



TOWN CLERK
2019 SEP 18 AM 11:00
DUXBURY, MASS.

TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS MEETING MINUTES

July 25, 2019 @ 7:30 p.m.

ATTENDANCE: Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., Borys Gojnycz, Philip Thorn & Emmett Sheehan

Other persons present at the hearing: Scott Lambiase, Director of Municipal Services, and Amy Kwesell, Town Counsel

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

EXECUTIVE SESSION

- *Kathleen Muncey makes a motion to enter into executive session. Wayne Dennison seconds. There was a unanimous roll call vote to enter into executive session.*
- *Wayne Dennison motions to close the executive session and Kathleen Muncey seconds. There was a unanimous roll call and all were in favor.*

OPEN SESSION

ZBA Case #2019-11, Van Haur /McGoldrick c/o Galvin, 14 Chestnut Street: *The Board voted to approve a request to extend the date of the opening of the public hearing until September 12, 2019.*

ZBA Case #2019-06 Cadete Family Limited Partnership, 1518 Tremont Street – CONT'D: *The Board voted to continue the public hearing until September 26, 2019.*

ZBA Case #2019-09 Whitelaw, 222 Powder Point Avenue: *The Board voted to continue the public hearing until September 26, 2019.*

ZBA Case #2019-10, Amber/Jones c/o Frametechs, 213 Powder Point Avenue: *The Board voted to approve the special permit as requested.*

The Board voted to approve administrative request for 12 Back River Way. All in favor (5-0).

The Board voted to approve the meeting minutes of May 23, 2019. All in favor (5-0).

Wayne Dennison voted to adjourn the meeting. Borys Gojnycz seconds. All in favor (5-0).

BOARD OF APPEALS — MINUTES

Case No: 2019-11

**Petitioner: Van Haur /McGoldrick
c/o Bob Galvin**

Address: 14 Chestnut Street

Date: July 25, 2019 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 25, 2019 at 7:30 p.m. to consider the application of Peter J. Van Haur and Michael McGoldrick c/o Robert W. Galvin for an Appeal under Article(s) 400 and 900, Section(s) 421.2, 906.1 and 911 of the Duxbury Protective Bylaw. The property is located at 14 Chestnut Street, Parcel No. 110-771-032 of the Duxbury Assessors Map, consisting of 0.82 Acres in Neighborhood Business District 1 (NB1) and owned by South Shore Capital, LLC. The Applicant disputes the basis of a zoning violation notice citing offensive noise and vibration and the Town's By-laws meaning therein.

Members present: Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., Borys Gojnycz Philip Thorn & Emmett Sheehan

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

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

- Wayne Dennison, Chair, explains that there is a request to extend the date to open the public hearing for this application.
- The Board discusses dates and agrees on September 12, 2019.
- Wayne Dennison states that there is an enforcement order in place and this appeal will be heard on September 12th.
- Chuck Perenick of 24 Chestnut Street states that he's being forced to call the police as they have not ceased or desisted and they don't want to tie up town resources, so he's wondering if he can offer any guidance.
- Wayne Dennison states that unfortunately they can't give any guidance at this point, there is a cease and desist order in place even though it's under appeal it is in place.

BOARD OF APPEALS — MINUTES

Case No: 2019-06

**Petitioner: Cadete Family Limited Partnership,
C/o Viewpoint Sign & Awning**

Address: 1518 Tremont Street

Date: July 25, 2019 Time: 7:30 p.m.

(Cont'd from June 27, 2019)

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on ~~Thursday, June 27, 2019~~ at 7:30 p.m. to consider the application of Cadete Family Limited Partnership, c/o Viewpoint Sign & Awning for a Special Permit under Article(s) 400, 600 and 900, Section(s) 421.1 #2, 424, 425.1, 601.3, 601.4, 601.6, 601.9 and 906.2 of the Duxbury Protective Bylaw. The property is located at 1518 Tremont Street, Parcel No. 104-731-350-A of the Duxbury Assessors Map, consisting of 1.5 Acres in the Neighborhood Business District (NB-1) and owned by Cadete Family Limited Partnership. The Applicant proposes to erect a freestanding sign with illumination.

Members present: Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., Borys Gojnycz Philip Thorn & Emmett Sheehan

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

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

- Wayne Dennison opens the public hearing for 1518 Tremont St., explains it's a continued hearing and establishes with ZBA admin who is voting on this case (Wayne Dennison, Kathleen Muncey, Borys Gojnycz, Freeman Boynton, Jr. & Philip Thorn) and invites the applicant to speak.
- Sean Donovan of Viewpoint Sign explains he worked to make revisions on all 3 sign proposals although they have preference for 1 and states they are hoping to know if the ZBA would consider the one they'd prefer.
- Kathleen Muncey asks if it's the middle sign they want still.
- Sean Donovan states that it is the middle one but Planning didn't like that option but we will take whatever we can get. Sean Donovan goes on to explain that we added Cox Corner to give it a more historical feel, that if we go with one of the two sides proposed we are ok but on the other we'd need to fix setbacks and I don't think the 139 side would work as we'd have to cut hedges and they're trying to catch the northbound traffic on 3A.
- Freeman Boynton, Jr. states that is the one on Enterprise Street.
- Sean Donovan states that Enterprise would be our second choice, but would prefer the sign in the triangle.
- Kathleen Muncey asks if people enter from Enterprise.
- Freeman Boynton, Jr. states that he thinks they need something in addition to what they have as he didn't know there was a Dunkin Donuts there.
- Sean Donovan states that he brought the owner with him, Jason Cadete.
- Jason Cadete states that they've been there for a few years now and they've found their presence there isn't widely known and that usually takes just a few months. He states that either side is ok as both will be beneficial.
- Sean Donovan states the benefits of having the sign on either side.

- Philip Thorn states that he noted a few things during the recent site visit – that there are many similar signs nearby but his hesitation comes with the bylaw 601.3 stating that a flush mounted sign is preferable and if not you may get a special permit, but he sees that the bylaw doesn't seem to allow more than 1.
- Sean Donovan states that they aren't asking for more than 1, just one on either side of the building, that they've been reviewing this for over a year and they want the BOA feedback to make it work.
- Wayne Dennison asks what public way does the flush mounted sign now face.
- Sean Donovan explains the location of the current sign and states that their preference is the Enterprise side.
- Jason Cadete confirms they are ok with the Enterprise side.
- Kathleen Muncey asks if they are hoping for a vote today.
- Sean Donovan states that we will come back with a solid proposal with site plan etc.
- Wayne Dennison explains that they routinely do straw polls of the board to get the feedback and he'd suggest that and that you come back with a full proposal.
- Wayne Dennison [to Scott Lambiase] states that he understands the flush mounted sign is fine, but wonders about the multiple signs on that premises including an awning sign and if it's approved.
- Scott Lambiase states that they came in with a sign package awhile back and that yes they do approve awning signs.
- Philp Thorn asks if the building is a condominium.
- Jason Cadete and Philip Thorn discuss the building and the number of tenants.
- Wayne Dennison and Sean Donovan discuss why there is space on the sign for extra tenants and the feasibility of it.
- Wayne Dennison asks if they will derive income from the other tenants.
- Sean Donovan states that no, they'd have options /would have to come before the ZBA.
- Freeman Boynton, Jr. states that they'd like them to see who wants in on the sign, put it all together and come back to the board with a complete proposal.
- John Rest of Duck Hill Road states that he recalls them coming before the ZBA asking for a Dunkin sign in the past and they all agreed up on the sign with brown lettering that there now and now 2 years later they are asking for more and he doesn't want more signs in the neighborhood.
- Wayne Dennison asks if anyone else in the audience would like to speak. No.
- Wayne asks the Board for an informal poll to see where everyone stands.
- Freeman Boynton, Jr. states that he feels a sign would be helpful and on Enterprise.
- Philip Thorn states that after the site visit and seeing that so many other businesses in the area have a freestanding sign, he feels he'd be hard pressed to say no and that either location is ok with him.
- Wayne Dennison states that his view is that the precondition for a freestanding sign is that flush sign isn't sufficient and he would not be inclined to vote yes.
- Kathleen Muncey states she be more inclined to allow the sign as others have one and she thinks it'd be helpful.
- Borys Gojnycz states he is very pro-business and would like to see them succeed and although I noted at the site visit that it seemed tough to fit the sign now that I see this I don't think it would be.
- Wayne Dennison states to the Applicant that you need 4 votes to get the special permit, so based on this poll there seems to be a chance.
- Wayne Dennison makes a motion to continue the public hearing until 9/26/19.
- Kathleen Muncey seconds. All in favor, 5-0.

Motion: It was moved, seconded and unanimously voted to continue the public hearing until September 26, 2019.

Moved by: WD

Number in favor: 5

Seconded by: KM

Number opposed: 0

BOARD OF APPEALS — MINUTES

Case No: 2019-09
Petitioner: George Whitelaw
Agent, Seacoast Engineering
Address: 222 Powder Point Avenue
Case No: 2019-09
Date: July 25, 2019

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, July 25, 2019 at 7:30 p.m. to consider the application of George P. Whitelaw for a Special Permit under Article(s) 400 and 900, Section(s) 401.2 #5, 404.9, 404.11, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 222 Powder Point Avenue, Parcel No. 134-080-215 of the Duxbury Assessors Map, consisting of 0.93 acres in the Residential Compatibility & Wetlands Protection Overlay Districts and owned by George P. Whitelaw. The Applicant proposes to raze two (2) existing dwellings and to construct a four (4) bedroom dwelling and a detached garage on a lot containing three (3) dwellings, leaving the lot with two (2) separate single family dwellings and one (1) detached garage. A Special Permit is required.

Members present: Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., Borys Gojnycz, Philip Thorn & Emmett Sheehan

Members Voting: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Borys Gojnycz & Philip Thorn

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

- Wayne Dennison, Chairman, opens the hearing and reads the public hearing notice into record and begins to cite the correspondence received.
- Freeman Boynton, Jr. states that he was involved with a recent project with these folks so therefore he would like to recuse himself from this case. All agree.
- Wayne Dennison resumes citing the correspondence, reading some in part and some in full – the ZBA referral, the drawings, the site plan, the Board of Health Memo, the Planning Board Memo, the Conservation Commission Memo stating they need to file a notice of intent, the Design Review Board Memo which indicates that a review of the plans concludes that the DRB has reservations about the proposal and its allowance under the bylaw.
- Paul Brogna of Seacoast Engineering begins by recognizing the loss of Associate ZBA Member, Dimitri Theodossiou, and his many contributions to the Town. Mr. Brogna then introduces Julia Chuslo, Architect and Bunt, the Whitelaw's son. Paul distributes copies of the plans to each board member (on file with the ZBA).
- Paul Brogna explains the proposal, stating that they propose 2 structures to be razed and they are both nonconforming and are old so we will need to go before historical and conservation and we'll need a new septic but states that they are before the ZBA first as this can often be the most challenging. He goes on to explain the plan, citing setbacks and coverage on the existing plan as well as the zoning districts. Mr Brogna states that the coverage as of today is 11.1.
- Wayne Dennison asks what the proposed coverage is.

- Paul Brogna states that it is 14.9%, about 1500sf additional, that they are taking out 2 buildings and constructing 1 new one.
- Wayne Dennison asks what makes him say that this was a dwelling prior to the bylaw coming into effect.
- Paul Brogna states the contractor has lived there for quite some time.
- Wayne Dennison asks how long they have been dwellings.
- Kathleen Muncey asks if all the structures have kitchens.
- Bunt Whitelaw states that yes they do.
- Wayne Dennison states that the fundamental question here is that we generally don't do multiple dwellings on a single lot and these are pre-existing nonconforming and I wonder how we know that.
- Kathleen Muncey states that we know the buildings are there, but how do we know they existed as dwellings and that part of it predated zoning.
- Paul Brogna, addressing Bunt Whitelaw asks if there's always been someone in there.
- Bunt Whitelaw states that it was about a year ago that he remembers someone living there.
- Wayne Dennison states that the site plan says it's a barn, so I am wondering if this qualifies as preexisting nonconforming and if the barn existed as a dwelling prior to zoning.
- The Board collectively discusses what differentiates a dwelling.
- Paul Brogna states that he has a Title 5 plan from the Board of Health.
- Kathleen Muncey states that those are current; we are talking about the pre-existing part.
- Paul Brogna states that this is the official record the Town has, certified by an engineer and approved by the Board of Health.
- Kathleen Muncey asks when zoning went into effect and states she believes that's the measure.
- Emmett Sheehan concurs it is.
- Wayne Dennison states that the reason you can have more than one dwelling is that these predated zoning, so where's the evidence that these were dwellings prior to zoning.
- Paul Brogna states he can go back to 1951 when zoning was adopted and prove there was at least 1 bedroom in each of these dwellings.
- Wayne Dennison asks if these were built pursuant to a building permit.
- Kathleen Muncey states he could look back at building permit files.
- Paul Brogna states he can look back at those and cites the assessor's records.
- Wayne Dennison states that it's a threshold problem, that it doesn't seem to be a dispute if someone could dwell there now, but is it a pre-existing nonconforming use.
- Emmett Sheehan states that the cottage has probably always had someone in there, but the barn may not be so easy to ascertain.
- Phil Thorn states that he knows that at least as far back as the mid 1980's the barn had people living in it.
- Scott Lambiase states that he'd recommend doing research of the assessor's records as if the cottage or barn had a bathroom etc. the records should show that.
- Paul Brogna asks for more guidance as to what they need as the bylaw doesn't state
- Wayne Dennison states that this is not a bylaw question, it's a question of if you'd get recognized as a pre-existing non-conforming use, and the evidence we have that shows you are pre-existing is Phil's recollection that gets you back to 1985, so we are looking to see how you can show that the barn, likely the cottage was, was a dwelling.
- Kathleen Muncey states it has to predate zoning.
- Philip Thorn asks if it has to be for both.

- Kathleen Muncey states that maybe it changes and you'll need to go not from 3 dwellings to 2 dwellings, but from two dwellings to 2 dwellings.
- Wayne Dennison states that the lot coverage would still apply and I'd suggest you look at the assessor's records as Scott suggested and that could be very useful.
- Paul Brogna asks if Town records are available.
- Scott Lambiase states that he should ask with the Assessors.
- Wayne states that he had cut Paul off with his questions, but asks if he'd like to resume his proposal.
- Paul Brogna states yes, that they'll be making all less nonconforming.
- Wayne Dennison states that the new plan will get rid of the nonconformities.
- Paul Brogna states that yes, it will and keep the building coverage below the 15% maximum in the Bylaws and that we'll be moving the building back to be further away from the wetland line
- Wayne Dennison asks how he interprets the DRB issue with the design and orientation
- Paul Brogna states that they felt that the significant increase in building coverage was not appropriate or authorized as per their Memo. Paul Brogna also states that there is a property on 53 Josselyn Ave that has 3 buildings and two owners and very similar to what they are doing here and the other issue the DRB had was with the exterior of the house.
- Paul hands out photos and goes over the proposal and how it relates to the bylaw, explaining it is compliant with 401.2#5, 404.9, 404.11 and 906.2 with details.
- Julia Chuslo, architect for the proposal describes the style of the home chosen, Georgian, that this style exists in many places in Duxbury and it's design is within the parameters of the bylaw including the height restriction.
- Borys Gojnycz asks about the height and if you'd see the roof line from the street
- Julia Chuslo states that you'd be looking down
- Paul states that there is an 11' drop, so you'd be looking at the 2nd floor
- Phil Thorn asks what the height of the barn is.
- Paul Brogna states he did not measure as it's going away.
- Wayne Dennison asks if anyone else is there to speak to the proposal. No.
- Philip Thorn asks if they got any input from neighbors.
- Paul Brogna states that they sent letters to the abutters and have not received a reply.
- Terry Vose states that he is an abutter across the street and that he is glad to hear that you brought up the historical aspect and that he thinks the powder point avenue streetscape is important especially across the street if you have three houses and will be looking into the second floor window, and asks that they consider more tree coverage.
- Wayne Dennison first asks if there is anyone else who'd like to speak. No. He then states that the proposal is well thought out, but he is not inclined to approve without more evidence to prove it was pre-existing as a dwelling.
- Kathleen Muncey agrees, stating that if we don't then we are opening a door we don't want to and that the concept may change from 3 dwellings to 2 to 2 dwellings to 2, but we need to know what was there one way or the other.
- Borys Gojnycz agrees, stating that he was happy to see that there may be improved use of the public access way and that he visited the property today to look at that.

- Paul Brogna states that a portion of the driveway will have to be improved because of safety, public safety or otherwise, and that will be addressed to be workable and reasonable.
- Borys Gojnycz asks where the cost for that would lie.
- Paul Brogna states they'd have to go back to public works and see about that as they go along.
- The Board discusses a date for continuation.
- Wayne Dennison motions to continue the public hearing until September 26, 2019. Kathleen Muncey seconds. All in favor, 5-0.

Motion: It was moved, seconded and unanimously voted to continue the public hearing until September 26, 2019.

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

**Seconded by: KM
Number opposed: 0**

BOARD OF APPEALS — MINUTES

Case No: 2019-10

c/o Agent Frametechs

Petitioner: Patrick T. Jones & Katherine E. Amber

Address: 213 Powder Point Avenue

Date: July 25, 2019 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 25, 2019 at 7:30 p.m. to consider the application of Patrick T. Jones and Katherine E. Amber c/o Frametechs, Inc. for a Special Permit under Article(s) 400 and 900, Section(s) 401.2 #5, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 213 Powder Point Avenue, Parcel No. 134-100-000 of the Duxbury Assessors Map, consisting of 1.058 acres in the Residential Compatibility District and owned by Patrick T. Jones and Katherine E. Amber. The Applicant proposes to alter an existing structure on a lot containing two dwellings. A Special Permit is required.

Members present: Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., Borys Gojnycz, Philip Thorn & Emmett Sheehan

Members Voting: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Borys Gojnycz & Philip Thorn

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

- Wayne Dennison, Chairman, reads the public hearing notice into record for 213 Powder Point Avenue and then goes over the correspondence, citing some and reading some in full – the Site Plan, the ZBA Application, photographs, a septic system plan, drawings of the proposed changes, the Board of Health Memo, the Planning Board Memo, the Design Review Board Memo, the Conservation Commission Memo and several letters of support from abutters Jim and Toni Brennan of #205, neighbors at #200 Wisneski, The Hogans at #212 and at #223 the Zerlows. Mr. Dennison invites the applicant to present.
- Mike Norton of Frametechs, Inc. states that he is there to represent the homeowners of the property, Patrick Jones and Katherine Amber and that neither is present tonight as they are home with a newborn. Mike Norton states he is proposing some slight extensions to the footprint and that eh plan is to remove the second level moving some square footage living area, but we are not going up or changing any views or blocking anything.
- Wayne Dennison asks where the extra 200 sf is coming from
- Mike Norton states that if you look at the footprint on the plan, in the back we are extending it out 6' by 15.6 and then there's an L in the front we're extending it 4' 8" and then 4'.
- The Board looks at the plans and discusses it.
- Wayne states that this is an existing guest house and asks how many bedrooms in there now and how many will be there.

- Mike Norton states that it's 1 for both. They are looking to keep the one and switch the kitchen from the back to the front and put the bedroom in back, keeping it more private.
- Wayne Dennison asks when the guest house was built.
- Mike Norton states that they just missed the mark of having to go to historical, and establishes it's now 74 years old.
- Emmett Sheehan asks what a dwelling is.
- Borys Gojnycz reads the definition of a dwelling from the bylaw.
- The Board discusses the definition and how it relates to this proposal.
- Wayne Dennison asks if there are any questions. No.
- Kathleen Muncey states she thinks it's reasonable, that it's a pretty structure and the proposal is in keeping with it.
- Wayne Dennison asks if anyone in the audience has any comments. No.
- Wayne asks Terry Vose, historical commission chair in audience, if he's looked at it.
- Terry Vose replies no.
- Mike Norton states that we were right at 74 so...
- Emmett Sheehan states they aren't tearing it down.
- Wayne asks if anyone else would like to speak. No.
- Wayne Dennison moves to close the public hearing.
- Emmett Sheehan seconds. All in favor, 5-0. No discussion.
- Wayne Dennison moves to approve the special permit as requested.
- Philip Thorn seconds. All in favor, 5-0.

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

Moved by: WD **Seconded by: ES**
Number in favor: 5 **Number opposed: 0**

Motion: It was moved, seconded and unanimously voted to grant the special permit for #2019-10.

Moved by: WD **Seconded by: PT**
Number in favor: 5 **Number opposed: 0**

BOARD OF APPEALS — MINUTES

Applicant: Minogue
c/o South Shore Homeworks, Nate Popoloski
Property Address: 12 Back River Way
Case No: 2018-23
Date: July 25, 2019

Members present: Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., Borys Gojnycz, Philip Thorn & Emmett Sheehan

Members Voting: Wayne Dennison, Kathleen Muncey, Emmett Sheehan, Borys Gojnycz & Philip Thorn

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

ADMINISTRATIVE:

Minogue, 12 Back River Way: Applicant has requested building permits to construct an addition of a single stall garage to the existing 2 stall garage.

- Wayne Dennison states there is an administrative matter on the agenda up next for Back River Way and invites the Applicant to speak.
- Nate Popoloski of South Shore Homeworks states that he is here with Teri Minogue of 12 Back River Way regarding plans he submitted to add a single bay to the existing 2 car garage.
- Freeman Boynton, Jr. asks what it was subject to.
- Nate Popoloski states that it was subject to Design Review that we did and then we went to Planning because we are next to a drainage easement and we are encroaching on it, so Planning wanted an engineer to survey it.
- Scott Lambiase states that Pat Brennan of Amory Engineering reviewed it.
- Nate Popoloski states that Pat reviewed it and gave us a letter stating there are no problems with it.
- Scott Lambiase states that the only requirement to note was that Pat asked that they be careful during construction about driving any heavy equipment over the area, but no other issue and that he's not sure why this Board required him to come back, but you did.
- The Board asked what {occurred in the past}.
- Scott Lambiase describes that they were there because it was in a Planned Development and there was no issue other than that it was in an easement and Pat Brennan has looked at it.
- Wayne Dennison asks Scott Lambiase if he's ok with it. Yes.
- The Board approves the proposal unanimously.