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DUXBURY, MASS.

TOWN OF DUXBURY  
BOARD OF APPEALS

DUXBURY BOARD OF APPEALS  
MEETING MINUTES  
May 12, 2022 @ 7:30 p.m.

**ATTENDANCE:** Judith Barrett (Chair Pro Tem), Kathleen Muncey, 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:** Judith Barrett called the meeting to order and reads the Governor's preamble Pursuant to Chapter 20 of the Acts of 2021, this meeting will be conducted in person and, as a courtesy, via remote means in accordance with applicable law. Please note that while an option for remote attendance and/or participation is being provided as a courtesy to the public and board members, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast, unless required by law. Additionally, the meeting will be broadcast live, in real time, via 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 #2022-02, Weintraub, 87 Gurnet Road (CONT'D):** *The Board voted unanimously (5-0) to continue the public hearing to May 26, 2022*

**ZBA Case #2022-08, Szczesny, 155 Bay Road:** *The Board voted unanimously (5-0) to approve the special permit as proposed.*

**ZBA Case #2022-09, Keefe, 5 Mayflower Road:** *The Board voted unanimously (5-0) to approve the special permit, with conditions*

**ZBA Case #2022-10, Old Myrtle Street LLC, Keene's Mill Village, 0 North Street, Comprehensive Permit Application:** *The Board voted unanimously to continue the public hearing to June 9, 2022 at 6pm*

*Emmett Sheehan makes a motion to close the public hearing. Judith Barrett seconds (5-0)*

## BOARD OF APPEALS MINUTES

**Case No: 2022-08**

**Petitioner: Scott and Kathleen Szczesny**

**Address: 155 Bay Road**

**Date: May 12, 2022 at 7:30 p.m.**

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

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

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

- Judith Barrett opens the public hearing and reads the hearing notice and the case responses from the various town boards
- Mark Casey shares his screen and describes the proposal, stating there is an existing connecting one story garage. The current coverage is 10.5% and the proposal will increase to 10.8% and there will be an increase in square footage and volume. Within the setback, there is a 52 square foot increase and shares photos
- Judith Barrett reads letters in support from the Nichols of 157 Bay Road and Lisa Montgomery of 153 Bay Road
- Judith Barrett states sitting on this case is Kathy Muncey, Freeman Boynton Jr., Emmett Sheehan Borys Gojnycz
- Judith Barrett asks for any comments from the Board
- Freeman Boynton Jr states I am having a hard time differentiating between the red lines and the black lines
- Kathy Muncey states they aren't changing the footprint right, they are just expanding up
- Mark Casey shares the screen of a sub-sketch showing the existing and the proposed. We are holding this back line, no changes and then extending but less non-conforming
- Judi Barrett states does anyone on the Board have questions
- Kathy Muncey and Emmett Sheehan both agree this is a nice project, it is to scale and in keeping with the neighborhood
- Judi Barrett states would anyone else in the public like to comment
- Matt Fogerty, 159 Bay Road, states that .56 acres is why there needs to be a variance, because the size of the lot, is that correct
- Judi Barrett states they aren't asking for a variance, they are seeking a special permit because both states law and our local bylaw provide for extensions or alterations of non-conforming uses and structures, so the Applicant is seeking a special permit to extend a non-conforming structure
- Freeman Boynton Jr. states basically they are increasing non-conforming volume
- Judi Barrett agrees
- Matt Fogerty asks about the size of the lot



- Mark Casey confirms that it is 28,330 square feet
- Matt Fogarty continues and states so looking at the plan, this would be an increase of 21% of the total space, is that right
- Freeman Boynton Jr states it appears to me that they are going from total building coverage of 10.5% to 10.8% for coverage of the lot
- Matt Fogarty states that's the coverage, I was referencing the square footage, where existing is 679 sq. ft. and 1469 sq. ft. for proposed, so the total increase in square footage is about 21% but the living space is almost 26%
- Mark Casey states as it's stated in the Duxbury Zoning Bylaw, we have been working on square feet and cubic feet but nothing in percentage
- Matt Fogarty states so the increase in square footage is what
- Mark Casey states the garage and connector is 734.9 sq. ft.
- Matt Fogarty asks the board about the notifications of abutters
- Mark Casey states everyone within 300 feet of this property got notified
- Matt Fogarty states it doesn't list who the owner of Bayridge Lane and that is the entire western edge of the property. The plan doesn't identify the owner of the road
- Mark Casey states we don't need to
- Judith Barrett states isn't it a public road
- Mark Casey states it is a private way and on one side there is a fee interest that is Szczesny and the other side is Nichols to the centerline
- Matt Fogarty refutes that and states my mother and I own the eastern edge of the road and there is an easement where over 100 homeowners including those on Blodgett, Bayview and Bayridge have access to this road and those parties haven't been given proper notice about this improvement, they should be considered abutters and it would affect them and their use. I would like to request the Appeals Board not make a determination on this tonight and in turn send proper notice to all of these abutters
- Kathleen Muncey states if they are easement holders they are not owners and not entitled to notice
- Matt Fogarty states it is out position is that this addition will over burden the use of Bayridge Lane
- Kathleen Muncey states how, how will this garage addition affect that
- Matt Fogarty states there is proposed living space above the garage
- Mark Casey states I don't believe my client is adding any new family members and I can't possible see how this will overburden Bayridge Lane
- Judith Barrett states I don't think that is out call either
- Kathleen Muncey states I don't believe there has been a notice violation
- Matt Fogarty states as an abutter I oppose this. I have one last question for Mark, David Uitti is on the Planning Board and I understand he is representing the Szczesny's in a dispute over the use of that road to the landing. Has David Uitti provided the appeals court any information about this
- Kathleen Muncey states that is a different board, so it won't have any bearing
- Judith Barrett explains the ZBA Bylaws states that any application that comes before the ZBA, goes out to several boards, including the Planning Board for comment. I did read

the case response earlier from the Planning Board where they simply defer to us. And that was signed by the Chair, not Mr. Uitti.

- Matt Fogarty states ok, so the memo from the Planning Board didn't include anything regarding that with the conflict
- Judith Barrett states they did not disclose that, it's not a matter for us
- Matt Fogarty states there are some case law with respect to zba's deny permits like this and let it be known that I oppose this matter
- Judith Barrett states yes, we are aware of circumstances where these types of cases are denied
- Freeman Boynton Jr states it appears to me that they could add another 1,000 square feet to this house without a special permit or 2,000 if two story. They are trying to tastefully add to the building with the way it is laid out.
- Kathleen Muncey states so the standard is still detrimental to the neighborhood
- Freeman Boynton Jr states I think the only direct abutter it could detrimentally affect are Montgomery's and they wrote a letter in support of this project
- Judith Barrett agrees and asks if there are any other comments or questions regarding this case
- Freeman Boynton Jr states I think this is an approval project, I don't see this becoming detrimental to the neighborhood
- Kathleen Szczesny, 155 Bay Road, states I just want to state we are not planning to add any family members to our family, we intent to use the space above the garage as bonus space for our two boys.
- Kathleen Muncey states this is a very approvable project
- Emmett Sheehan states I agree and make a motion to close the hearing
- Freeman Boynton Jr seconds
- All in favor JB, KM, FB, ES, BG
- Freeman Boynton Jr states as long as Kathy doesn't think we have to notice easement owners, I have no issues approving this
- Judith Barrett states they don't have a fee interest
- Jim Wasielewski states Mass General Law doesn't allow us to put unrealistic stipulations on how someone lives in their home
- Emmett Sheehan makes a motion to approve the special permit as proposed for 155 Bay Road
- Kathleen Muncey seconds
- All in favor JB, KM, FB, ES, 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.**

Moved by: ES

Seconded by: KM

Number in favor: 5

Number opposed: 0



## BOARD OF APPEALS MINUTES

**Case No: 2022-09**

**Petitioner: Stephen and Victoria Keefe**

**Address: 5 Mayflower Road**

**Date: May 12, 2022 at 7:30 p.m.**

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

**Members Voting:** Judith Barrett, Freeman Boynton Jr., Emmett Sheehan, Philip Thorn & Borys Gojnycz

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

- Judith Barrett opens the public hearing and reads the public hearing notice, states a complete application was submitted and reads the case response from various town boards.
- Victoria and Stephen Keefe of 5 Mayflower Road explain the project and state they are proposing to add a two-story garage which is 624 sq. ft with the 3% will allow for 646 sq. ft. so we won't use the full 3% allowed with the special permit. We are not increasing on any side, rear or front setbacks.
- Judith Barrett states who is sitting on this case, me, Freeman Boynton, Borys Gojnycz, Emmett Sheehan and Phil Thorn.
- Freeman Boynton asks about the large overhang on the garage, Jim have you looked at this
- Jim Wasielewski states this is typically is added to the total coverage calculations
- Stephen Keefe explains the overhang on page A1 at the gable end is aesthetic
- Judith Barrett states are you asking if the coverage calculations are correct, what does the Bylaw say
- Jim Wasielewski states the Bylaw typically speaks to steps and stoops but doesn't refer to anything with a roof on it but typically anything over eight inches would be included in coverage
- Stephen Keefe states the Design Board liked the idea of it matching the gable end to accommodate lights
- Jim Wasielewski states I did the math coverage calculations quickly to see if the overhangs were included, the total coverage with the 3% is 2,030 and you're seeking 2,008 so that gives 22 square feet that you can still increase. The overhang here is 2ft 6inches and this adds
- Emmett Sheehan suggests maybe they bring the overhangs in to 8 inches
- Jim Wasielewski states with the mass it's a little over the 3%, so if you can dial that back a bit

- Freeman Boynton Jr suggests a 1 x 10 soffit
- Judith Barrett states all we need to hold them to is keeping at the max coverage with 3% and including the overhang
- Emmett Sheehan states I think it is a great project, we should impose a condition to make sure the coverage calculations are correct before a building permit is issued
- Judith Barrett asks the public for input, no one spoke up
- Emmett Sheehan moves to close the public hearing
- Freeman Boynton Jr. seconds
- All in favor JB, FB, ES, PT, BG
- Freeman Boynton Jr. makes a motion to approve the special permit subject to the condition that the architect prepare a plan showing the area of any overhang over 10 inches and that the coverage shall not exceed the 3 percent rule
- Emmett Sheehan seconds
- All in favor JB, FB, ES, PT, 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: FB

Seconded by: ES

Number in favor: 5

Number opposed: 0



## BOARD OF APPEALS MINUTES

**Case No: 2022-10**

**Petitioner: Keene's Mill Village**

**Address: 0 North Street**

**Date: May 12, 2022 at 7:30 p.m.**

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

**Members Voting:** Judith Barrett, Kathleen Muncey, Freeman Boynton Jr., Emmett Sheehan & Philip Thorn; Tanya Trevisan Alternate

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

- Judith Barrett opens the public hearing and states this application is for a comprehensive permit under chapter 40B and reads the public hearing notice into the record. Ms. Barrett's continues to explain the comprehensive permit process with waivers and the affordable housing element. We will start tonight with the Applicant's team to open the presentation
- Paul Haverty, the Applicant's Agent, begins the presentation stating they are proposing a North Hamlet with have 5 single family dwellings and then on a south parcel we are proposing 23 units.
- Ian Sheriff presents to the Board the Traffic Impact Assessment that was conducted over the winter
- Judith Barrett asks the Applicant about waiver relief from the Town's subdivision regulations
- Attorney Haverty states I don't believe so
- Judith Barrett states I do suggest that your waiver list is complete, I don't see the request in the application
- Attorney Haverty agrees
- Judith Barrett continues and states I would not like to summarize some of the Town Boards comments. I would like to hire Pat Brennan to do the site and civil review and Rob Nagi for the traffic review. The Board of Health states the plan is proposing 28 units each with 3-bedroom systems. The plan that has been submitted at this time does not show details on the design of the septic systems, setbacks, requirement of title 5 or Duxbury Supplemental rules and regulations. Perc tests have been performed and passed, the proposed plan shows 3-bedroom units with a bonus room that may meet the definition of a bedroom and that may need to be considered when designing the septic systems. At this time, I do not see any waivers requested from the Duxbury Supplemental Rules and Regulations. Ms. Barrett reads a letter from May 2021 noting the high-water table at this property and continued that there was some ledge at some test holes, but all the test holes passed at a passing perc rate. The septic systems will need to be designed in the areas where the perc tests were conducted.

- Judith Barrett continues and reads the memo from the Design Review Board, the Planning Board and a letter from Abutter Nancy Shine, 840 Keene Street stating their complete dependence on well water.
- Judith Barrett states has the application been sent to Pat Brennan yet
- Lauren Hache states not yet
- Freeman Boynton Jr states it's not complete, should the 180 days begin with an incomplete application
- Judith Barrett states the rules state we cannot hold the application up for this. We also need a quote from Rob Nagi to set up the escrow and get the traffic study going
- Judith Barrett states we are missing drainage calculations, Mr. Haverty what is the plan for that
- Attorney Haverty states I will defer to Rick Grady, the civil engineer
- Rick Grady states we should have this done in a couple of weeks
- Freeman Boynton Jr states do we need the nitrogen loading calcs also
- Rick Grady states there is a small portion of the property in the APOD where no septic systems are proposed and shares his screen to show that line on the property along Keene Street
- Tanya Trevisan states I think they should address the neighbors' concerns with the well. Also, I don't see any basement plans, will there be basements
- The Architect for the project does state that basements will be included
- Rick Grady states we do have the neighbors well in the plans
- Emmett Sheehan states will this development be on town water or well
- Rick Grady states Town
- Emmett Sheehan states how far from the Shine property will the mains be
- Rick Grady agrees to check on that
- Phil Thorn states I do have a question on where the APOD is on the plan
- Rick Grady shares his screen and shows where the line is on the plan
- Freeman Boynton states it's on sheet 101
- Judith Barrett opens the hearing to the public and I would like to keep it to just questions that the Applicant can respond to, please direct those to the Board
- Deborah Frangesh, 399 North Street, I would like to know how these houses will fit on the wetlands, will the wetlands delineation be updated
- Freeman Boynton states it needs to be less than 3 years old and the report states 2014
- Judith Barrett asks the Applicants
- Rick Grady states we will refresh that line for Conservation Commission, we will be filing in approximately a month
- Judith Barrett states I assume that a copy of that application will be furnished to the ZBA
- Carole Smith, 415 North Street, concerned about a Town water easement for this entire area and it goes through three properties and it drains under where this 20 ft drive is proposed on North Hamlet. The sidewalk is being proposed over an easement as well.
- Rick Grady states we will have to look into that, I am not aware of any easements



- Deirdre Graceffa, 62 Myrtle Street, questions the traffic study being conducted in the winter and notes that the traffic impacts are far greater in the summer months especially with Camp Wing.
- Don Bartlett, 171 Forest Street, asking about the perc testing and what areas of the proposal were they performed
- Rick Grady states the perc tests were scattered throughout the entire property
- Don Bartlett states ok, we are concerned about water pressure and how will the number of units affect the water pressure
- Judi Barrett states we will be seeking response from the water department
- Don Bartlett continues and questions the drainage flows and water easement that needs to be looked at
- Judith Barrett states we have an independent consultant that will look at this with the traffic review
- Judith Barrett states is there anyone online looking to comment.
- Judith Barrett states ok, we need to get the escrow established on these peer reviews and I assume you need time for the drainage calcs. Does it make sense for Pat Brennan to even review this without drainage calcs
- Freeman Boynton agrees, he needs that information
- Judith Barrett states when would you like to continue, keeping this in mind
- Attorney Haverty states what will work with your Town Counsel
- Judi Barrett states June 9<sup>th</sup> she is available, but I don't know if we will be ready with reviews if we don't have accurate information. Maybe we can plan for traffic on June 9<sup>th</sup>
- Rick Grady states yes, we would 4-6 weeks for drainage calcs and civil site
- Judith Barrett states we could go forward and meet with just traffic review on June 9<sup>th</sup>
- Lauren Hache states we do have 3 cases on for June 9<sup>th</sup> already
- Judith Barrett states ok, what about June 23<sup>rd</sup>
- Attorney Haverty agrees
- Phil Thorn states I cannot make the meeting on June 23<sup>rd</sup>, it's 8<sup>th</sup> grade graduation
- Freeman Boynton Jr. also suggests a site visit
- Kathy Muncey states what do we have June 9<sup>th</sup>
- Judi Barrett states ok, we can do June 9<sup>th</sup> for just traffic
- Carole Smith, 415 North Street, states yes, I would request that the architect stake out all 28 units if there is a site visit
- Judi Barrett states what is realistic for staking
- Rick Grady states the site is pretty well defined
- Judith Barrett asks for groupings of buildings for a visual
- Rick Grady states we can stake enough to make the Board comfortable
- Judith Barrett states how about Friday June 3<sup>rd</sup> at 9am for the site visit
- Lorelei Driscoll, 11 Forest Street, states why 28 units in this area, why not less
- Attorney Haverty states after review of site constraints, we determined this was an appropriate number
- Lorelei Driscoll states is that to maximize the profit of this site

- Attorney Haverty states profit is always a consideration
- Lorelei Driscoll states how many few units could you have to meet 40B requirements
- Attorney Haverty states that is not an appropriate question
- Judith Barrett states ok, so can we have a motion to continue the hearing to June 9<sup>th</sup>
- Emmett Sheehan states any thought to starting the meetings a bit earlier
- Judith Barrett states could we start at 6pm on June 9<sup>th</sup>
- Phil Thorn moves
- Emmett Sheehan seconds
- All in favor JB, FB, KM, ES, PT

**Motion: It was moved, seconded and unanimously voted to continue the public hearing to June 9, 2022 at 6:00pm.**

Moved by: PT

Seconded by: ES

Number in favor: 5

Number opposed: 0