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TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS MEETING MINUTES

July 27, 2017 @ 7:30 p.m.

ATTENDANCE: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. & Emmett Sheehan

CALL TO ORDER: Wayne Dennison called the meeting to order.

- **2017-05 SSHH (DAHT), 0 Lake Shore Drive:** *The Board moved to approve the Comprehensive Permit. All in favor (5-0).*
- **2017-06 Cordeiro, 278 Washington St:** *The Board moved to deny the request for a Special Permit. All in favor (5-0).*

Wayne Dennison makes a motion to close the public hearing for 0 Lakeshore Drive. Emmett Sheehan seconds. All in favor (5-0).

Wayne Dennison makes a motion to approve the Comprehensive Permit for 0 Lakeshore Drive, subject to conditions. Judith Barrett seconds. All in favor (5-0).

Judith Barrett makes a motion to close the public hearing for 278 Washington Street. Kathy Muncey seconds. All in favor (5-0).

Wayne Dennison makes a motion to deny the special permit for 278 Washington Street. Judith Barrett seconds. All in favor (5-0).

Kathy Muncey makes a motion to adjourn the meeting. Wayne Dennison seconds. All in favor (5-0).

BOARD OF APPEALS — MINUTES

Applicant: South Shore Habitat for Humanity
Property Address: 0 Lake Shore Drive
Case No: 2017-05
Date: July 27, 2017 Time: 7:30 p.m.
(Rescheduled from 6.22.17)

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on ~~Thursday, June 22, 2017~~ at 7:30 p.m. to consider the application of South Shore Habitat for Humanity for a Comprehensive Permit. The property is located at 0 Lake Shore Drive, Parcel No. 018-500-121 of the Duxbury Assessors Map, consisting of 0.70 acres in the Residential Compatibility and Water Protection Districts and owned by Duxbury Affordable Housing Trust. The Applicant proposes to construct one single family home on a nonconforming lot that will meet the definition of low and moderate income housing under G.L. c. 40B, Sections 20-23.

Members present: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. & Emmett Sheehan

Members Voting: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. & Emmett Sheehan

Other persons present at the hearing: Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Assistant

- Wayne Dennison calls the meeting to order, states that the first case is for South Shore Habitat for Humanity at 0 Lakeshore Drive and that Judith Barrett will chair that case.
- Judith Barrett reads the public hearing notice then explains that the Board of Appeals has jurisdiction to grant the permit and goes over the hearing process.
- Judith Barrett states that the property at 0 Lakeshore Drive was voted at Town Meeting to transfer to the Affordable Housing Trust. She goes on to read the case correspondence Memos in full, synopsis as follows: 1. A Memo from the Design Review Board received June 5th & dated May 22nd stating that the DRB met with the applicant and discussed the proposal and concluded that they support the project, noting that although the proposed 22' wide structure will take up more than half of the lot, the distance from the street and the vegetation masking it alleviates any design detriment to the neighborhood ; 2. A Board of Health Memo dated June 5th stating that the BOH witnessed percolation tests at the site, has not received a Disposal System Construction Permit, will need to review and approve any septic systems prior to any building permits and that the proposed setback of 118' is less than the 150' requirement in Duxbury which is listed as a requested exception. Judith Barrett explains that this is an example of a waiver the ZBA has the authority to approve; 3. A Memo from the Conservation Commission dated June 13th stating that the Commission received a Notice of Intent, held a public hearing and reluctantly issued Orders of conditions, but that the Conservation Commission does not support the project due to soil absorption system not meeting the Duxbury Supplementary Rules & Regs and the septic system setbacks being less than what the by-law requires; 4. A Memo from the Planning Board dated June 16th stating that the Planning Board voted 5-1 to defer judgement to the ZBA; 5. A Memo from the Duxbury Affordable Housing Trust (DAHT) received June 21st — in response to the Conservation Commission's Memo — stating that the DAHT was surprised at the CC's Memo and would like to address it, noting that the Duxbury adopted septic setback was a tool to limit house construction, that many beliefs are offered without scientific backup, the DCC supported other projects in Town with variance to regulations, that the DAHT met with Town Boards to discuss the project, and cited the Town Meeting vote of 2009 and noted parcel no. changes.

- Judith Barrett invites the applicant to present the case.
- Rick Grady of Grady Consulting states he is there along with many representatives from SSHH to present the project. Rick Grady states the project is located at 0 Lakeshore Drive, a 28,360 sf lot with frontage on Lake shore Drive, and of 25,962 sf is upland, a wetland area adjacent to lower Chandler pond on the rear property line, it is about 177' from the front property corner to the pond and about 198' from Lake shore Drive to the pond (pointing to a map). He states that it is a Residential Compatibility zoning district which requires 40,000sf of area, but zoning by-law section 570 has a provision to allow for affordable housing on a 10,000sf lot. Mr. Grady states that the home proposed through SSHH is 24' deep, 44' in width and presents elevation drawings showing a split level home with a basement and small deck arranged to blend with the grading, the house 30' off property line and 64' off the property line to the right and 67' off to the left. He states the nearest distance to the wetland is 86' and about ½ of the house is within the 100' buffer zone to the wetland which is why they went to Conservation first. Mr. Grady cites that percolation tests digging 13' deep did not encounter groundwater, the lot is at elevation 92 on the front and 72 at the pond, that they will likely increase the 118' setback but should work with that number for now. He states that Title V requires 5' groundwater separation in percolation rates and Duxbury requires a 6' separation, but in all likelihood it'll be 12-14' so although they are asking for relief with the leaching field from 150' to 118' they will be almost doubling the groundwater separation rate. Mr. Grady goes on to state that the State recommends that practice. He states that the Design Review Board suggested moving the driveway, which they've done, the house is exempt from storm water management, they propose to connect to Town water. Mr. Grady asks the Board if there are any questions. No.
- Judith Barrett invites representative from South Shore Habitat to speak.
- Martine Taylor, Executive Director of South Shore Habitat for Humanity (SSHH) states that SSHH's goal is to work with municipalities and boards to help meet requirements for affordable housing. She states they do 3 main things – homeowners being able to pay the mortgages and be part of the community and they do not give the homes away, an opportunity to work with the neighbors and the Town to provide more homeowner opportunities within the Town, that this is the 4th home they've built in the community as well as a 6 unit project. She states that they know there are concerns, but hope they have addressed any concerns with the Boards and through abutters meetings.
- Judith Barrett asks if she can explain how they select homebuyers.
- Martine Taylor states they have a family selection committee, which entails selecting applicants that meet the financial guidelines to afford the home and then the final application goes to the Board of Directors for final approval.
- Freeman Boynton, Jr. asks Rick Grady if the property is an APOD area. No.
- Judith Barrett asks if anyone would like to speak for or against the project. No.
- Judith Barrett asks what the scientific or professional qualifications of the person who authored the memo challenging the Conservation Commission's memo.
- Shawn Dahlen of 60 Long Point Lane in Duxbury, states that he will take ownership for the memo, that he is a BOS and a member of the Housing Trust. He states there is no scientific background, but fact based on prior practices in the Town and that the Town has not had scientific development.
- Freeman Boynton, Jr. states that Horsley Witten did a study.
- Judith Barrett states that they hired Horsley Witten to do that study because the one done on the Cape wasn't sufficient.
- Shawn Dahlen states that Duxbury's requirement is in excess of the state requirement of 50'.
- Judith Barrett states she thinks it's important to be careful challenging other Boards using public documents by stating it is not scientific fact when that might not be the case.
- Shawn Dahlen states that lots of regulations that change on a regular basis and gives the example of a mounted system changing.

- Judith Barrett states that her concern is the assertion that they should be granting this because there is no scientific background for the regulations when really what they should be doing is ruling if compliance with the regulations would render the project uneconomic and asks if compliance with the BOH regulations do that? She asks if the project be redesigned.
- Rick Grady states that the project, regardless of economics, could not be redesigned to meet the 150' setback.
- Freeman Boynton, Jr. asks if they could improve the septic to provide better treatment?
- Rick Grady states that he thinks they will be due to the groundwater separation as they are doubling it.
- Wayne Dennison states it'll be the 12' versus the 6'.
- Rick Grady states that is correct.
- Freeman Boynton, Jr. states that groundwater separation is important but wonders if they could move the reserve area on the other side of the lot and move it another 8 or 10'.
- Rick Grady states they could do that by swapping the primary reserve.
Freeman Boynton, Jr. asks if they could put it on the other side of the lot.
- Rick Grady states that could help as well, they could pick up 10 or 12' that way.
- Judith Barrett states that would be wonderful.
- Wayne Dennison asks if there is any issue with making that a condition.
- Rick Grady states that if the question was to revise the leaching to have the reserve to the southerly side of the property thereby pushing the primary further from the wetland and closer to the street, then yes, they can do that. Mr. Grady states that they could also reduce the front setback from the septic system from 10' to 5', although he would suggest holding it at 10 and make the other revision.
- Judith Barrett states that if that is possible it'd be great, in order to achieve as most compliance as possible.
- Freeman Boynton, Jr. wonders if this is setting a precedent with others.
- Kathy Muncey states that it will not, it only applies to 40B.
- Judith Barrett explains the balance with compliance and waivers with 40B and states she is not concerned with this one.
- Freeman Boynton, Jr. asks Rick Grady if they will definitely knock the house back to a 3 bedroom.
- Rick Grady confirms they will reduce the system to a 3 bedroom house.
- Judith Barrett asks if there are any other questions. No.
- Wayne Dennison makes a motion to close the public hearing.
- Emmett Sheehan seconds. All in favor (5-0).
- Wayne Dennison makes a motion to approve the Comprehensive Permit, with a condition that the septic is moved to the southern portion of the property.
- Kathy Muncey asks if they want to include that it will be a 3 bedroom.
- Freeman Boynton, Jr. adds that they will redesign in such a way that maximizes the setback from the resource area.
- Judith Barrett seconds the conditions. All in favor (5-0).

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

**Moved by: WD
Number in favor: 5**

**Seconded by: ES
Number opposed: 0**

Motion: It was moved, seconded and unanimously voted to approve the Comprehensive Permit, subject to the septic being a 3 bedroom and moved to the southerly portion of the property/redesigned to maximize the setback distance from the resource area.

**Moved by: WD
Number in favor: 5**

**Seconded by: JB
Number opposed: 0**

BOARD OF APPEALS — MINUTES

Applicant: Susan Cordeiro

Property Address: 278 Washington Street

Case No: 2017-06

Date: July 27, 2017 Time: 7:30 p.m.

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, July 27, 2017 at 7:30 p.m. to consider the application of Susan Cordeiro for a Special Permit under Article(s) 400 and 900, Section(s) 410.3 and 906.2 of the Duxbury Protective Bylaw. The property is located at 278 Washington Street, Parcel No. 120-105-001 of the Duxbury Assessors Map, consisting of 40,510 sq. ft. in the Residential Compatibility District and owned by Joseph J. Sullivan and Susan Cordeiro. The applicant proposes to operate the premises as a Bed and Breakfast. A Special Permit is required.

Members present: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. & Emmett Sheehan

Members Voting: Wayne Dennison, Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. & Emmett Sheehan

Other persons present at the hearing: Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Assistant

- Wayne Dennison reads the public hearing notice into record. Mr. Dennison then goes on to cite the correspondence received: a Board of Health Memo stating that if food was provided you need a permit and that the pool would be considered semi-public and would require additional signage; a Planning Board memo that defers judgement to the ZBA; a Memo from Planning Director stating that a Bed and Breakfast must have an owner present. Mr. Dennison states that they have received other correspondence dated today (7/27) from Attorney Driscoll of Driscoll & Gibson on behalf of abutters Stephen and Ann Williams of 274 Washington St. Mr. Dennison cites letters from Liz Bone, a letter from Becky Firth, two opponents petitions and several other documents including a letter that concludes that the Bed & Breakfast should not be permitted and has been used via Air BnB illegally, is not within character or the neighborhood and that the neighborhood is strongly in opposition. Mr. Dennison cites and reads an email from Judi Hall of the Design Review Board that strongly objects to the proposal.
- Mr. Dennison invites the applicant to present.
- Tanya Trevisan states she is there representing Susan Cordeiro of 278 Washington Street and who is applying for a Special Permit to operate a Bed and Breakfast at the location. Ms. Trevisan states that the special permit is an allowable use in the district pursuant to article 400, section 410.3 of the by-laws. She states that Ms. Cordeiro will not be serving food to any renters of the property. Ms. Trevisan states that she has not had the opportunity to review the staff report prepared by Ms. Massard and as a point of review she reads the report as it restating the rule. Ms. Trevisan states that she met with Mr. Lambiase, that AirBnB is part of the new economy and the B&B is the closest use in the by-law which is why it fell under Bed and Breakfast so they filed the application to comply with the regulation.
- Mr. Dennison asks if the client is in fact not going to be there and is going to rent the premises on a day by day basis, what the bed and breakfast definition states, a dwelling in which the operator resides and not more than four guest rooms are offered with or without meals – and I understand it's without meals. Mr. Dennison states that if I look at what guest unit says and a guest unit is a room or suite of rooms suitable for separate rental or occupancy in a hotel, motel or other establishment, and it says any room or suite

of rooms containing a stove plus either or both a refrigerator and a kitchen sink shall be considered a dwelling unit, so they distinguish a guest unit from a dwelling unit and only guest units are permitted in a Bed and Breakfast. Mr. Dennison asks that if you rent the entire home, don't you get both a refrigerator and a kitchen sink?

- Ms. Trevisan states that you do, with the suite of rooms, but there is one room that is locked. She goes on to state that the proposed use is compatible with the allowed, that Ms. Cordeiro obtained letters of support from her neighbors, that historically many of these homes were used as bed and breakfasts and hotels and cites a book by Marjorie MacMillan.
- Judith Barrett states that predates zoning.
- Ms. Trevisan states that the current Bed and Breakfast usage in the Town has 18 AirBnB listings as of the application submittal.
- Freeman Boynton, Jr. asks if the 18 were AirBnB or houses for rent?
- Ms. Trevisan states that it is 18 via AirBnB (she rises to distribute a map showing listings) and states now there are upwards of 40. Ms. Trevisan states that the benefits of granting the application far outweigh any adverse effects and that the Town has very few lodging options and it will be a benefit to the Town's economy. Ms. Trevisan concludes that is why they request the special permit be allowed.
- Kathy Muncey asks if she will occupy the premises and that it seems that is a requirement of the special permit.
- Ms. Trevisan states that she spoke with Mr. Lambiase about this because the way the clause is structured with the separation with the comma she would interpret is as it is the operator's primary residence but doesn't specifically read that the owner has to occupying the premises when the renters are there.
- Wayne Dennison states he sees what she is saying, because it is set off in commas.
- Judith Barrett states that it's like a parenthetical clause.
- Tanya Trevisan states there is room for ambiguity there.
- Freeman Boynton, Jr. asks if they think that was the intention from the creators of the by-law.
- Judith Barrett states no, but thinks the by-law wouldn't pass a grammar test.
- Wayne Dennison asks if anyone else has questions. No.
- Wayne Dennison opens the public hearing for comment.
- Elizabeth Sullivan of 277 Washington Street states that she thinks this is a neighbor's dispute at the heart of it. Ms. Sullivan explains that her family rented Ms. Cordeiro's home for her daughter's wedding and that many guests at that wedding rented other houses in Town also via AirBnB. Ms. Sullivan states she is concerned that if this is not allowed it is going to become a problem and states that there are many holes in the by-law, that this is an expensive town and many struggle with finding ways to stay afloat in an expensive town and this is a way of doing that. She states that her house was a boarding house in the past.
- Tanya Trevisan states that Ms. Sullivan's house was featured in the book she mentioned.
- Mr. Dennison asks if anyone else would like to speak.
- Joan Sullivan of 15 Surplus Street states she is concerned with the noise primarily and it is disrupting the neighborhood.
- Judith Barrett asks her how often she has been aware of the property being rented.
- Joan Sullivan states that it is frequent and in the month of July probably 5 nights.
- Emmett Sheehan asks Ms. Sullivan if that is her main objection. Yes.
- Freeman Boynton, Jr. states he thinks it seems that is why they are there.
- Sarah McCormack of Peterson Road states that this is something where we have to think about our neighbors, the Design Review Board talked about this and although it is hard to find places to stay, she doesn't think it's the purview of the ZBA to discuss if we should blanketly give Duxbury places to stay. Ms. McCormack states she remembers one B&B on Powder Point, but that one was quiet and the owners were always there, but this one is very different as the neighbors are very very close and she wants all to think about the quality of life in a residential neighborhood.

- Mr. Dennison asks Ms. McCormack if she just stated that the DRB doesn't think it's the purview of the ZBA to decide on B&B's.
- Ms. McCormack stated that the DRB looked at a plot plan and was speaking from a design point of view and the other view is hers.
- Lauren Petricelli of 49 Surplus Street states she is a direct abutter and she is one of 4 abutters who signed a petition because of noise. She states that her sleep is disturbed and having this run as an AirBnB rental is not in the best interest of the neighbors.
- John Powell of 33 Powder Point Avenue states that he's lived in Duxbury since 1948 but also resides in Sanibel Island in FL and that in FL it's a residential area and there is a strict rule that you cannot rent your house more than once every month and he suggests that Duxbury adopting a similar rule would help to preserve a residential neighborhood.
- Wayne Dennison invites anyone else to speak before Mr. Driscoll as he notes that Mr. Driscoll seems ready to present.
- Paul Driscoll states that he represents Stephen and Ann Williams and apologies for last minute lengthy documents sent today on their behalf.
- Wayne Dennison states that he'd like to disclose that Mr. Driscoll – on behalf of other clients - is involved in litigation which has named several members of this Board including myself, but I have no impediment from hearing you today. No objections.
- Paul Driscoll agrees.
- Paul Driscoll states that he sent documents today that are itemized in his cover letter. He notes that #2 is a letter from Liz Bone in which she withdraws her support.
- Mr. Dennison asks where Liz lives in relationship to the property?
- Emmett Sheehan states she lives on Josselyn Ave.
- Mr. Driscoll states that another that withdrew support was Becky Firth. He states that several families that signed a petition in opposition (he reads the petition). He states that they submitted a map showing abutters in the neighborhood that signed the petition.
- Wayne Dennison asks if any of the abutters directly adjacent have sent letters of support.
- Mr. Driscoll states he is not aware of any.
- Ann Williams [pointing to the map] states that this house submitted a letter and it was Gunster (was Charlie Rogerson's house) and the long abutter that is Hetherington but he has moved and rented his property to someone else. Ms. Williams states that Scott Salisbury and Betsy Sullivan were in support and the other letters in support were from people outside this area.
- Ms. Trevisan states that on the map she'd like to point out that Brink and the Worthys submitted letters of support.
- Mr. Dennison asks if the support letters are in addition to the ones that Ms. Williams described. Ms. Trevisan concurs.
- Paul Driscoll states that another document prepared by Ann Williams is to explain what she has experienced. Mr. Driscoll states that he would like to point out that it is not just the house that is rented; it is a point of distinction in the by-law, that it is the house, the pool, a Jacuzzi, the basketball court, etc. Mr. Driscoll goes on to state that although Betsy Sullivan has acknowledged a need for this in the Town for , it doesn't mean it's allowed within the by-law. He states that two issues are 1. Is it in the by-law and 2. If it is within the by-law, has the applicant met the burden of proof to show she is entitled to a special permit? Mr. Driscoll states that his letter addresses that he believes it's important for the zoning board to be apprised of the conduct of the applicant prior to tonight and that is shown in his attachments and he can summarize it.
- Wayne Dennison asks if he can do it. Mr. Driscoll agrees. Mr. Dennison states that his client (referring to Driscoll's client) takes the position that the applicant has acted improperly, illegally and inconsistently with what Mr. Lambiase told her over a long period of time and then Mr. Dennison asks how he did.
- Paul Driscoll states that it is close and goes on to state that it goes beyond that because his clients noticed 9 rentals between July and September of 2016, that they are direct abutters separated only by about 30 or 40' by the swimming pool and have had many interruptions and difficulties that involved the police on two occasions. Mr. Driscoll

states that the Williams' checked and found that no permits were issued and when they complained Mr. Lambiase wrote a letter to Ms. Cordeiro where he informs her she needs a special permit.

- Wayne Dennison asks if they are appealing Mr. Lambiase's enforcement order or failure to issue an enforcement order.
- Paul Driscoll states they are not, the enforcement will come later.
- Judith Barrett states that they are responding to a special permit application for use.
- Wayne Dennison agrees, stating this is an argument about use and he understands that the client feels that the property has been used improperly and unlawfully, however he is unsure this is in the view of this Board given the nature.
- Paul Driscoll states that he'd like to explain his argument.
- Freeman Boynton, Jr. asks if when there were noise issues and the police were called or if the Williams' reached out to the applicant, if she was home.
- Paul Driscoll responds no, that she was not and does not reside there and has testified to that. Mr. Driscoll goes on to state that after the first enforcement order letter Ms. Cordeiro continued with the rental in October 14th of 2016. Mr. Driscoll states that the AirBnB ads came down for a while, but went back up in January 2017 and that on the 2nd of March 2017 Mr. Lambiase wrote an enforcement order.
- Wayne Dennison states that he understands what he is explaining and also understands that you are about to tell us is that you don't think what the applicant is proposing is a bed and breakfast.
- Paul Driscoll states that his first question is legally whether it is a bed and breakfast and if it is, does the applicant satisfy the test for a special permit, so it is really two questions.
- Wayne Dennison states they will hear him on both questions.
- Paul Driscoll states that if they get to the second one and then impose conditions he thinks it's relevant whether or not the conditions will be adhered to. Mr. Driscoll goes on to state that he made a legal argument that is a jurisdictional argument that you can grant a special permit under 410.3 #8 for a bed and breakfast within an existing footprint in a single family home in which the operator resides, but he thinks there are two qualifications there that the applicant doesn't meet. He states that he reads bed and breakfast within the existing footprint as meaning within the existing footprint of the dwelling itself excluding any use of a pool, basketball court, etc. Mr. Driscoll states that the second one – "in which the operator resides" - is quite important because if it was to mean that the operator only has to reside there during non-rental periods the language would have no meaning. Mr. Driscoll states that the purpose of having the occupant reside there is to control the conduct and it is a very important one.
- Freeman Boynton, Jr. states that he wholeheartedly agrees.
- Paul Driscoll states that the definition of a bed and breakfast is a structure originally built as a dwelling in which the operator resides and not more than 4 guest units are offered, so it's 2 occasions both in the special permit and in the definition section where the necessity of the operator residing is repeated. He states that another area is in the definition of a guest unit – a room or suite or rooms suitable for separate rental or occupancy in a hotel or motel. Mr. Driscoll states nobody goes to a hotel or motel and rents the whole place, so in his judgement the business that was there never qualified for three reasons, 1. It didn't have any guest units, 2. The operator didn't reside there and 3. It didn't confine to the footprint of the building.
- Wayne Dennison states the same grammatical construction that was questioned earlier is repeated in 410.3 and asks what Mr. Driscoll makes of the commas.
- Mr. Driscoll states he doesn't think it's a logical or reasonable one because the language wouldn't be there if wasn't needed and that this is something that is not allowed by right, but by special permit and this is the manner of enforcement or oversight to see that the residential zone won't be negatively impacted.
- Wayne Dennison states that the man who spoke about Sanibel earlier and when he read this application made him wonder about renting for a period of 6 months, would he (addressing Mr. Driscoll) have any problem with that.

- Mr. Driscoll states he can't address it; it's not a bed and breakfast.
- Kathy Muncey asks how about two months.
- Mr. Driscoll states he's not sure and has never had occasion to find out if that's allowed but he thinks it occurs in this town.
- Wayne Dennison asks how about 2 days.
- Mr. Driscoll states that if you comply with the bed and breakfast rules.
- Emmett Sheehan agrees.
- Wayne Dennison states that he agrees that it is not a bed and breakfast, that if you are going to give them the kitchen and a stove, it's not a bed and breakfast.
- Judith Barrett states that this is silly, that if you are renting a house to a tenant who is going to live there 6 months, there is one household
- Kathy Muncey states it's a single family dwelling so it should be a single family.
- Judith Barrett states the impact of having a family there for 6 months is as if you were there yourself, but the impact on a neighborhood of 'in and out', 'in and out' is a very different thing and that is why zoning typically separates uses for hospitality from residential areas except in a bed and breakfast that is owner occupied and that there is an assumption that if you are in a residential area, the property is being adequately supervised. She states the zoning is defective but doesn't think the intent is all that unclear.
- Wayne Dennison states that he doesn't think it's silly because he can get to that outcome if the rental is for 6 months, 3 months or even 1 month, but wonders what the distinction is between one month and 2 days.
- Freeman Boynton, Jr. states he can answer that and it is because if you rent your house out for one month and the tenant is noisy and the police are called, that tenant probably won't be noisy for the next 30 days.
- Emmett Sheehan states that he thinks that's not always the case, he has the same neighbors who are noisy every day.
- Wayne Dennison and Judith Barrett agree it's a hard question.
- Emmett Sheehan states they shouldn't take it lightly because there could be 50 more of these, they don't know.
- Judith Barrett states that she agrees and that a transient operation in renting a house is different than on a long term basis. Wayne Dennison agrees.
- Paul Driscoll states that when you focus on the question of residency and under bed and breakfast there is a prohibition that you can't have a bed and breakfast unless you have guest units.
- Wayne Dennison asks how many bedrooms. Susan Cordeiro answers 4.
- Paul Driscoll states that they do not come within the definition of a guest unit.
- Wayne Dennison asks how many bedrooms there are without a kitchen sink or a stove.
- Paul Driscoll states there are 4 but that they are all shared, but the point is that the definition of a guest room is a room or suite available for separate rental or occupancy so a guest room you could do that, but this one is not rented to 4 renters, it is the entire premises. He goes on to explain that you cannot do something in a residential zone unless the by-law says you can and it's a prohibitive by-law, not an inclusionary one.
- Kathy Muncey asks what about those on Duxbury beach that rent their house weekly, are those in violation.
- Scott Lambiase states that if you defer back to the building code, the trigger is 30 days. Anything under 30 days is considered transient in nature and it is something different, over 30 days is a single family dwelling and that is what brought up to this point because what is going on here is transient and the only thing I can offer is a special permit through this Board.
- Wayne Dennison states that the building code deals with his problem being the difference between a month and two days.
- Emmett Sheehan states that then the one week beach rentals aren't good, theoretically?

- Scott Lambiase states that if there was in fact a one week beach rental that was brought to his attention, then he probably would have to say that. He goes on to state that the by-law, written in 2003 did not foresee AirBnB.
- Wayne Dennison states that is the essential problem and then asks if Paul Driscoll has anything more to add.
- Paul Driscoll states that he was going to get to the special permit test and that just because it's a bed and breakfast doesn't mean it meets the special permit test. Mr. Driscoll goes on to state that he'd like to give his client, Ann Williams, a chance to speak as she has lived through this and cites the document that Ms. Williams prepared which include a number of photographs.
- Wayne Dennison states that he'd like to ask Ms. Williams a question and states that Mr. Driscoll pointed us to the special permit test in our by-law Section 906.2. He goes on to ask if she thinks this is within the neighborhood character if they considerably treat just that – neighborhood character.
- Ms. Williams answers absolutely not. She goes on to state that in this kind of a neighborhood you have to really make an effort to be a good neighbor and you must be very respectful and tolerant – mutually. She states that when that doesn't happen and it starts to break down you affect the quality of the lives of neighborhood and what has transpired in the past two summers next door is not acceptable. Ms. Williams states that they began to notice there was something different last summer as they overheard a party at the pool and after looking into it, they discovered it was being rented on AirBnB. She states that after that she made notes to help her remember and that over the course of last summer and this summer she has journaled what she has seen and heard and that is a lot of parties. Ms. Williams states that she found information on the website that emphasizes parties and the rental states what is rented which includes the entire house and a pool and hot tub, etc. Ms. Williams states that other comparable do not include a hot tub or a pool and states that the rental rates are pretty steep which would suggest the rental is affordable only in groups and that all of the group rentals, with the exception of the most recent rental has been to a group, and that the most recent was to a family.
- Emmett Sheehan asks how the most recent renter was.
- Ms. Williams states that it was fine.
- Wayne Dennison asks if Ms. Williams would have had a problem if the neighbor that had guests in from Australia had simply just asked the other neighbor if she could use here house.
- Ms. Williams states that there are two different things going on and that as a neighbor you have to be tolerant so if Betsy Sullivan had come and asked us that would've been fine and in fact that is what happens and states a graduation party as an example and says it is different because that is a one-time thing, this is weekend after weekend.
- Emmett Sheehan states that he thinks they all understand what she is explaining, it's noisy and she doesn't want it and then asks if everybody else understands.
- Judith Barrett states that she understands it's a transient quarters situation and it's having an impact on you and many of your neighbors.
- Paul Driscoll states that they are at that special permit test now and explains that this section of Washington Street is in a unique area in that 90% of the houses are historical and that one of the criteria for special permits is to consider the suitability of the proposed location and land usage and whether they would be supported by or damaged by having the proposed use nearby. Mr. Driscoll goes on to state that he thinks it's fair to mention that the Williams' purchased their home for over a million dollars and have since put money into it and he doesn't feel that he needs an expert to say that if there is a commercial establishment allowed next to their residence it is going to negatively affect the value of their property and that financial damage comes within that and should be considered.
- Wayne Dennison asks if anyone else like to speak.
- Susan Cordeiro states that she has 4 children that come home from college and they all have friends and she doesn't know how they know who's in and out.

- Wayne Dennison states that he is going to presuppose that the college kids make noise.
- Susan Cordeiro agrees and states that she has a million and a half dollar home and she put a pool back there so she could have fun. Ms. Cordeiro states that most of the people in Duxbury are renting her home because of weddings and that this has been going on for years, that they have brought her to the Town Hall constantly and feels this is a vendetta.
- Judith Barrett stops her and states that if people have a concern about activity that is occurring near them, what do they do if they don't feel they can get relief from their neighbor? They go to the zoning enforcement officer if they think there was a zoning violation, that's where they go. She states that you may disagree that there was a zoning violation, but he has to make a determination that is his job. Ms. Barrett states that if she received letters that she had a zoning enforcement problem going on and to cease and desist, she would not ignore it.
- Susan Cordeiro states that she needed a lawyer to figure it out.
- Judith Barrett asks how many letters you have to get before you take it seriously.
- Susan Cordeiro states 2. Judith Barrett states she would've done it at the first one.
- Susan Cordeiro states that she didn't understand it and went back to Scott to ask how you can even apply for a permit without a lawyer.
- Wayne Dennison asks if anyone else has further input.
- Ms. Williams states that the way she knows there will be a rental is from a calendar on AirBnB.
- Wayne Dennison states that there seems to be no dispute that the property is on AirBnB.
- Judith Barrett states that is the case along with many others, and that this is going on everywhere and is a problem in many coastal communities, resort areas and tourist areas. She states that there is litigation going on right now and it is safe to say that very few communities have regulations sufficient to protect neighborhoods in a very clear way, which is why we are left to interpret the by-law and we have to work with what we've got.
- Wayne Dennison asks if anyone else would like to speak. No. Mr. Dennison goes on to ask (directed to the Board) if they feel they need any more information. No. Mr. Dennison asks if he can hear a motion.
- Judith Barrett makes a motion to close the public hearing for 278 Washington Street. Kathy Muncey seconds. All in favor (5-0).
- Wayne Dennison asks if there is any discussion. He states he thinks this is not a B&B.
- Kathy Muncey agrees.
- Wayne Dennison states that we can't permit it as a bed and breakfast and thinks it's the very narrow question in front of us for a variety of reasons, both those expressed by Mr. Driscoll, but...
- Kathy Muncey states that most importantly it's that the operator is not residing there.
- Mr. Dennison states that is the case, and because with this you literally get the kitchen sink, you get the pool.
- Judith Barrett states that the question is could you grant the special permit with conditions, meaning you say you can do it under the following circumstances - that you have to actually be there, you can't rent the whole house, you have to rent the rooms.
- Kathy Muncey states that you also have to consider the effect on the neighborhood.
- Wayne Dennison states that he doesn't think it's either a bed and breakfast or an appropriate use for the neighborhood and is disinclined to approve the special permit.
- Judith Barrett agrees and states she was making the comment to see if there was room for discussion that one could be granted with a lot of conditions that she is not sure the applicant would be amendable to, given what's actually been happening there.
- Wayne Dennison asks if she'd like to propose something. Judith Barrett replies No.
- Freeman Boynton, Jr. states that he thinks that if it met the test for a special permit and she was just there looking for a special permit and they had all these complaints, then they would deny it, so really either way it doesn't meet.
- Kathy Muncey agrees. Judith Barrett states that she thinks Freeman's is a good point.
- Wayne Dennison asks if anybody else has anything to add.

- Wayne Dennison makes a 2 part motion and moves that the Board find that this is not a bed and breakfast and in the event that it were deemed a bed and breakfast we would find it is not consistent with the character of the neighborhood and deny it.
- Judith Barrett adds that she would find that it does not qualify for a special permit under the criteria in 906.2 as the location is not suitable, but does find that the type, mix, and intensity of use may in fact be seasonable but there are adverse consequences for the surrounding properties and it doesn't meet the test.
- Wayne Dennison states that, with Judi's amendment, he moves to deny the special permit.
- Judith Barrett seconds. All in favor (5-0).

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 deny the special permit.

Moved by: WD

Seconded by: JB

Number in favor: 5

Number opposed: 0