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DUXBURY, MASS.

TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS MEETING MINUTES

March 28, 2019 @ 7:30 p.m.

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

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

- **ZBA Case #2018-20 Duddy, 14 Stetson Place, Special Permit (CONT'D):** *The Board voted to approve the special permit. (5-0).*

BOARD OF APPEALS — MINUTES

Case No: 2018-20

Petitioner: Brian Duddy,

Doug Friesen/Duxborough Designs, Agent

Address: 14 Stetson Place

Date: March 28, 2019 Time: 7:30 p.m.

(CONT'D from 1/10/19, 2/14/19, 2/28/19)

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on ~~Thursday, January 10, 2019~~ at 7:30 p.m. to consider the application of Brian Duddy for a Special Permit under Article(s) 400 and 900, Section(s) 410.2 #4, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 14 Stetson Place, Parcel No. 119-079-226 of the Duxbury Assessors Map, consisting of 0.25 Acres in the Residential Compatibility District and owned by Brian P. & Kathleen M. Duddy. The Applicant proposes to construct additions to a pre-existing, non-conforming structure, plans for which increase the coverage beyond the allowable amount. A Special Permit is required. The application may be viewed in the Municipal Services Department between the hours of 8:30 a.m. and 1:30 p.m., or by appointment. Any individual with a disability may request accommodation in order to participate in the public hearing and may request the application and any accompanying materials in an accessible format. Such requests should be made at least three business days in advance by contacting the Municipal Services Department.

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

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

- Wayne Dennison opens the public hearing and states that this hearing is one that has been continued from another date and summarizes the public hearing notice.
- Mr. Dennison goes on to state that the property is already above the 15% lot coverage – at 16.7 - and asks the agent, Doug Friesen if it has ever dropped back to 15.
- Doug Friesen states it has not.
- Mr. Dennison states that there have been 3 different versions of the plan submitted and he would suggest confirming with the clients as to which one they want.
- Doug Friesen states that they know which one they want and states that they'd like to ask for the first proposal dated in October 2018 and in summary, that version was at 21' to the left side of the garage bump the kitchen out and keep the shed, putting them at 23.2 coverage from 16.7 and it gives them about a 1 ½ car garage and an entryway that is not crammed.
- Freeman Boynton, Jr. asks if any of the plans not require a variance.
- Doug Friesen states that they are asking for a special permit, not a variance.
- Freeman Boynton, Jr. states that it's a variance if you don't meet the 3% rule.
- Wayne Dennison states that if they were under 15% and they wanted to go over, that's a variance, but if they start out over 15% they are already nonconforming and according to a recent case from the SJC, we'd have to make two determinations – one is if their further nonconformance means anything and if it does, do we think that has substantially deters from the bylaw or harms the neighborhood.
- Freeman Boynton, Jr. asks where the 3% rule comes in.
- Wayne Dennison states that it comes in only if you are under 15% and want to go over.

- Doug Friesen states that was his understanding of this too and asks if there is anything in the bylaw that states what percentage you are allowed to go over.
- Wayne Dennison states that it doesn't.
- Doug Friesen submits a case from the SJC to the Board for consideration, stating it will likely affect how special permit cases are decided and asks the Board for their input surrounding it.
- Wayne Dennison reads from the bylaw regarding building coverage and then summarizes that this Board has previously interpreted this bylaw that if you are at 15% and want to go beyond 15% you can only do so in an amount that is 3% of the difference between 15% and 20,000sf.
- Emmett Sheehan asks what that number is for this.
- Wayne states it'd be way less than what they did.
- Wayne Dennison states that Doug is right and that this case, Maria Bellalta, deals with this particular question of whether you need a variance if you are already nonconforming in some way and you ask to alter your one of two family house and it says that the Board has to make a two stage determination – the increase from 16.7 to 23.1 is substantial in terms of the existing nonconformity and...
- Wayne Dennison states this was an FAR case, Floor Area Ratio, and what they said was that this particular house in Brookline was noncompliant with FAR and they were trying to make it more noncompliant with FAR and they said you don't need a variance for that because you were already noncompliant and under 40A Section 6 you would try to determine if the nonconforming nature has been substantially altered. He then asks Doug if there is any new nonconformity created with this.
- Doug replies there is not, they meet all the setbacks.
- Wayne Dennison states he thinks this case (SJC) directly applies.
- Freeman Boynton, Jr. asks if they meet the front setback?
- The Board and Doug discuss if it meets the front setback and determines it doesn't appear to, but it is not getting closer to the street than it used to be.
- Freeman Boynton, Jr. asks if they are adding a roof to the entryway [referring to the plans]. Doug, Freeman, et al. discuss those plans.
- The Board goes over what the DRB had to say, which is that they had no objections to the project if the ZBA accepts the increased coverage.
- Wayne Dennison states that it's tough for us to go back and approve older plans if the DRB has reviewed others.
- Doug states that the revision was mostly due to their coverage concerns and suggested they could read the old DRB opinion.
- Wayne Dennison reads the DRB revised opinion, emphasizing that the DRB has no objection to the December plans, not the October plan.
- Doug asks if that is a deciding factor.
- Wayne states that no, they are not the final, but we ask other boards to weigh in with their input for a reason and often consider it.
- Doug states that moving the gable to line up with the garage door really harms the usability of the building and it's not as if the original was much different.
- Emmett Sheehan and the Board ask to review the plans. Doug Friesen presents the plans to the Board and they discuss.
- Kathleen Duddy points out that if you start with a nonconforming lot, you never have the chance to be conforming.
- Freeman Boynton, Jr. states that they should consider at what point it becomes detrimental to the neighborhood.
- Doug Friesen states that this house has had a great turnover over the years and it's most likely that they cannot do much with this spot and states the Board should consider that the neighborhood will benefit from it.
- Kathleen Muncey states that coverage from neighboring properties should be considered.
- Kathleen Duddy states that the street is very narrow and they are asking for the garage to accommodate their vehicles as the on street parking is naught.

- Kathleen Muncey asks which version of the plan they like the best.
- The Board and Doug Friesen discuss the version of the plan that is best.
- Wayne Dennison states that they must determine if the proposed alteration would increase the nonconforming nature of the structure and going from 16 to 23% doesn't mean we could say it doesn't – and we must determine if it is substantially more detrimental.
- The Board and Applicants discuss how much additional coverage is too much.
- Wayne Dennison states that there is absent evidence about coverage comparisons in the neighborhood (referring to the October plan), but he is ok with the DRB approved plans from December going from 16 to 21, but would need more if to approve the October plan
- Kathleen Muncey states she'd like to see what the other houses coverage is and she has trouble because if a house that began under 15% asked for this, they wouldn't have this option and she's thinking how this might affect others.
- Brian Duddy asks if he can help get past the more detrimental part.
- Freeman Boynton, Jr. states they'd be looking for coverage on the direct abutters.
- Wayne Dennison states that the Board would be hard pressed not to give you the ability to make your house bigger, but the question is how much bigger.
- Freeman asks what they are gaining by going with the October plan.
- Doug Friesen states a wider garage and a less cramped entryway w/second floor same
- Philip Thorn states that he'd be more comfortable with approving the December plan seeing as the DRB had submitted comments.
- Wayne Dennison states that the DRB opinion predates the SJC opinion and the best thing to do if you'd like the October plans would be to go back to the DRB and ask them to consider that decision and look at the October plans; however, he is ok with the December plan.
- Doug Friesen asks for a moment to confer with his clients.
- Doug Friesen and the Applicants return and state that they haven't talked about one part of the plan which is the shed and the percentage includes the shed, so they'd like to go with the December plan at 21% but keep the shed.
- Emmett Sheehan states that he'd like to see the no's on the neighborhood.
- Freeman states that they are willing to compromise by going with the December plan that the DRB likes but keep their shed.
- Phil states that to be clear, the proposal is December plans, but keep the shed and move it fully on their property as it's just over the lot line now.
- The Board and the Applicants discuss the shed and the December plan.
- Freeman Boynton, Jr. makes a motion to close the public hearing. Philip Thorn seconds. All in favor (5-0).
- Freeman Boynton, Jr. makes a motion to approve the December plan with the shed. Philip Thorn seconds. All in favor (5-0).

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

Moved by: FB

Seconded by: PT

Number in favor: 5

Number opposed: 0

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

Moved by: FB

Seconded by: PT

Number in favor: 5

Number opposed: 0