes like most of the houses on the street have that style
- Attorney Guard states that is what confused us
- Wayne Dennison states they aren't big on gambrels
- Attorney Guard states they didn't like the windows on the front and asks Lauren to share the photo on the screen
- Kathleen Muncey states they didn't like the round window
- Wayne Dennison states I will be candid with you, it's up to you
- Freeman Boynton Jr states I think it's cute
- Kathleen Muncey states I like it
- Attorney Guard states it's a nautical look to it
- Jim Wasielewski states it is a pretty design
- Wayne Dennison states so where are you going to move the stairs, looking at the design of the front
- Attorney Guard states those aren't garages, those are just storage units, so we are going to slide the stairs over
- Robert Weintraub states I would like to comment on the Design Review Board. The first meeting they didn't notify us, so we didn't know about it. We had three meetings with the DRB and they were unhappy with several design elements so we left that meeting and changed several elements based on their statements and met with them again. We left the meeting last week and everyone was very happy until we got the letter which we were shocked. We changed the cupola and put in the dormer, we changed the deck sizes so they are now Juliette balconies. They didn't like the roof deck so I scaled that back and made it half the size of the roof. They didn't like the elevator override staircase looking like a lighthouse so we made it a simpler design and they didn't like the staircase from the roof so we removed that and made it a frost bubble. So now you would open up the bubble and go down the stairs. We have changed all of the elements that they are unhappy with and they also mentioned they were unhappy with the



interior of the house layout and even though they don't have jurisdiction over that they made a comment about the size of the island and that it is too big and will be hard to clean. I have three daughters and grand kids and it works for my family.

- Wayne Dennison states you can use that as a changing table, it is your home
- Robert Weintraub states we have done everything we can to appease them and I don't know where we go from here. The house that is there now is deplorable, infested with varmint and an eye sore to the neighborhood
- Freeman Boynton Jr states the one thing that concerns me is that you took out the staircase and put in a bosco bubble and so now you have a bubble and elevator on the roof deck. The staircase makes a lot more sense safety wise
- Robert Weintraub states we had proposed a lighthouse stairwell and where I work in Boston doesn't allow the bubble, they are dangerous
- Freeman Boynton Jr states can you add back in the staircase
- Robert Weintraub states yes, I would like to keep it for safety concerns
- Freeman Boynton Jr states can you add the stairs back in without changing the architecture. What does the south view look like
- Robert Weintraub states we can put in a simple hen house and put it next to the elevator
- Kathleen Muncey states I like the safety of that
- Jim Wasielewski states this seems to be the smarter choice safety-wise
- Wayne Dennison states any more questions from the Board
- Wayne Dennison continues and opens the discussion up to the public, where there are no comments. Mr. Dennison states any further questions
- Freeman Boynton Jr states so there is a new owner at 91 Gurnet
- Robert Weintraub states we have not met the new owners yet
- Wayne Dennison states if there is no further comment I am going to move to close the public hearing
- Kathleen Muncey states what about the new plans
- Attorney Guard states I would ask you to leave the record open to submit the new plans with the roof stairs and side stairs
- Freeman Boynton Jr states well, as long as it is not bigger
- Wayne Dennison states I am not in favor of closing the hearing and then have more plans submitted. I would keep the hearing open and consider the plans and allow for public comment
- Kathleen Muncey states I am still interested in what the coverage is for the area homes
- Kevin Grady states we can do that using the assessors map
- Kathleen Muncey states there are concerns that this is going to be the largest so we would like to have this
- Wayne Dennison states alright, I am going to withdraw the motion to close the public hearing and move to continue the hearing
- Freeman Boynton Jr states thank you for not pushing us (to the Applicants)
- Discussion over the schedule ensues and Wayne Dennison moves to continue the case to May 12, 2022 Freeman Boynton Jr seconds
- WD, KM, FB, PT, BG and TT

**Motion: It was moved, seconded and unanimously voted to continue the public hearing to May 12, 2022.**

Moved by: WD

Seconded by: FB

Number in favor: 5

Number opposed: 0

## BOARD OF APPEALS MINUTES

**Case No: 2022-05**

**Petitioner: Daniel and Mary Lefebvre**

**Address: 33 Marginal Road**

**Date: April 14, 2022 Time: 7:30 p.m.**

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

**Members Voting:** Wayne Dennison, Kathleen Muncey, Freeman Boynton Jr., Philip Thorn and Borys Gojnycz

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

The Board of Appeals will hold a public hearing in the Mural Room, 878 Tremont Street and via zoom on Thursday, April 14, 2022 at 7:30 p.m. to consider the application of Daniel Lefebvre for a Special Permit under Article(s) 400 and 900, Sections 401.2 #4, 402, 404, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 33 Marginal Road, Parcel No. 139-941-038 of the Duxbury Assessors Map, consisting of 0.10 acres in the Residential Compatibility District (RC), Flood Hazard Area Overlay District (FHAOD) and the Wetlands Protection Overlay District (WPOD) and owned by Daniel and Mary Lefebvre. The Applicants propose to add on to a pre-existing, non-conforming dwelling. A special permit is required.

- Wayne Dennison opens the public hearing and reads the hearing notice into the record and the various Town Board case response memos and notes the details submitted with the application.
- Freeman Boynton Jr. states where are we with Con Comm.
- Daniel Lefebvre states we haven't filed yet with Conservation
- Freeman Boynton Jr states shouldn't we wait to hear this until after Conservation
- Kathleen Muncey states when are you scheduled
- Daniel Lefebvre states to be honest, I have not filed yet, I didn't realize that came first
- Freeman Boynton Jr states this should be your last step so that all of the other Boards have weighed in, so that we know it is not going to change
- Wayne Dennison continues to read the case response in to the record and then letters in support from the neighbors. Mr. Dennison continues we usually ask applicants to go to Con Comm first so that if changes need to be made based on their decision, you can make those changes and come back
- Daniel Lefebvre states I do not, I just ask that I get on the schedule sooner after the Conservation hearing
- Philip Thorn explains that this is on a barrier beach, so we have a concern that Con Comm. May have changes determined by this and it would be too difficult to condition that



- Daniel Lefebvre states I apologize I didn't understand the process
- Wayne Dennison states I see the wetlands delineation and it looks as though the proposed addition is further from the wetland
- Freeman Boynton Jr states but still in the 100-foot buffer
- The Board agrees
- Wayne Dennison states I think you have to go to Conservation first
- Freeman Boynton Jr states where is the driveway
- Daniel Lefebvre states it's labeled crushed stone
- Freeman Boynton Jr states so we are not putting an addition in the only parking spaces you have
- Daniel Lefebvre states no
- Kathleen Muncey states does Conservation ever change the size of the dwelling
- Freeman Boynton Jr states I don't think so
- Wayne Dennison states Jim, what is your take on the shed being part of existing coverage
- Jim Wasielewski states the zoning bylaw addresses in definitions a structure but the definition of that is anything less than 120 square feet isn't included; I don't know how big that shed is
- Daniel Lefebvre states it is less than 100 square feet
- Jim Wasielewski states typically in the past if someone comes before us and all of the setbacks are in compliance, coverage wouldn't include a small shed on a small property
- Wayne Dennison states it seems like they are under the 15% existing while including the shed and I am not even sure they had to
- Daniel Lefebvre states I understand the process now and I appreciate this
- Wayne Dennison states the plans look good, but we really have to wait for Con Comm. The neighbors are supporting this and you are still under the 3% rule. When should we continue this to
- Freeman Boynton Jr states Con Comm takes a while, they are busy and it may take a couple of months
- Kathleen Muncey states we do have August off
- Lauren Haché states June is open for now
- Wayne Dennison makes a motion to continue the hearing to June 9, 2022
- Kathleen Muncey seconds the motion
- All In favor WD, KM, FB, PT

**Motion: It was moved, seconded and unanimously voted to continue the public hearing to June 9, 2022.**

Moved by: WD

Seconded by: KM

Number in favor: 4

Number opposed: 0