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TOWN OF DUXBURY
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BOARD OF APPEALS

**DUXBURY BOARD OF APPEALS**  
**MEETING MINUTES**  
May 26, 2022 @ 7:30 p.m.

**ATTENDANCE:** Kathleen Muncey (Chair Pro Tem), Freeman Boynton Jr., Emmett Sheehan, 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:** Kathleen Muncey 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 #2021-28, Husk, 160 Marshall Street (CONT'D):** *The Board voted 4-1 to continue the public hearing to July 28, 2022, with Associate Member Thorn voting in opposition*

**ZBA Case #2022-02, Weintraub, 87 Gurnet Road (CONT'D):** *The Board voted unanimously to continue the public hearing to June 23, 2022.*

**ZBA Case #2022-07, Old Cape Realty, LLC, 5 Webster Road (CONT'D):** *The Board voted unanimously (5-0) to withdraw the application, without prejudice*

**ZBA Case #2022-11, MacLaren, 379 Tremont Street:** *The Board voted unanimously (5-0) to approve the special permit with conditions.*

**ZBA Case #2022-12, White, 35 Winsor Street:** *The Board voted unanimously (5-0) to approve the special permit with conditions.*

*Kathy Muncey makes a motion to approve the minutes from April 14, 2022. Emmett Sheehan seconds*  
*Kathy Muncey makes a motion to close the public hearing. Emmett Sheehan seconds (5-0)*

## BOARD OF APPEALS MINUTES

Case No: 2022-07  
Petitioner: Old Cape Realty LLC  
Address: 5 Webster Road  
Date: May 26, 2022 at 7:30 p.m.  
(Continued April 14, 2022)

**Members present:** Kathleen Muncey (CPT), Freeman Boynton Jr., Emmett Sheehan, Philip Thorn, Borys Gojnycz & Tanya Trevisan

**Members Voting:** Kathleen Muncey, Freeman Boynton Jr., Emmett Sheehan, Tanya Trevisan & Borys Gojnycz

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

- Kathy Muncey re-opens the public hearing and states that Town Counsel has weighed in on this case and stated that if we make the determination that this is not an alteration, the Applicant can withdraw
- Michael Ferreira reads a letter regarding the research that they conducted to find out previous ownership but that they can not come up with the burden of proof. There was a rental to a border previously, but nothing set in stone proving this. Per our electrician no new wiring, no new service and no change of location is needed.
- Emmett Sheehan states well, how about we go with it's not an alteration
- Kathleen Muncey states that if we do that and we pen a decision, we would have to say that it is not an alteration, but we don't have sufficient evidence that it is a pre-existing multi family. I think the alternative would be to withdraw based on Town Counsels opinion that it's not an alteration. Jim, are you still here. They can come and get a permit for the meter based on the opinion if you are in agreement
- Jim Wasielewski states I read the opinion, I agree with her and it doesn't legitimize the use.
- Emmett Sheehan states I don't have a problem with this
- Phil Thorn states I think that based on Town Counsels opinion, I would withdraw the special permit application and get a building permit
- Kathy Muncey states any other Board Members
- Jim Wasielewski states I agree with Phil and Town Counsel, it makes the most sense for the applicant to withdraw.
- Kathy Muncey states how would you like to handle this
- Michael Ferreira states I don't understand
- Kathy Muncey states Town Counsel has opined that the meter is not an alteration
- Michael Ferreira states I would like to withdraw, without prejudice
- Kathy Muncey states do I have a motion to accept the withdraw
- Emmett Sheehan states so moved



- Tanya Trevisan seconds
- All in favor KM, ES, FB, TT, BG

## **BOARD OF APPEALS MINUTES**

**Case No: 2022-02**

**Petitioner: Weintraub**

**Address: 87 Gurnet Road**

**Date: May 26, 2022 at 7:30 p.m.**

**(Continued March 10, 2022, April 14, 2022 & May 12, 2022)**

**Members present:** Kathleen Muncey (CPT), Freeman Boynton Jr., Emmett Sheehan, Philip Thorn, Borys Gojnycz & Tanya Trevisan

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

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

- Kathy Muncey re-opens the public hearing and reads the new materials received since the last public hearing a plan set 10 and 11, a coverage analysis and some existing photos of surrounding homes
- Steve Guard, the Agent for the Applicant Rob Weintraub re-introduces himself and states we took the Boards suggestions and we moved the side stairs to the front, so that it is not in the side-setback. We also have a coverage analysis of the surrounding homes and finally, we have removed the emergency roof deck bubble and added a "dog house" stairwell.
- Kathy Muncey states thank you, what is the difference with plan set 10 and plan set 11
- Jim Wasielewski states it has to do with the dog house on the roof, one is connected and one is separate
- Kathy Muncey states the structure is bigger and there seems to be another set of windows on the side as well. Before there was once tower type structure and now there are two
- Kerri Johnson, the contractor states we tried to marry the structures and then gave the option with two separate structures
- Kent Harrington, the Architect, explains the height for the doghouse structure, explaining that there needs to be headspace
- Kathy Muncey states Freeman, I think you were the one that requested the stairwell back, is this what you were thinking
- Freeman Boynton Jr states I think whatever it takes, I don't want to see a crew up there having to exit through a bubble in an emergency
- Kathy Muncey states the Design review Board had some issues with this early on, we have Nancy Johnson here from the Design Review Board, would you like to speak Nancy

- Nancy Johnson with the Design Review Board states the main issue we have is the coverage issue and shares her screen and states the coverage is 20% greater than the average and the decks aren't included in their coverage figures. There are other ways to do the project, it doesn't have to be so close to the side setback. They are proposing the volume to go above the height limitation and I have a real problem with the doghouse coming back. It's not sensible to have a roof deck without stairs, but we made other suggestions to get a stair within the bylaw and put the stairs from a lower deck up to a roof. They haven't worked hard enough to get this to comply with the bylaw. A roof deck is not required, if they can't make it conform then they shouldn't do it.
- Emmett Sheehan states how much did they exceed the height requirement
- Nancy Johnson states this is the 30-foot line, so quite a bit
- Kathy Muncey states well the elevator shaft has to correct
- Jim Wasielewski states bulkhead and elevator shafts are excluded from the height requirement
- Nancy Johnson states well, if the elevator didn't have to stop at the roof, so
- Kathy Muncey states so the stairs are a second means of access
- Freeman Boynton Jr states yes
- Nancy Johnson states it's necessary to have stairs but they don't have to look like that
- Kathy Muncey states thank you Nancy
- Nancy Johnson states one other point I would like to make is the gambrel shape is not resolved with the rest of the plans. I think there is more work to be done to resolve everything
- Jim Wasielewski states I would like to address one thing regarding the front setback, this is compliant with the front setback in every way.
- Steve Guard states the coverage meets the Bylaw by special permit and the non-conformities are becoming less non-conforming from setbacks, this is an unfair restriction
- Kathy Muncey states it is our job to determine if this is more detrimental to the neighborhood. The neighbor to the left is for this project and the direct abutter to the right is against this but sold the property in April. Does the Board have any questions?
- Borys Gojnycz states with the elevator shaft, could the applicant emit the elevator and just use the stairs
- Kathy Muncey states I believe someone has disabilities and wouldn't be able to get there otherwise
- Steve Guard states the elevator is not a luxury item, this is for persons with disabilities
- Kathy Muncey states I would prefer the chimney style elevator shaft and that the stairs be part of the house, but it sounds like you're not restricted-just my thoughts
- Kathy Muncey continues would the public like to speak
- Rob Weintraub, home owner, states I would like to speak to some of Nancy's comments. With respect to the elevator and stair well, those are both head houses and exempt from the height restrictions. We are happy to lose the lighthouse appearance, those are not windows, just panels as opposed to just a plain box. All the homes are



different in appearance and many of them have decks; no two are alike. Most of these homes were from a sears catalog

- John Mastermarino, 93 Gurnet Road, states I have sent in several letters and for the last 20 years we have been required to stay inside of the footprint. At the end of the day, does this mean my property can increase in size by 25% and maybe I will claim disability and get a higher elevation on my home. This is a charming little neighborhood and this is going to turn into this proposed project. Does it belong in the neighborhood, what you decide tonight is precedence setting
- Kathy Muncey states this isn't a matter of right, they would have to come before the board
- Rob Weintraub states that your home John wasn't from a sears catalog, yours is completely renovated. I think 87 Gurnet was from a catalog and it is certainly an eyesore and dilapidated
- Steve Guard states I would like to remind the board that I submitted about 20 homes in the area with the square footage and this gentleman's home floor area is 4378 sq. ft. and we are proposing 2847 sq. ft.; there are significantly larger homes in the area
- Kathy Muncey states I grew up in the neighborhood and I have always adored those ten homes, but times are changing and homes are getting higher, given the rising sea level
- Nancy Johnson states I did want to respond on a few things I am confused about, the increase of the side setback would be increasing the non-conforming nature.
- Kathy Muncey states it does intensify it, but they are staying within the same side setback and within the footprint with the 3% rule, they aren't substantially increasing setback
- Nancy Johnson states and the pieces projecting above the height and also, the stair hall is allowed by the zoning height and I did not find that to be the case
- Jim Wasielewski states it is considered a bulkhead
- Nancy Johnson states it is a lot larger than a bulkhead
- Jim Wasielewski states those are exempt
- Nancy Johnson states they should redesign the roof to hide that or move the stairs closer to the elevator
- Kathy Muncey states does the Board have any questions
- Freeman Boynton Jr states I think Nancy has legitimate concerns, I wonder if we could have the applicant work on the bulkheads on the roof
- Rob Weintraub states we would be happy to work with her; my preference would be to have them separate. We are going to make them as small as possible, they are not for storage or entertaining, so we are going to make them as small as possible. We will be happy to work with her on the design
- Freeman Boynton Jr states so design 11, that's linked together and also are there mechanicals above the elevator
- Rob Weintraub states there is a hoist way above the elevator, you can't do a hydraulic elevator in a flood zone. We are fine separating them
- Kathy Muncey states how should we approach that
- Freeman Boynton Jr states conditioned on Nancy's approval

- Kathy Muncey states so Nancy, do you think they could be reduced? I am worried they can't
- Nancy Johnson states it's tough to say, it depends on what they are willing to change
- Rob Weintraub states we already made the changes that you suggested and were very surprised that the Design review Board sent that letter after the fact; I cannot go back to the drawing board at this point
- John Mastromarino states given the fact that the neighborhood has issues with this renovation, I would hope that we would be able to review what this will look like
- Jim Wasielewski states it is my opinion, but I don't think that conditioning this for Nancy and the Applicant to go back and forth, the Design review Board makes suggestions but they are not the designers of the project. There are things allowed by right and then there are codes for head height
- Kathy Muncey states so we can continue or we can close the public hearing and the Board can discuss
- Amy MacNab, 269 Old Tobey Garden Street, states I am concerned about the height restrictions. One of the bulkheads is for the elevator, what is the purpose of the second one
- Kathy Muncey states stairs as a second means of egress
- Amy MacNab states what is the need for both of these, which do exceed or height limitation and this is to access the roof deck
- Kathy Muncey states there is a disabled person in the house, so the elevator is necessary. The stairs are the code. Last meeting the doghouse was smaller, but the stairs were accessed through a hatch which we deemed as not safe. They came back with a much larger than anticipated stair doghouse
- Amy Macnab states I do understand the handicapped waivers, so could they go up 40 or 50 feet, we would have to allow that because they are disabled
- Kathy Muncey states no, we have a height limitation that they meet
- Amy MacNab states I understand that, I am struggling with the...
- Kathy Muncey states it is limited to the height of a person
- Jim Wasielewski states a height limitation in the RC district is not exceeding 65 feet
- Kathy Muncey asks the Board if they have any more questions
- Freeman Boynton Jr states I am concerned about not continuing and them coming to a stalemate with Nancy
- Kathy Muncey states Freeman is asking you to continue
- Ron Weintraub states we are happy to continue, when we come back is the only issue the two hen houses
- Kathy Muncey states we do have to consider
- Kerri Johnson the Builder states we did completely redesign the project after the initial meeting with the Design review Board and the interior was changing significantly after redesigns. I don't want to go in circles, I am hoping we can restrict it to the staircase and elevator and not have to do a whole redesign of the house
- Freeman Boynton Jr agrees, just shrink the hen houses as best you can



- Steve Guard states I think that's achievable. Could you tell us separate or together for hen houses
- Kathy Muncey states it is whatever it can be reduced as best can be
- Freeman Boynton States is it an option to join them or make them closer together
- Kerry Johnson states the first and second floor handicapped access is direct and stairs are stacked, so it is not going to go together
- Nancy Johnson states if you were looking to relocate the stairs or elevator, it could be smaller. I prefer smaller and together is preferable
- John Mastromarino states I think we are heading in a bad direction with size and I would like to leave it open to continue to access that the structure is moving 20 feet closer to the street
- Kathy Muncey states it meets the front setback, thank you
- Steve Guard states we can work on smaller and together and we will continue
- Freeman Boynton Jr states could you slide the elevator and laundry and see what you can do
- Lauren Haché states June 23<sup>rd</sup> is completely free
- Kathy Muncey asks for a motion to continue to June 23<sup>rd</sup>
- Freeman Boynton Jr moves
- Phil Thorn seconds
- All in favor KM, TT, BG, PT, FB

**Motion: It was moved, seconded and unanimously voted to continue the public hearing to June 23, 2022**

Moved by: FB

Seconded by: PT

Number in favor: 5

Number opposed: 0

## BOARD OF APPEALS MINUTES

**Case No: 2022-11**

**Petitioner: John MacLaren**

**Address: 379 Tremont Street**

**Date: May 26, 2022 at 7:30 p.m.**

**Members present:** Kathleen Muncey (CPT), Freeman Boynton Jr., Emmett Sheehan, Philip Thorn, Borys Gojnycz & Tanya Trevisan

**Members Voting:** Kathleen Muncey, Freeman Boynton Jr., Emmett Sheehan, Tanya Trevisan & Borys Gojnycz

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

- Kathleen Muncey reads the public hearing notice and the case responses from various boards in town
- John MacLaren present his application and explains that he is interested in creating a legal apartment for the future for his wife eventually as some income. Right now we don't have the stove, so we are coming here to ask for the special permit to add the stove and make this a legal rental apartment. Right now, this is for our kids, but in the future, this could supplement the income for my wife. Regarding the stairs, we have fixed that and the Building Inspector came out and signed that off, so we are compliant with Building and Septic.
- Jim Wasielewski states I have the bylaw in front of me and reads the criteria for an accessory apartment. They are compliant, we just need a second point of egress, but that wouldn't happen until permitting
- John MacLaren states we do have two other egress stairways
- Jim Wasielewski states we do need the doorway is 36" wide and would need to go directly outside
- Kathy Muncey states so, you will take care of this
- John MacLaren states yes, I will take care of this
- Tanya Trevisan states I was going to follow up because the Design Review Board's letter noted two sets of egress. So maybe should we approve this application we provide a proviso
- Kathy Muncey states so 780 CMR
- Jim Wasielewski states that's the building code
- Kathy Muncey states we'll just say in compliance in egress with the Massachusetts Building Code, should we elect to approve this. Anyone else have any questions
- Emmett Sheehan states no questions, I think this is exactly what the special permit is for
- Kathy Muncey states do I have a motion to close the public hearing
- Emmett Sheehan states so moved
- Freeman Boynton Jr seconds



- All in Favor KM, TT, ES, FB, PT
- Kathy Muncey states any discussion; I personally think this is why we have the bylaw, this is a great example and a great application
- Jim Wasielewski states what about parking, is there sufficient parking
- John MacLaren states we have two spaces for the apartment
- Kathy Muncey states do I have a motion to approve the application as presented with the condition that a second means of access be established in compliance with the State building Code
- Emmett Sheehan moves
- Tanya Trevisan seconds
- All those in favor KM, TT, ES, FB, BG

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

Moved by: ES

Seconded by: FB

Number in favor: 5

Number opposed: 0

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

Moved by: ES

Seconded by: TT

Number in favor: 5

Number opposed: 0

## BOARD OF APPEALS MINUTES

**Case No: 2022-12**

**Petitioner: White**

**Address: 35 Winsor Street**

**Date: May 26, 2022 at 7:30 p.m.**

**Members present:** Kathleen Muncey (CPT), Freeman Boynton Jr., Emmett Sheehan, Philip Thorn, Borys Gojnycz & Tanya Trevisan

**Members Voting:** Kathleen Muncey, Freeman Boynton Jr., Emmett Sheehan, Tanya Trevisan & Borys Gojnycz

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

- Kathleen Muncey reads the public hearing notice and the case response from various town boards
- Kathy Muncey reads a letter from David Corey, 32 Linden Lane, with concerns about being able to traverse the beach for walkers along the beach below the highwater mark.
- Freeman Boynton Jr recuses from this case
- Kathy Muncey states ok, so we have myself, Emmett Sheehan, Tanya Trevisan, Borys Gojnycz and Phil Thorn ok
- Paul Brogna, Seacoast Engineers, explains the project to the Board as the Agent for the Applicant. Mr. Brogna states we have the Orders of Conditions from Conservation and explains that the height below the highwater mark will still allow for a height of 7 to 8 feet and that the State's requirement is 5 feet of clearance at the mean high waterline, so crossover stairs are not required. The pier is designed in accordance with section 404.20 of the zoning bylaw.
- Emmett Sheehan states so someone can walk under this at high tide
- Paul Brogna states yes
- Kathleen Muncey states so where Mr. Corey has walked for years, he will be able to still walk under the pier at high tide
- Paul Brogna states definitely
- Kathy Muncey states the application states no lighted, will they entertain a condition
- Paul Brogna states yes, as long as they can put seasonal/christmas lighting
- Kathy Muncey states ok. Any board members have questions
- Emmett Sheehan states this is a great project
- Borys Gojnycz states I had full faith that Mr. Brogna would not block beach access
- Phil Thorn states I am happy with the height access for beach walkers and I agree that the condition of no lighting other than seasonal and that this pier ends in open water and not in a tidal creek
- Kathy Muncey opens the discussion to the public for comment



- Phil Thorn states I would like to say that the pier does not end in a tidal creek even though the Bylaw doesn't define that
- Bill Tenhoor, 1 Water Street, states I would like to make a few points. Perhaps postponing the decision on this pier. I am concerned with sea level rise and shore level. The shoreline is slowly getting eroded by construction and piers but maybe this be considered for a period of time to look at alternative designs
- Paul Brogna states we did everything according to the regulations, they don't allow us to design these any higher or I would do this. Also, there are two piers are coming in this summer on King Caesar Road and no one intervened so I see no reason to continue this case
- Kathy Muncey states any further comments
- Tanya Trevisan states I respect Bill's comments and concerns but also recognize Mr. Brogna's comment on the 20 year codes and Bylaws. I wonder if when the Bylaws are being revised, we take into consideration sea level rise
- Emmett Sheehan makes a motion to close
- Kathy Muncey seconds
- All in favor KM, TT, ES, BG, PT
- Kathy Muncey states any discussion, I think this meets the current Bylaw
- Phil Thorn concurs
- Kathy Muncey makes a motion to approve the special permit with the condition that there be no lighting other than appropriate seasonal lighting
- Emmett Sheehan seconds
- All in favor KM, TT, BG, PT, ES

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

Moved by: ES

Seconded by: KM

Number in favor: 5

Number opposed: 0

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

Moved by: KM

Seconded by: ES

Number in favor: 5

Number opposed: 0