

TOWN OF DUXBURY

BOARD OF APPEALS

DUXBURY BOARD OF APPEALS

MEETING MINUTES

June 9, 2022 @ 6:00 p.m.

TOWN CLERK
2022 AUG -8 PM 4:36
DUXBURY, MASS.

ATTENDANCE: Kathleen Muncey (Chair Pro Tem), Freeman Boynton Jr., Emmett Sheehan, Philip Thorn and Borys Gojnycz, 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 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 for more information about Duxbury programming including streaming on Duxbury You Tube, to watch replays and Video on Demand.

<https://pactv.zoom.us/j/93616327348?pwd=RHZYNIvLTndTdVZqaWIPb25hZiVLUT09>

Call in Access dial by your location: 1 929 205 6099

Meeting ID: 936 1632 7348 Zoom Password: 943482

ZBA Case #2022-10, Old Myrtle Street LLC, Keene's Mill Village, 0 North Street, Comprehensive Permit Application (CONT'D): *The Board voted unanimously (5-0) to continue the public hearing to July 14, 2022*

ZBA Case #2021-40, Campbell, 5 E. Marginal Road (CONT'D): *The Board voted unanimously (5-0) to continue the public hearing to June 23, 2022*

ZBA Case #2022-05, Lefebvre, 33 Marginal Road (CONT'D): *The Board voted unanimously (4-0) to approve the special permit.*

ZBA Case #2022-13, Smith, 69 Trout Farm Lane: *The Board voted unanimously (5-0) to grant the special permit, with conditions*

Philip Thorn makes a motion to close the public hearing. Emmett Sheehan seconds (5-0)

BOARD OF APPEALS MINUTES

Case No: 2022-05

Petitioner: Daniel Lefebvre

Address: 33 Marginal Road

Date: June 9, 2022 Time: 6:00 p.m.

(Continued from April 14, 2022)

Members present: Kathleen Muncey, Emmett Sheehan, Freeman Boynton Jr., Judith Barrett, Philip Thorn & Tanya Trevisan

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

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

- Kathleen Muncey re-opens the public hearing and states we have received some amended plans
- Daniel Lefebvre states we have amended the plans and shares the plans on the screen, the egress stairs are slightly in the setback, which is allowed up to 30 square feet. We also added windows on the east elevation to align with the interior stairs. We stayed within the setbacks and did not increase any non-conformity.
- Freeman Boynton asks about the false roofline based on the Design Reviews comments
- Daniel Lefebvre states I added this to break up the shingles
- Kathleen Muncey states continue the vertical trim
- Daniel Lefebvre explains the existing window is the bathroom
- Freeman Boynton states just by continuing the trim down
- Daniel Lefebvre states we have a weaved shingle so and shares the west elevation with weaved corners
- Freeman Boynton agrees the corner board will look silly
- Jim Wasielewski states it is a built out rake
- The Board agrees with the explanation
- Kathleen Muncey states who is voting on this
- Lauren Haché states Kathy, Freeman, Phil and Tanya
- Freeman Boynton moves to close the public hearing
- Kathleen Muncey seconds
- All those in favor Kathy, Phil, Freeman and Tanya
- Discussions, all of the neighbors are in favor, it's a nice project
- Philip Thorn moves to approve the special permit as presented
- Freeman Boynton Jr. seconds

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

Moved by: FB

Seconded by: KM

Number in favor: 4

Number opposed: 0

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

Moved by: PT

Seconded by: FB

Number in favor: 4

Number opposed:

0

Philip Thorn moves to recess until 7:30pm. Freeman Boynton Jr. seconds.

BOARD OF APPEALS MINUTES

Case No: 2022-09

Petitioner: Leigh Smith; Featherstones

Address: 69 Trout Farm Lane

Date: June 9, 2022 Time: 7:30 p.m.

Members present: Kathleen Muncey (Chair Pro Tem), Emmett Sheehan, Freeman Boynton Jr., Judith Barrett, Philip Thorn & Tanya Trevisan

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

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

- Kathleen Muncey opens the public hearing and reads the public hearing notice and the case response memos from the local boards. Along with the application, there is a memorandum from the Trout Farm Association Attorney's stating that in the restrictions section that talks about how they were created in 1977 and that these restrictions expired in 2007. As the restrictions expired, they are no longer valid or enforceable. In other words, the restrictions imposed on the individual lots in trout farm are no longer enforceable. Further, as the restrictions have expired, any rules promulgated by the Association can only apply to the common areas. Ms. Muncey states that it goes on to explain the old restrictions cannot be re-instated but that new rules can be voted. Ms. Muncey continues to read a letter from Kevin Wilson, the property manager for the homeowner's association. The letter states that Board of Trustees voted regarding this and have voted against this business and that the Board is working with an Attorney to have the rules reinstated.
- Leigh Smith, 69 Trout Farm Lane, introduces herself as native of Duxbury and explains her business of pre-natal massage therapy, which has been established since 1989. Ms. Smith states that she is looking to downsize the clientel from 20 people a week down to no more than 10 clients a week. I plan to work a few days a week. Our home is on a deadend and abut the woods. All of my direct neighbors are in support and we do have a petition signed by these core abutters in full agreement. I also don't plan on working for more than two years with this.
- Kathleen Muncey states how long are the sessions, an hour or so?
- Leigh Smith agrees, yes
- Emmett Sheehan states can I see that sheet
- Leigh Smith states there was one Board member that didn't vote and came to me with questions. This Board (Trustees) met without allowing me the courtesy of attending and answering questions
- Kathleen Muncey states does the Board have any questions; Ms. Muncey reads the names on the Applicants petition in support.

- Kathleen Muncey states would anyone in the public like to speak
- Mary Jane Noelle, 59 Trout Farm Lane, I am before in support for Leigh's petition for the following reasons: she will be serving a small number of clients, one at a time, with two hours between the. I do not see any issue with traffic or nuisance.
- Macdara Fallon, 70 Trout Farm Lane, states they live directly next door to the Smith's and have a common driveway and they enthusiastically encourage and support what Leigh is trying to do.
- Mary McCarthy, 68 Trout Farm Lane, I live diagonally across from the Leigh's and my front door faces their driveway and I have absolutely no problem with that. They are wonderful neighbors and everyone in our circle are in support. I think that taking care of prenatal patients is very important.
- Sharon Dennehy, Vice President of Trout Farm Association, 36 Trout Farm Lane. We don't have issue with Leigh particularly, we are worried this will start a precedence.
- Kathleen Muncey states well, they would have to come before the ZBA, it's a case by case basis.
- Emmett Sheehan states she would not be setting a precedence
- Sharon Dennehy states well, it still states that businesses cannot be in Trout Farm so I am a little confused, the governing documents state this can't happen
- Kathleen Muncey states but those expired
- Sharon Dennehy states not the governing documents; the rules and regulations have expired.
- Kathleen Muncey states but it is a restriction on use and your Attorney states that the restrictions have expired.
- Sharon Dennehy states I stand by the governing documents
- Kathleen Muncey states based on your Attorney's letter, the entire community has to agree on any rules
- Sharon Dennehy states I do have another question, if there are so many spaces to share with another business, why not try that
- Kathleen Muncey states Leigh has a choice and in Duxbury we do have a home occupation by special permit and that is what she is seeking
- Philip Thorn states we don't want to get involved with the association issues, the facts are clear, the rules have expired, they don't exist. As a Board, we really lean on what the neighbors think. All of the immediate neighbors are in full support. Mr. Thorn asks how close Sharon Dennehy is from Leigh's home
- Sharon Denney states I live near Leigh, but there are a lot of walkers and joggers and I am concerned about traffic and children in the neighborhood.
- Philip Thorn states well, the pregnant women coming for prenatal massage isn't public enemy number one to children. I don't think the Applicants clients are a risk
- Kathleen Muncey states anyone else
- Doug Carver, Trout Farm, I live in the development and I am also on the Board of Trustees, I was away for some of the meetings. What I did see was a lot of

misinformation. As a builder, I know that 300 feet abutters are noticed and for some reason the Trout Farm Homeowners Association wasn't noticed.

- Freeman Boynton asks what their address is
- Doug Carver states it's a private street and we have had some slips and falls etc.
- Kathleen Muncey states I believe the Assessor gives the list based on taxes, do they pay taxes on the street
- Doug Carver states they are taxed on lot 37 I believe
- Kathleen Muncey states well, they did respond, so they were noticed
- Doug Carver states they weren't noticed and that is part of the problem that you guys need to fix
- Kathleen Muncey states do they have an address
- Doug Carver states 1 Bassett Brook
- Kathleen Muncey states that is outside of the 300 feet
- Philip Thorn was the association notified
- Doug Carver states no
- Emmett Sheehan states they are outside the 300 feet, we have a process
- Kathleen Muncey states I think the road will be taxed if they want to be added. Right now their address is outside of the 300. Maybe they need to be taxed on all the roads, then they would get notice.
- Doug Carver states it does look like a legitimate request and they don't want to change anything physically on the property. I heard there won't be new clients coming in, is that so? I am inclined to say this is fair but should have some restrictions on cars, days and times of day as protection.
- Kathleen Muncey states at any time, if someone exceeds what is permitted via special permit, the permit can be revoked.
- Freeman Boynton states we can limit the number of patients
- Leigh Smith states 12 a week would be my maximum and the times would be between 9:30am – 3:30pm. I don't work Sunday, Monday and normally Thursday.
- Jim Wasielewski states I would like to ask the Association Members regarding the governing documents mention no commercial property, This wouldn't be a commercial property, this is a residential home with a home occupation.
- Emmett Sheehan moves to close the public hearing.
- Philip Thorn seconds.
- All in favor Kathy, Freeman, Emmett, Phil and Tanya
- Kathleen Muncey states do we need to discuss or are we ready
- Board Members agree they are ready to vote
- Makes a motion to approve the special permit subject to there not be more than twelve visits a week with hours of operation during the daytime
- Emmett Sheehan moves the motion
- Philip Thorn seconds
- All in favor Kathleen Muncey, Freeman Boynton Jr., Emmett Sheehan, Philip Thorn and Tanya Trevisan

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

Moved by: ES

Seconded by: PT

Number in favor: 4

Number opposed: 0

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

Moved by: ES

Seconded by: PT

Number in favor: 5

Number opposed: 0