



TOWN OF DUXBURY
BOARD OF APPEALS

DUXBURY BOARD OF APPEALS
MEETING MINUTES
July 27, 2023 @ 7:30 p.m.

TOWN CLERK
2023 SEP 15 AM 9:44
DUXBURY, MASS.

ATTENDANCE: Wayne Dennison, Judith Barrett, Emmett Sheehan, Freeman Boynton Jr., Philip Thorn, Borys Gojnycz, and Tanya Trevisan

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

CALL TO ORDER: Wayne Dennison called the meeting to order and reads the Governor's Preamble: Pursuant to Chapter 2 of the Acts of 2023, 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 information about Duxbury programming including streaming on Duxbury You Tube, to watch replays and Video on Demand.

AGENDA

ZBA Case #2023-10, Daly, 5 Hummock Lane (CONT'D): *The Board voted to approve the special permit, with conditions.*

ZBA Case #2023-11, Osborn's Country Store, 632 Summer Street: *The Board voted unanimously (4-0) to approve the special permit, with conditions*

ZBA Case #2023-12, The Town of Duxbury, 878 Tremont Street: *The Board voted to continue the public hearing to September 14, 2023.*

ZBA Case #2023-13, The Bluefish River Tavern, 581 Tremont Street: *The Board voted to continue the public hearing to September 14, 2023.*

ZBA Case #2023-14, Clifford, 4 Lewis Court: *The Board voted unanimously (4-0) to approve the special permit.*

Wayne Dennison makes a motion to adjourn. Tanya Trevisan seconds.

BOARD OF APPEALS MINUTES

Case No: 2023-10

Petitioner: William and Joanne Daly

Address: 5 Hummock lane

Date: July 27, 2023 Time: 7:30 p.m.

(Continued from July 13, 2023)

Members present: Wayne Dennison, Judith Barrett , Philip Thorn, Freeman Boynton Jr., and Tanya Trevisan

Members Voting: Wayne Dennison, Judith Barrett, Philip Thorn, Freeman Boynton Jr., and Tanya Trevisan

Other persons present at the hearing: Lauren Haché, Principal Assistant

- Wayne Dennison re-opens the public hearing and states we have new materials received today. We had some discussion at the previous meeting regarding how to calculate overhangs and coverage and we did receive a memo and a revised memo from Town Counsel, giving her opinion that the overhangs should be included in the coverage calculations. Did we receive new drawings
- Jessica Williams the Agent for the Applicants states yes, revised plans from today and continues, I did try to reduce the overhangs based on the memo from Town Counsel. These overhangs are 1 ½" overhangs. We were not able to have the Engineer add or change the coverage calculations on the plot plan that fast and then shares an email with the Engineers math coverage changes which fall within the 3% rule. I am hoping that you can look at these overhang changes and I have provided the conservation plan with the piers and the midpoint.
- Wayne Dennison states the finish grade doesn't matter, you measure the midpoint from 20 feet in front of the structure
- Jessica Williams states which is 8 feet
- Freeman Boynton Jr states I believe at the last meeting we determined it is 7 feet
- Jessica Williams states either 7 or 8, it doesn't matter, we are meeting the midpoint because I am at 36 10 and 1/2
- Freeman Boynton Jr states did you determine what the setback for 40 Ocean Road North was so we can average the three together
- Jessica Williams states no, and the reason that I did not is because my site engineer stated the typical methodology is to use the adjoining properties on the same street; for example shipyard lane. We have never used the adjoining street of Washington Street in that scenario
- Wayne Dennison states so, you didn't do it because you didn't want to
- Jessica Williams states my engineer did not have the information for the other property; we did not have enough time to go out to the property, measure and put that in the site plan
- Wayne Dennison states I understand that, but no one decision of this board is presidential of any other decision of this board. We have to deal with people appropriately and not arbitrarily.
- Jessica Williams states the idea that we are looking at frontage and we have to now incorporate that from a completely different street ...
- Wayne Dennison states you were asked to do one lot, one lot
- Jessica Williams states ok, let's continue to give us time to get that

- Freeman Boynton Jr states I think the issue is that you are getting closer to that front setback here and on Shipyard that isn't the case
- Jessica Williams states I do not agree, I would like to continue
- Wayne Dennison states that when Town Counsel revised her memo, she states that anything over 1 foot in an overhang, should be counted as coverage and if you did this at 1 foot rather than 1 ½ feet, you would end up back to where you were.
- Jessica Williams states we will go for the 1 ½
- Judith Barrett states what prompted the revised memo from Amy
- Wayne Dennison states I called Counsel because I did not understand the first one
- Tanya Trevisan states I only see overhangs contribute to coverage, nothing with "over 1 foot"
- Philip Thorn states Counsel doesn't say over 1 foot, she states any overhang contributes to coverage
- Freeman Boynton Jr states she meets the coverage ratio right
- Wayne Dennison states she meets coverage with the 3% but they started over the 15%
- Judith Barrett states I am a bit troubled with this, that an applicant can't rely on a past decision from this board to how it relates with the present. It feels wrong to me
- Judith Barrett states we need to have a meeting with Amy, outside of a public meeting, to discuss the issue of the 3% rule and the overhang issue
- Wayne Dennison states does anyone else have anything to say; does the board want to continue or vote
- Freeman Boynton Jr states since she meets the coverage, maybe we can conditionally approve and have Jim check that number for the property behind
- Tanya Trevisan states do we need to wait for the Conservation Administrator to weigh in on this
- Wayne Dennison states if they can't get through Con Comm they can't do it
- Freeman Boynton Jr states typically there is a foundation cert that is required
- Tanya Trevisan States Jessica can you share the calculations again
- Discussion over coverage calculations for the project ensues
- Wayne Dennison states we can continue this, but my inclination would be to close it and vote on it
- Freeman Boynton Jr states I'm ok with that
- Tanya Trevisan moves to close the public hearing
- Phil Thorn seconds
- All in favor Wayne, Phil, Freeman, Tanya, Judi
- Freeman Boynton Jr makes a motion to approve the special permit for 5 Hummock Lane with the condition that they provide the setback of 40 Ocean Road North and that it doesn't compromise the average and that they get conservation approval.
- Wayne Dennison seconds the motion
- All in favor Wayne, Phil, Freeman, Tanya, Judi

Motion: It was moved, seconded and voted (5-0) to close the public hearing.

Moved by: TT

Seconded by: PT

Number in favor: 5

Number opposed: 0

Motion: It was moved, seconded and voted (5-0) to approve the special permit with conditions.

Moved by: FB

Seconded by: WD

Number in favor: 5

Number opposed: 0

BOARD OF APPEALS MINUTES

Case No: 2023-11

Petitioner: Osborn's Country Store

Address: 632 Summer Street

Date: July 27, 2023 Time: 7:30 p.m.

Members present: Wayne Dennison, Philip Thorn, Freeman Boynton Jr., and Tanya Trevisan

Members Voting: Wayne Dennison, Philip Thorn, Freeman Boynton Jr., and Tanya Trevisan

Other persons present at the hearing: Lauren Haché, Principal Assistant

- Wayne Dennison opens the public hearing and reads the public hearing notice and continues to read the case response from the board of health, the planning board and the design review board
- Lauren Haché reads a memo from the Conservation Administrator
- John LeClare with Station One New England and Barbara Sanders, the property owner both speak about the proposed sign
- Barbara Sanders shares some photos of the existing sign, the fluctuation in gas pricing and explains that the current sign requires someone to climb a ladder to change the numbers
- Freeman Boynton Jr states are you only going to list the price of one fuel or do you only sell one fuel; is this new sign bigger than the existing?
- John LeClare states the new sign is going to be a little smaller than what is currently there, the measurements are 10 square feet and the existing is 13.6 square feet
- Wayne Dennison state the current sign has room for two fuels, is the new sign only going to display one
- John LeClare states yes just one price, it would have been too big to add both gases
- Wayne Dennison states is it backlit with a white light
- Barbara Sanders states it will be, yes and it would be regular unleaded
- Wayne Dennison states does the board have any questions; is anyone here looking to speak to this matter
- Wayne Dennison moves to close the public hearing
- Tanya Trevisan seconds
- All in favor Wayne, Tanya, Phil, Freeman
- Wayne Dennison states any discussion
- Phil Thorn states no, I think the sign is smaller, the lights are internal and white, I would suggest that we condition this with the intensity of the light be reasonable
- Wayne Dennison states the other condition be that you shut it off when you're closed
- Freeman Boynton Jr states and white lights of reasonable intensity
- Phil Thorn states I am ready to vote
- Wayne Dennison states I move to approve the special permit as requested with the conditions that the sign is backlit with white light, that the sign is of reasonable intensity and that the sign is turned off when Osborn's is closed.
- Tanya Trevisan seconds
- All in favor Wayne, Tanya, Phil, Freeman

Motion: It was moved, seconded and voted (4-0) to close the public hearing.

Moved by: WD

Seconded by: TT

Number in favor: 4

Number opposed: 0

Motion: It was moved, seconded and voted (5-0) to approve the special permit with conditions.

Moved by: WD

Seconded by: TT

Number in favor: 4

Number opposed: 0

BOARD OF APPEALS MINUTES

Case No: 2023-14

Petitioner: Clifford

Address: 4 Lewis Court

Date: July 27, 2023 Time: 7:30 p.m.

Members present: Wayne Dennison, Philip Thorn, Freeman Boynton Jr., and Tanya Trevisan

Members Voting: Wayne Dennison, Philip Thorn, Freeman Boynton Jr., and Tanya Trevisan

Other persons present at the hearing: Lauren Haché, Principal Assistant

- Wayne Dennison opens the public hearing and reads the public hearing notice and memos from the Planning Board, the Board of Health and the Building Commissioner, the Planning Board and reads letter in support from various neighbors and abutters.
- Lauren Haché reads a memo from the design review board and states we received a revised site plan
- Dick Rockwood, Rockwood Designs, introduces himself as the Agent and states we are in an AO flood zone and we are looking to raze and rebuild
- Wayne Dennison states which plan is the revised and most up to date
- Dick Rockwood states the one from Brendan Sullivan with two views
- Tanya Trevisan states what is the date on that one
- Lauren Haché states July 19, 2023
- Dick Rockwood continues and states the setback lines are as so and we are making slightly less conforming and lengthening the project and we are out of the velocity line. The existing lot is 8770 less the right of way which is 1540, so existing is 16.7%. Since we are over the 15% standard coverage, I thought the Planning Board stated it may not need the 3%
- Wayne Dennison states we did get an opinion from Town Counsel whether or not the 3% rule applies for properties already over the 15% and it was determined that it does not apply, rather a determination of detriment could be made. We did get another opinion today about this and it was not clear, so I did reach out to Counsel and basically it does not apply, but if it is more than the 3% we would want to determine if it is a significant, detrimental change
- Dick Rockwood states ok, I have heard both ways and we did draw plans with both ways, with and without the right of way
- Wayne Dennison asks about the proposal getting closer to the front
- Dick Rockwood explains the right of way
- Wayne Dennison states right, it says existing 5.1 and proposed 6.3
- Freeman Boynton Jr states so you're not getting closer
- Dick Rockwood states correct, we are moving away and, on the side as well, it is all less non-conforming
- Wayne Dennison states why is the rear not applicable on the plan
- Dick Rockwood states it's a three sided lot
- Tanya Trevisan states well there are four corners
- Freeman Boynton Jr states 80.1 to 60.3 on the east side, 20 feet closer

- Mike Clifford, 4 Lewis Court homeowner, explains the setback changes, where the proposal will be less non-conforming and we are proposing to bring it forward towards the water, but still well outside of the setback
- Freeman Boynton Jr states I think we understand that, but we are all wondering why he didn't frontside the setback to the back/northside
- Mike Clifford states I asked him the same question and he stated that because it's a corner lot, that is the way it's done, that's the best explanation he gave me
- Tanya Trevisan states so Lewis Court goes around that corner
- Mike Clifford explains the right of way
- Tanya Trevisan states so you are the only home on the north side of Lewis court
- Mike Clifford states that is correct and the letter of support that I included in the application are from every adjoining property and on East Marginal and on Ocean; every property that touches mine is in support
- Wayne Dennison states how tall is this
- Dick Rockwood states 29 feet from the midpoint of the roof, measured from average grade
- Freeman Boynton Jr states can you go back to the site plan for elevations-20 feet out
- Dick Rockwood states 13 and 12 and average that
- Freeman Boynton Jr states 20 feet in front of the house is in the neighbor's yard
- Wayne Dennison states so we measure from 20 feet in front of the house
- Freeman Boynton Jr states the plan shows a retaining wall, is the grade lower in the street or lower at the wall
- Mike Clifford states the grade is lower at the right of way
- Freeman Boynton Jr states ok, that covers us I would think
- Wayne Dennison agrees
- Dick Rockwood shares aerial photos for perspective
- Discussion ensues regarding elevations and where the midpoint of the roof is
- Dick Rockwood explains the midpoint between the eaves of the roof
- Freeman Boynton Jr states It wouldn't be an issue if you didn't have to raise it up on piers and I am okay with this since it is not 3 stories
- Phil Thorn agrees and states this project has a lot less vertical mass than other projects we have seen out here, I don't have an issue with this
- Freeman Boynton Jr states how many bedrooms in this existing and how many in the proposed
- Dick Rockwood states four bedrooms in both
- Freeman Boynton Jr mentions that we should check with Marshfield Sewer about capacity
- Phil Thorn states that shouldn't be an issue here, they aren't increasing bedroom counts
- Tanya Trevisan states the Planning Director, in his report states there are things becoming less non-conforming but isn't sure what
- Dick Rockwood explained the proposed setbacks to the existing, they are reduced
- Freeman Boynton Jr states reduced, not eliminated
- Wayne Dennison states how big are the overhangs
- Dick Rockwood states 12"
- Freeman Boynton Jr states did the surveyor include them with the math
- Dick Rockwood stated yes, from the very beginning
- Freeman Boynton Jr states so the big determination is over the 3% rule, whether we consider it detrimental to the neighborhood
- Tanya Trevisan states well all of the neighbors are in support

- Wayne Dennison states is there anyone else here to speak
- Mike Clifford states I would like to point out we are getting rid of a basement and making it more environmentally friendly with the water
- Wayne Dennison states it would be hard for me to say it's more detrimental when every single neighbor is supporting this
- Mike Clifford states I personally spoke with every direct abutter and they all support this; we're trying to put up a tasteful house and when its done, it is still behind all of the other homes along the water
- Wayne Dennison states is there anyone else here to speak
- Tanya Trevisan moves to close the public hearing
- Phil Thorn seconds
- All in favor Wayne, Phil, Tanya, Freeman
- Wayne Dennison states any discussion
- Phil Thorn states I think this is a tasteful design making efforts to become less non-conforming
- Wayne Dennison recites the Town Counsel opinion regarding the 3% rule and states when you go beyond the 3%, this Board can choose to determine that is a significant change and can use that to deny the special permit
- Freeman Boynton Jr states an so it is not a variance to go beyond the 3%
- Tanya Trevisan states wouldn't it require a variance
- Wayne Dennison states it is already non-conforming
- Wayne Dennison moves to approve the special permit consistent with the progress plan dated 7.27.2023 and site plan dated 7.19.2023
- Freeman Boynton Jr seconds
- All in favor Wayne, Phil, Tanya, Freeman

Motion: It was moved, seconded and voted (4-0) to close the public hearing.

Moved by: TT

Seconded by: PT

Number in favor: 4

Number opposed: 0

Motion: It was moved, seconded and voted (5-0) to approve the special permit.

Moved by: WD

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Number in favor: 4

Number opposed: 0