

TOWN OF DUXBURY

BOARD OF APPEALS

DUXBURY BOARD OF APPEALS

MEETING MINUTES

April 28, 2022 @ 7:30 p.m.

TOWN CLERK
2022 JUN 24 AM 8:45
DUXBURY, MASS.

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: Kathleen Muncey called the meeting to order and reads the Governor's Preamble: Pursuant to Governor Baker's Chapter 20 of the Acts of 2021 dated June 16, 2021, An Act of Extending Certain COVID-19 Measures Adopted During the State of Emergency regarding suspending certain provisions of the Open Meeting Law, , G.L. c. 30A, §18, the Town of Duxbury's Board and/or Committee meetings will be conducted via remote participation to the greatest extent possible with members. For this meeting, members of the public who wish to watch the meeting may do so by viewing the Duxbury Government Access Channels – **Verizon 39 or Comcast 15**. Viewers can visit www.pactv.org/duxbury for information about Duxbury programming including streaming on Duxbury You Tube, to watch replays and Video on Demand.

ZBA Case #2021-06, Harlow Brook LLC, The Village at Harlow Brook, 766, 782 and 0 Temple Street (CONT'D): *The Board voted unanimously (5-0) to continue the public hearing to May 9, 2022 at 5:00 p.m.*

ZBA Case #2021-40, Campbell, 5 E. Marginal Road (CONT'D): *The Board voted unanimously (5-0) to continue the public hearing to June 9, 2022*

ZBA Case #2022-07, Old Cape Realthy, LLC, 5 Webster Road (CONT'D): *The Board voted unanimously (5-0) to continue the public hearing to May 26, 2022*

Borys Gojnycz makes a motion to close the public hearing. Freeman Boynton Jr. seconds (5-0)

BOARD OF APPEALS MINUTES

Case No: 2022-07

Petitioner: Old Cape Realty LLC

Address: 5 Webster Road

Date: April 28, 2022 at 7:30 p.m.

(Continued April 14, 2022)

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

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

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 never opened this case on April 14th and continues to read the public hearing notice, the case response memos from area boards including the planning board, the board of health and the design review board. The Applicant is seeking to add a second electrical meter. Ms. Muncey continues and states I do see Jim Wasielewski here, the Building Commissioner. Jim are you familiar with this case and does the file have anything that states the two family home pre-exists the bylaw which Town Counsels tells us is 1954
- Jim Wasielewski states we do not have anything in the file, which is why I referred this case to the Board
- John Ferriera, the property owner, presents to the Board his proposal stating I cannot prove that the second family was in operation prior to 1954. I do know the home was built in 1910 and I can say that we uncovered an old second kitchen in the fireplace from the early 1900's. Unfortunately that is all we have for now. The electrician discovered that all the wiring for the front apartment is separate and all of the wiring for the back apartment separate as well, so it make sense to us to just add the separate meter so that our long term tenants can just handle that expense in their own and we the landlords don't have to divide up the usage and keep track of it.
- Kathleen Muncey states unfortunately I don't think we can act as a board without the proof of this being a two family home pre-zoning bylaw. Out Town Counsel has made this clear that we need the proof in order to act
- Emmett Sheehan states it seems we cannot act on this
- Kathleen Muncey states I think the burden of proof is on the Applicant to try and prove the existence prior to 1954. I think there are other ways this can be done,

perhaps by researching the previous families in town that owned the home like Lansing Bennett

- Michael Ferriera states so their word would suffice for the Board
- Kathleen Muncey states yes, personal knowledge will suffice
- Philip Thorn states does the Assessor tax these different than a single family
- Kathleen Muncey states unfortunately that can't be used to determine zoning
- Freeman Boynton states we can't stop the use though
- Kathleen Muncey states correct use is protected after 10 years but the structure cannot be protected under that
- Jim Wasielewski states one of the things we talked about a lot with Amy (Town Counsel) was that we cannot enforce the use but we can't expand, alter it or change it
- Freeman Boynton Jr states did Amy weigh in, does she feel that add a second electric meter is an alteration or structural change
- Jim Wasielewski states in the conversation I had with her it gets tricky with the legitimizing the use
- Kathleen Muncey states there are other things you can try here, should we continue this to allow you more time to either research the previous owners who would be willing to sign an affidavit or perhaps a title search
- Mike Ferreira states we would like to continue to do some more research
- Kathleen Muncey states we also should ask Town Counsel if adding another meter is considered an alteration; what would be the next time we can hear this matter
- Jim Wasielewski states are there two addresses
- Mike Ferreira states no, there is #5 and 5A
- Lauren Haché states May 26, 2022
- Kathleen Muncey states can I have a motion to continue this hearing to May 26, 2022
- Tanya Trevisan moves
- Emmett Sheehan seconds
- All those in favor KM, ES, TT, FB, BG

Motion: It was moved, seconded and unanimously voted to continue the public hearing to May 26, 2022

Moved by: TT

Seconded by: ES

Number in favor: 5

Number opposed: 0

BOARD OF APPEALS MINUTES

Case No: 2021-40

Petitioner: Campbell

Address: 5 E. Marginal Road

Date: April 28, 2022 at 7:30 p.m.

(Continued February 10, 2022)

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

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

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 are the Applicants here
- Hugh Campbell states yes
- Kathleen Muncey states so, are you still waiting to go before the Conservation Commission
- Hugh Campbell states we did go before Conservation and they have decided to hire a peer review consultant. We were hoping for a judgment pending Conservation
- Kathleen Muncey states we don't usually go that route; let me read the case response we have received since meeting last. Design Review Board has some roofline suggestions, the parking on the east side and there is a single garage door. We did receive new plans showing a reduction in size. Also a letter from an abutter from Paul Shakespeare on 245 Gurnet Rd. where she is not in support. Do you know sir if the abutter has seen the new plans?
- Hugh Campbell states I believe she is looking at the old plans
- Kathleen Muncey states do any other Board Members have any questions, I think we do need to wait for Conservation; you meet with them again on May 10th
- Tanya Trevisan and Emmett Sheehan agree
- Kathleen Muncey states how about June 9th
- Hugh Campbell states yes, that is fine
- Kathleen Muncey moves to continue the public hearing to June 9, 2022
- Tanya Trevisan seconds
- All in favor KM, ES, TT, JB, FB

Motion: It was moved, seconded and unanimously voted to continue the public hearing to June 9, 2022

Moved by: KM

Seconded by: TT

Number in favor: 5

Number opposed: 0

BOARD OF APPEALS MINUTES

Case No: 2021-06

Petitioner: The Village at Harlow Broook

Address: 766, 782 and 0 Temple Street

Date: April 28, 2022 at 7:30 p.m.

(Continued from March 11, 2021, May 13, 2021, June 10, 2021, June 24, 2021, September 23, 2021, October 28, 2021, December 2, 2021, Jnauary 13, 2022 and February 24, 2022)

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

Members Voting: Judith Barrett, Kathleen Muncey, Freeman Boynton Jr., Philip Thorn & Borys Gojnycz

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

- Judith Barrett, Chair Pro Tem, re-opens the public hearing and lists all of the new correspondence since the last meeting. We have received a letter from the Applicant with responses to some of the peer review responses, a letter from Cliff Boehmer, out Architect Peer Reviewer, a revised waiver list, updated peer review from VHB, am email from the Building Inspector and then comments from Amory Engineers. This is all on file with the ZBA, I don't want to read everything tonight
- Attorney Robert Galvin, the Agent for the Applicant, briefly updates the Board on what has transpired and states that we have eliminated a unit and moved the buildings much further from Temple Street and increased space between the buildings. We also submitted a letter from out hydrologist as well
- Mounir Tayara, the Applicant, addresses the Board and states we have been working with the neighbors and suggestions of the Board and have moved the entire project much further from Temple Street. We are at least 100 feet from Temple Street now, we have also submitted detailed landscape plans to show all of the buffering we are proposing and continues to share the screen to show the renderings.
- Bart Lipinski, the landscape architect with Grady Consulting, shares his screen and explains the proposed screening and overall landscape including to rebuild the stone wall and the wall at the entry
- Judith Barrett states does the Board have any questions and clarifies the members sitting on this case, myself, Kathy Muncey, Freeman Boynton and Borys Gojnycz and Wayne Dennison is gone for a bit and is out of state, so I know we have Phil Thorn here as an alternate as well

- Borys Gojnycz states thank you to the Applicants for the great video of the images and illustrations
- Freeman Boynton asks for the applicant to zoom in on the property line screening
- Bart Lipinski continues to explain the screening in detail
- Mounir Tayara states that this is a condo with a homeowner's association and so if a tree falls on the proposed fence, the homeowner's association will repair that fence. Mounir Tayara also states that we are planning to sprinkler the entire development, even though the larger triplexes and quads require it, we are committed to adding sprinklers to all of the buildings
- Freeman Boynton states what about up by the mailbox station, I am wondering if it may make sense to increase the radius of the western inside circle, just speaking from experience, just to make the turning radius a little easier.
- Mark Casey agrees and said it is a subtle fix that seems like a good idea
- Phil Thorn states so for clarity the measurements from Temple Street to the first building is going from 50 feet to 140 feet and then also, is there any way to have new stakes so we can see with doing a drive by without trespassing, could that be done
- Mounir Tayara states those measurements are correct, but I don't think you'll be able to see from driving by, it's too far away
- Judith Barrett states ok, so Rob Nagi with VHB is here, would you like to respond to their memo
- Rob Nagi states I think the memo they issued was answering Amory Engineers statements, but generally regarding the fill that will be trucked in and what the volume will be and how is that going to happen in terms of construction management and the Applicant did submit a management plan.
- Judith Barrett states thank you and asks the Applicant to submit written response to the traffic peer review
- Mounir Tayara states if that's conditioned, that would be better, so we would request that these be conditioned in the decision
- Judith Barrett states if we have outstanding issues that have not been addressed, that is not the Boards fault, that is the responsibility of the Applicant. We are owed a response to the peer review, we need to close that loop
- Attorney Galvin states we have already submitted a detailed construction management plan back in February from Mr. Vanasse
- Rob Nagi states we did receive that from January 24th
- Attorney Galvin states in several previous comprehensive permits in the past, the Board has limited the number of trucks moving per day and I think that is what we would be expecting
- Judith Barrett states there is concern with this site and it is on the Applicant to review and respond to the Peer reviews
- Attorney Galvin confirms that they will submit a truck plan

- Judith Barrett states we also have Cliff Boehmer, the Peer review Architect from Davis Square Architects.
- Cliff Boehmer states there are a few things most of which a lot of new materials being submitted recently. I would recommend the Board seriously consider a working group. The Applicants have been extremely responsive by moving the building back over 100 feet from Temple Street, that really helps tremendously. There are basements in these homes and we have not seen any type of floor plan and I think you need basement plans. I think you also need to understand the grade change on this site. Homeownership units are not fully exempt from group 1 requirements, the other important statute applying here is the fair housing acts and those would be the ones with 4 units or greater.
- Judith Barrett states are there any questions from the Board for our Peer Review Architects
- Tanya Trevisan states I would like to thank Cliff for the great review and also, for the record the Board had invited the Applicant to participate in table top sessions and we still have not been able to achieve it.
- Attorney Galvin states we are not going to substantially redesign the project, we can certainly iron out some of these issues, but we would be willing to do that in a decision condition. The working session, we have not had an opportunity since the plans were just submitted.
- Judith Barrett states so, you're not willing to give any responses to the peer review architect
- Attorney Galvin states yes
- Judith Barrett opens the hearing to the public for comment
- Attorney Murphy states I am representing several neighbors, I'll start by saying even though these plans were just submitted this week, I get the distinct feeling that the Applicant is looking to perhaps close the hearing this week, if that is the case, I have a long list of things to say. If not the case, I just have some quick points
- Judith Barrett states I am not planning to close tonight, we don't have a response to the traffic review and there are some issues with the architectural and we're still waiting for input from Pat Brennan on these new plans
- Attorney Murphy continues the limiting factor is the location adjacent to wetlands, in a water supply district and close to the highway. This is an environmentally sensitive site. The Engineer of record has never attended and he's the engineer that stamps the plans and he hasn't been accountable. In January 2020 they had a hydrologist do some calculations of nitrogen and measure the saturated thickness and he said that distance was 20 feet. The plans that were submitted this week by Esposito state the saturated thickness is 45 feet. The same site, the same measurement and wildly different numbers. The amount of fill that is being brought is a function of how high they need to raise the ground from the 5 foot water table.

- Robert Melton, 732 Temple Street, we are direct abutters. This neighborhood has been under constant assault from developers for many years. We are not opposed to affordable housing, we are supportive of reasonably scaled developments and the Affordable Housing Trust is proposing affordable housing across the street from this on an environmentally appropriate site. This is proposing 1,500 truck loads of fill. This site also sits on a well head for the Town of Marshfield, has the town notified Marshfield
- Alia Samad-Salameh, 16 Laurel Ave, states I do appreciate the footage moving the building from the street and the tree lines. My question is what do you mean by "building up the rock wall"
- Bart Lipinski states we are proposing the new wall at 2 feet
- Alia Samad-Salameh states isn't it 2 feet existing
- Bart Lipinski states not really, it's falling apart
- Alia Samad-Salameh states infrastructure overload, I did speak with Captain Monahan and asked about him reviewing the plans. I'm just putting this on the radar of the Board since there are new plans and safety is something that gets considered. Also the call volume for the fire department is significant with these types of developments from a safety perspective
- Judith Barrett states I just want to point out that those developments, Island Creek and 59 Chestnut Street are rental units and this is a homeownership development, so it's a little different
- Adam Schweback, 756 Temple Street, states I want to bring up a few points about the water. My basement is wet as can be and my sump-pump has been running non-stop, so I am very surprised. Also PFAS is an issue as well, we have a water quality issue in this town. Lastly, I think this is the first time we're seeing waivers and it is lengthy. Why do they have so many waivers.
- Paul Pandiscio, 35 Amado Way states I would like to thank the Applicant for the renderings, they are very helpful and nicely done. I am just wondering how accurate are the renderings, or how similar will the renderings be to the actual construction design. Thank you very much
- Mounir Tayara states the renderings are pretty accurate, they are cad files and the only thing that will change are the colors, roof lines, dormers will be accurate. The roof material is the typical architectural shingles
- Judith Barrett states we do need Pat Brennan to review the revised plans, are you still willing to have a work session with the architect and engineer
- Mounir Tayara states I would like to discuss this with my team first.
- Judith Barrett states we should discuss for a continuance date
- Attorney Galvin concurs
- Judith Barrett states Lauren when can we hear this again
- Lauren Haché states June 23rd
- Mounir Tayara states that is too long
- Judith Barrett states we are swamped with cases on our dates
- Kathleen Muncey states I would suggest a separate meeting for this project

- Judith Barrett states yes, that's a wonderful idea, how about May 9, 2022 at 5:00pm
- Kathleen Muncey states yes, as does Freeman Boynton and Borys Gojnycz and Phil Thorn
- Judith Barrett makes a motion to continue to May 9, 2022 at 5pm
- Kathleen Muncey seconds
- All in favor JB, FB, PT, BG, KM

Motion: It was moved, seconded and unanimously voted to continue the public hearing to May 9, 2022

Moved by: JB

Seconded by: KM

Number in favor: 5

Number opposed: 0

