

TOWN OF DUXBURY

BOARD OF APPEALS

DUXBURY BOARD OF APPEALS  
MEETING MINUTES

March 24, 2022 @ 7:30 p.m.

TOWN CLERK  
2022 APR 15 AM 8:08  
DUXBURY, MASS.

**ATTENDANCE:** Wayne Dennison, Judith Barrett, 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:** Wayne Dennison 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](http://www.pactv.org/duxbury) for information about Duxbury programming including streaming on Duxbury YouTube, to watch replays and Video on Demand.

**ZBA Case #2021-28, Husk, 160 Marshall Street (CONT'D):** *The Board voted unanimously (5-0) to continue the public hearing to May 26, 2022 at 7:30 p.m.*

**ZBA Case #2022-06, Pros Only, LLC/Island Creek Oysters, 403-7 Washington Street:** *The Board voted unanimously (5-0) to continue the public hearing to March 31, 2022 at 5:00 p.m.*

**Administrative:**

*Wayne Dennison makes a motion to approve the meeting minutes from February 10, 2022. Tanya Trevisan seconds.*

*Wayne Dennison makes a motion to close the public hearing. Emmett Sheehan seconds (5-0)*

## BOARD OF APPEALS MINUTES

**Case No: 2021-28**

**Petitioner: Benjamin Husk**

**Address: 160 Marshall Street**

**Date: March 24, 2022 at 7:30 p.m.**

**(Continued from January 13, 2022 & October 14, 2021)**

**Members present:** Wayne Dennison, Freeman Boynton Jr., Emmett Sheehan, Philip Thorn, Borys Gojnycz & Tanya Trevisan

**Members Voting:** Wayne Dennison, 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

- Wayne Dennison re-opens the public hearing and states we have received a tremendous amount of material since the previous hearing. We may at some point summarize material, but I would like to start this hearing off reading a particular letter dated March 21, 2022 from Kathleen Heyer, who represents the co-owner of 160 Marshall Street, Benjamin Husk. This letter states that Benjamin Husk was unaware of this application and strongly opposes it. Upon receipt of this letter, I asked for Town Counsel to submit an opinion as to whether the application is properly before us and we received that opinion this morning. Town Counsel's opinion is that the application is incomplete and there are a couple of courses that we can proceed down. One of the courses is that we can continue this matter to allow time for Benjamin Husk to sign the application as a co-owner or we can proceed and ultimately deny the application. I want to hear from Mr. Davidson first, before we proceed.
- Attorney Chris Davidson, Counsel for the Applicant CJ Husk, states I did receive the letter from Town Counsel late today, so I want to look into the legal issues that this may pose onto our application and I think it would be equitable to continue to allow time to look into these issues. I would like to get some more input from Benjamin Husk
- Wayne Dennison states I did not mean to imply that Benjamin Husk or his Counsel are here, I just do not want to spend a lot of time with the materials that came in, in the event that what we are doing is temporarily not useful. I am very much in favor to continuing to a date to allow the Applicant to consider the opinion of Town Counsel. Town Counsel's opinion is clear-cut and I do not believe this Board will deviate from the opinion of Town Counsel on something of this nature. The other aspect is the letter from Ms. Heyer where we need to address and I am going to ask Mr. Wasielewski, is this property in the Wetlands Protection Overlay District



- Jim Wasielewski states let me look this up to be sure, I believe it is
- Wayne Dennison states there is an allegation that the notice of public hearing fails to point out section 404.6 of the Bylaw of which I agree, but the public hearing notice does in fact indicate that portions of the property are in fact in the Wetland Protection Overlay District further in the notice and I do not see that as a problematic notice moving forward.
- James Wasieewski states most of the property is in fact in the Wetland Protection Overlay District
- Wayne Dennison states the public hearing notice for this application does indicate that the property is in this district. I am going to ask Mr. Davidson if he sees an issue that would require the public hearing notice to be re-noticed. My inclination for this evening is to permit Mr. Davidson more time
- Emmett Sheehan states I agree with how you want to proceed
- Borys Gojnycz states I also agree
- Wayne Dennison states Mr. Davidson can we discuss a continuation date
- Philip Thorn states is counsel for the co-owner present tonight
- Kathleen Heyer, Counsel for Benjamin Husk states my client is firm on his position detailed in my letter that the application is not complete
- Attorney Davidson states thank you, in terms of a continuance date, we would appreciate maybe 30-60 days and apologizes for the connectivity issues
- Wayne Dennison states Lauren when can we continue this to
- Lauren Haché states May 26<sup>th</sup> at 7:30 p.m.
- Wayne Dennison states Mr. Davidson, would May 26<sup>th</sup> give you enough time to address some of these issues
- Christopher Davidson states yes, I believe that will give us accurate time
- Wayne Dennison states great, before we continue this I would like to note that we have received a lot of material that comes in days before the hearing, so for those that would wish to submit additional materials for this case, I would ask that those who wish to submit them, who are on the zoom tonight, to look at the Bylaw and out their submissions in context of what this Board does. This Board does determine special permits under 906.2, which lists the special permit criteria. This Board does not arbitrate Land Use disputes, this board does not require neighbors to be nice to each other, this board doesn't determine whether someone's email is nice that someone else's. All of that material does not bear on the Board's decision. People can submit what they want, but their submissions should be around the special permit requirements of 906.2
- Wayne Dennison moves to continue this hearing to May 26, 2022 at 7:30pm.
- Emmett Sheehan seconds
- All in favor WD, FB, ES, BG, PT

**Motion: It was moved, seconded and unanimously voted to continue the public hearing to May 26, 2022 at 7:30 p.m.**

Moved by: WD

Number in favor: 5

Seconded by: ES

Number opposed: 0

## BOARD OF APPEALS MINUTES

**Case No: 2022-06**

**Petitioner: Pros Only LLC**

**Island Creek Oysters**

**Address: 403-7 Washington Street**

**Date: March 24, 2022 at 7:30 p.m.**

**Members present:** Wayne Dennison, Judith Barrett, Freeman Boynton Jr., Emmett Sheehan, Philip Thorn, Borys Gojnycz & Tanya Trevisan

**Members Voting:** Wayne Dennison, Judith Barrett, 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

- Wayne Dennison opens the public hearing and reads the public hearing notice into the record. Mr. Dennison states we have received an application, a site plan from Grady Engineers and architects renderings. There are several case response memos from Town Boards including the Planning Board, The Conservation Commission, The Board of Health and the Design Review Board. Lauren what else did we get?
- Lauren Haché states we also received a letter from Island Creek Oysters regarding an informal meeting with their Abutter, whom signed a memo in support. We have also received an email from Adam and Pam Earle, 387 Washington also in support.
- Mr. Dennison states let's hear from the Applicants
- Chris Sherman, President of Island Creek Oysters, presents to the Board the proposal to expand the quick serve raw bar. Mr. Sherman states we are looking to expand the quick serve raw bar after success from the original special permit. The three main things we want to address is to create an indoor space to be more reliably open in season even when there is inclement weather and potentially create a space for potential all year round service. We want to add infrastructure on the lower level of the building adding a food prep area, not a kitchen and also to add retail and bathrooms. The truck and merch tent will potentially go away. We are also thinking about site circulation as well and are proposing to add parking for an agricultural lot along the North side of the property to alleviate traffic. This is under the agricultural label due to season needs. In the winter we have a lot of oyster gear that needs to be stored in the winter consolidated there on this lot and in the spring, summer and fall it will be used for our farm staff to free up the parking on the site for guests. We are going to restrict the North lot for employees only and enter only, This is for safety and so that neighbors won't have headlights coming into their homes



- Wayne Dennison states does the Board have questions
- Borys Gojnycz states so if you're going to organize the equipment, will this create a noise issues
- Chris Sherman states there is minimal noise and maintenance while it's stored there. Also our Abutter to the North is Bayside Marine and we sort of have a complimentary type of business and we're far enough apart that noise won't be an issue.
- Wayne Dennison states so based on the plan, you mentioned getting rid of the food truck in favor of the indoor facility that would lend itself with more utility but the plan shows the merch tent and there appears to be a new food truck
- Chris Sherman explains that is the existing food truck moving for additional shucking capacity should we need it. My hope is that with the indoor prep area we would not need the truck, but it's auxiliary
- Wayne Dennison states so let me as you a couple of questions, the existing special permit limits site capacity to 120 people, you are seeking no modification to that
- Chris Sherman states right now we have 120 on the patio and the request is for an additional 108, which would bring the seating up to roughly 230 which would be in line with the current demand
- Wayne Dennison states so you're going from 120 outdoors to 230
- Chris Sherman confirms
- Wayne Dennison states where is that reflected in the application
- Chris Sherman states in the floor plan shows 74 indoor seats, however the building capacity due to requirements in 108
- Emmett Sheehan states so that capacity, what would the outside total be and does that include employees
- Chris Sherman states the employees are not part of the number, but they are included in the septic count and parking. The building use is also going from office use to retail, so that entails much more detailed codes such as fire sprinklers, ADA compliant access etc
- Emmett Sheehan states so the previous special permit is 120, what do you think it will go to if this is approved
- Chris Sherman states after doing counts with people waiting on busy days, this number would accommodate the daily demand. We also have the Winsor House now, so our hope is that both will interact synergistically
- Emmett Sheehan states so 120 going to 230 and lets say it's a sunny day, would that trigger a couple of hundred that will be outside
- Chris Sherman states in reality we would rather use the two spaces fluidly and to try to manage the outside capacity
- Emmett Sheehan states the key word is management and in the past few years, Island Creek has managed it well. I just want the neighbors to be aware of the new size

- Tanya Trevisan states I am concerned about the parking, is the Winsor House going to be open at the same time that the Oyster bar is open
- Chris Sherman explains that there is a good possibility that they are both open
- Tanya Trevisan states where is all of the additional parking going to go. This says 1 space for every 4 seats
- Chris Sherman states the Winsor House comes along with it's own parking and the restaurant comes with it's own long standing history of Pilgrim Church and St. John's we all work together on special events in those scenarios. Plus we are adding 50 additional parking for employees and we also have valet. I have confidence in the plan for parking, even at peak
- Wayne Dennison states so with regard to the outdoor tables you did talk about the folks who waited and my own experience, there were significant amounts of people waiting in hopes for a table, don't you think you'll be way over 120 just outside
- Chris Sherman states that has not been our experience thus far, this is really about adding capacity in general and we have been working on infrastructure on site for capacity with parking and septic, we feel this, after four years of this, this is what we see to bring us successful operations
- Wayne Dennison states I remember the original special permit mentions a traffic management personnel to deal with this, Jim Wasielewski what was that about
- Jim Wasielewski states I don't recall that part of it, but what typically happens is having trained managers to deal with that. I have some concerns particularly with the inside seating, the building code is going to determine what that occupancy load will be. There are a number of determining factors that vary based on the set up for interior occupant code. I know that Brian Monahan with the Fire Department and he has some concerns with the parking and the space for emergency fire apparatus access. Brian may want to chime in
- Chris Sherman states the occupancy is something the Architects have calculated with permitting
- Courtney with the Architecture firm states the occupancy count was submitted with the full building package
- Wayne Dennison states I believe Jim's concern is that he doesn't know how the interior is configured
- Chris Sherman states it is my understanding that the full plans were submitted
- Wayne Dennison states Jim do you have a building permit package
- Jim Wasielewski states we wouldn't typically look at that until we know this goes through the proper channels
- Wayne Dennison states I have a plan that does show the interior set up and states at the end of the day whatever we permit will have to comply with the building code
- Jim Wasielewski agrees
- Emmett Sheehan states so we have capacity of 108 outside and 128 inside are they allowed to aggregate that all outside



- Wayne Dennison states why don't we hear from the Fire Department
- Jim Wasielewski states Wayne, unfortunately Brian is watching on you tube and isn't able to zoom in for comment. I understand their concerns, basically the biggest challenge in an emergency at peak times it is very congested down there and they would like a clear idea of the parking plan and would like to submit comment on that
- Philip Thorn states Chris the driveway that will be used for the employees on the North end of the property will be entrance only
- Chris Sherman states yes correct
- Wayne Dennison opens the hearing to the public; Jim how will we accommodate the fire department concerns if they can't weigh in tonight
- Emmett Sheehan states why not push this and have them weigh in
- Tanya Trevisan states it would be helpful to see a full parking plan
- Chris Sherman states there is an included parking spot table with a site plan with lined spots and asks Courtney to show the plan and explain it
- Wayne Dennison questions the spaces on the plan past the south gate
- Chris Sherman states they are there should we ever need them
- Wayne Dennison states in this parking total, have we accounted for the existing retail and commercial activities at the site, are there an additional 147 spaces or does that include the existing businesses as well
- Chris Sherman explains the additional 50 spots are not in this table because it is an agriculture use
- Wayne Dennison discusses the parking spaces for the other businesses. The issue is that we have existing commercial uses that have parking requirements and pursuant to which we permitted them because they had adequate and required parking
- Courtney with Dewing Schmid Kearns asks to share her screen and explains the parking plan and spots
- Wayne Dennison states so you have 147 but 45 are exempted due to agricultural use. Jim did you look at this close
- James Wasielewski states I think the intention is that the indoor space will help on inclement weather days and that this is all if they are at capacity which may not always be the case
- Wayne Dennison states I have to say as a patron of this place often, the existing 120 seat capacity already has golf carts running around for parking
- Chris Sherman states that is correct, bear in mind we are adding 50 spots
- Wayne Dennison agrees
- Chris Sherman states we did spend month on this parking plan and the Bylaw
- Wayne Dennison states quite honestly, the Bylaw is the minimum requirements
- Chris Sherman states we did comply with the Bylaw and then added another 50 spots; the fifty spots are not counted because they are agriculture use
- Courtney states also these are complimentary uses, such as the bust times for the raw bar the offices are not open at that time

- Jim Wasielewski states so going back to the fire department do you have any plans to restrict parking on the circle of the lawn, beyond someone managing it
- Chris Sherman states yes, the extra 50 spots will alleviate this
- Wayne Dennison states you are adding 30-40% parking but doubling the amount of people on site
- Courtney states Saltworks has 1 space to every 2 employees and they only have 5 employees so we have 6 spaces for them
- Emmett Sheehan states so are clients able to access the 50 agg spots
- Chris Sherman states the employees will no longer be taking guest spots, his is substantial
- Jim Wasielewski states one more concern, it is not unrealistic to add some direction signs pertaining to the circle to eliminate parking there
- Chris Sherman states yes, we will be adding more substantial signs
- Emmett Sheehan states maybe bollards
- Wayne Dennison states areas of this gets totally parked up at times and that is the concern
- Chris Sherman agrees and states we have had discussions with Fire and Jim to reduce the creative parking by adding the North lot
- Emmett Sheehan states what about the future for parking as this continues to grow is there an option to ship your guys offsite to park
- Chris Sherman states I do think we peaked during Covid and notes pretty much everything on site is already in service
- Wayne Dennison states so where the Hummingbird parks, where is the parking
- Chris Sherman states I am not sure if they will be back this summer, but they are temporary and don't require parking as it is not a permitted use on site
- Emmett Sheehan well it has been there semi-permanently
- Wayne Dennison states any additional questions from the Board
- Emmett Sheehan states it's just the parking that makes me nervous and there is zero parking in that area and keeping people there and not in the streets. I don't want to see people parking on Beaverbrook
- Chris Sherman states that is a valid point and the use of the neighborhood has increased and this is on our radar. We have always committed to maintaining the parking to our site
- Wayne Dennison states my experience is that your site is the most intense use of parking in the area, what am I missing. The second most intense use is the Winsor House. I park there daily at DBMS and rent space here, I see it daily.
- Chris Sherman states I don't think this is constructive, the use in the neighborhood as a whole is intense, we contribute to that but we have made commitments
- Wayne Dennison states so when parking is full you put someone at the entrance you put someone in a golf cart, so can we condition this permit to turn away patrons at 102 spaces
- Chris Sherman states that is at the discretion of the board



- Emmett Sheehan states I am ok with that and suggest bollards at the round about
- Chris Sherman agrees but for the farm business I want to be able to park a farm truck by the water without violating the special permit
- Boris Gojnycz states what about walking traffic coming to the site who don't use parking
- Emmett Sheehan states it won't matter if they don't park
- Wayne Dennison states Jim do we try to continue this for the Fire Department
- Jim Wasielewski states as long as we can get cars in spots and not on the lawn, this should be good
- Wayne Dennison opens the hearing
- Emmett Sheehan states I would like to see a written memo from Fire
- Tanya Trevisan can we stop the screen share and also can we condition the decision with a fire department review
- Wayne Dennison states we can condition this regarding that
- Philip Thorn states I line up with Emmett with regard to something written from fire
- Wayne Dennison states Jim could we get input from the fire dept.
- Jim Wasielewski states we would like to meet on the site with fire and Chris Sherman
- Wayne Dennison states we can continue this case out to allow for this, Lauren is there a date we could look at this rather quickly
- Lauren Haché would March 31<sup>st</sup> at 5:00pm work
- Jim Wasielewski states that would work for us
- Wayne Dennison agrees
- Borys Gojnycz states can the board meet on site
- Emmett Sheehan states I would like to join
- Wayne Dennison states we can have 2 people go not 3, so you Borys and Emmett
- Wayne Dennison makes a motion to continue the hearing to March 31<sup>st</sup> at 5:00pm
- Emmett Sheehan seconds
- All in favor WD, TT, ES, BG, PT

**Motion: It was moved, seconded and unanimously voted to continue the public hearing to March 31, 2022 at 5:00 p.m.**

Moved by: WD

Seconded by: ES

Number in favor: 5

Number opposed: 0