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TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS MEETING MINUTES

March 31, 2022 @ 7:30 p.m.

ATTENDANCE: Wayne Dennison, Judith Barrett, Kathleen Muncey, 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 for information about Duxbury programming including streaming on Duxbury You Tube, to watch replays and Video on Demand.

ZBA Case #2021-06, The Village at Harlow Brook, 766 & 782 Temple Street (CONT'D): *The Board voted unanimously (5-0) to continue the Public Hearing to April 28, 2022 at 7:30 p.m.*

ZBA Case #2021-15, McKeag, 39 Shipyard Lane (CONT'D): *The Board voted 4-1 to approve the Special Permit, with conditions.*

ZBA Case #2022-01, Shoham, 39 Shipyard Lane VARIANE (CONT'D): *The Board voted 4-1 to deny the Appeal.*

ZBA Case #2022-06, Pros Only LLC, 403-7 Washington Street (CONT'D): *The Board voted unanimously (5-0) to approve the special permit.*

Wayne Dennison makes a motion to adjourn. Tanya Trevisan seconds (5-0)

BOARD OF APPEALS MINUTES

Case No: 2022-01

Petitioner: Antonia Shoham

Address: 39 Shipyard Lane APPEAL

Date: March 31, 2022 Time: 7:30 p.m.

(Continued from February 10, 2022)

Members present: Wayne Dennison, Judith Barrett, Kathleen Muncey, Philip Thorn, Borys Gojnycz & Tanya Trevisan

Members Voting: Wayne Dennison, Kathleen Muncey, Philip Thorn, Borys Gojnycz & Tanya Trevisan

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

The Board of Appeals will hold a REMOTE public hearing via Zoom on Thursday, February 10, 2022 at 7:30 p.m. to consider the application of Antonia C. Shoham for an Appeal under Article 900, Section 906.1 of the Duxbury Protective Bylaw. The property is located at 39 Shipyard Lane, Parcel No. 120-199-212 of the Duxbury Assessors Map, consisting of 0.178 acres in the Residential Compatibility (RC) District and owned by Jennifer Doherty McKeag.

The Applicant requests the Board of Appeals overturn the Zoning Enforcement Officer's decision to grant the building permit for a ninety-four square foot two-story addition citing inaccurate lot coverage calculations, which would result in the requirement of a Special Permit.

- Wayne Dennison re-opens the public hearing and states we have received a number of materials including a letter from Attorney Galvin dated March 7, 2022, we have an opinion from Town Counsel dated March 8, 2022, we have a letter from Robert Phinney dated March 9, 2022 and a plan dated March 28, 2022 from Mr. Phinney as well. Chairman Dennison asks the Counsel for the Applicant to present first.
- Attorney Robert Galvin states thank you, I will keep this simple, we appealed this building permit because we don't believe this should be issued as of right, it should require a special permit. Mr. Galvin states the only place I disagree with Attorney Galvin is whether there is a way on the back of this property. Mr. Phinney the surveyor indicted that he concluded as a matter of law is that the way is abandoned but there was no court determination that the way was released; We believe the way is still there and the Bylaw states that a way is not includible in lot size.
- Wayne Dennison states I understand what you are saying about a way and lot size, but let's go to the plan from the Surveyor that looks at the ground conditions and reflects 8,885 square feet, are you comfortable with this number
- Robert Galvin states I don't think this was a full survey but if you use the calculations you are pretty close to the 8,885
- Wayne Dennison states so this comes down to the way issue
- Robert Galvin agrees

- Wayne Dennison states Town Counsel states that it is their understanding that the Lane is not shown on a plan approved under the provisions of the Subdivision Control Law and is not constructed on the ground.
- Robert Galvin states right, it predated by 80 years the subdivision control law
- Wayne Dennison states in Town Counsel's opinion it is not a way as defined by the Bylaw. Mr. Dennison opens the meeting up to the public
- Charles McKeag, 39 Shipyard Lane homeowner of property, asks the Board to step back and states let's assume that every single lot on Shipyard Lane is effected by this 16 foot way. We are simply asking for a small 94 sq. ft. addition. How has the town interpreted lot coverage for all of the lots on Shipyard. Is this really detrimental to the neighborhood. I think it is amazing that a neighbor would hire a Lawyer questioning our surveyor. This is clearly a vindictive move and not about breaking rules
- Wayne Dennison states is there anyone else to speak on this case
- Antonia Shoham, 35 Shipyard Lane, states this is a sad occurrence but it is hard not to be a little angry when your neighbor goes and pulls up your fence that you helped pay for without asking. This will directly affect my home with sunlight and I too am sorry that things came to this.
- Kathleen Muncey states Bob, I agree with you that once a right of way is established it is hard to get rid of. In this case however it seems as though there was a thought of a lane in the late 1800's that never materialized, to the extent that pieces of it were conveyed to the actual property owners without retention of any rights. At the very end on Washington Street there is a garage on the way but it has been blocked since at least 1947.
- Robert Galvin states the lots were conveyed with a lane on the front and a lane on the rear
- Kathleen Muncey states it all went into one party and he conveyed out pieces of the land without any reference to the lane.
- Robert Galvin states it is my contention that the way still exists even if it may not be there
- Kathleen Muncey states it was never created; I don't think any of the homes on Shipyard Lane feel that people can walk across 16 feet of their backyard.
- Robert Galvin states respectfully, I disagree, I believe that the ways were created and I believe that the ways were created
- Antonia Shoham states I wanted to states that I did speak with the Sheehan family that owns the land along the way and I asked several neighbors as well and it is not on any of the deeds
- Kathleen Muncey states they have absolutely no rights to that way
- Antonia Shoham states if we went back through all the plot plans and deeds, there wasn't one that adheres to that back lot line
- Wayne Dennison states this is an application overturn request issued by the Building Commissioner. Wayne Dennison moves to close the public hearing
- Tanya Trevisan seconds
- All in favor WD, KM, TT, PT, BG

- Wayne Dennison states in the discussion, I frankly do not have a different analysis on this any different from what Town Counsel said.
- Kathleen Muncey and Tanya Trevisan agree
- Wayne Dennison states my view is that I rely on Town Counsel and I think the building permit was appropriately issued
- Philip Thorn states I can't find any fault in Town Counsel's comments
- Wayne Dennison makes a motion to Deny the application to overturn the building permit
- Kathleen Muncey seconds
- All in favor WD, KM, TT, BG
- All Opposed PT

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

Moved by: WD

Seconded by: TT

Number in favor: 5

Number opposed: 0

Motion: It was moved, seconded and voted unanimously to Deny the Appeal of the Building Commissioners building permit issuance.

Moved by: WD

Seconded by: KM

Number in favor: 4

Number opposed: 1

BOARD OF APPEALS MINUTES

Case No: 2021-15

Petitioner: Charles and Jennifer McKeag

Address: 39 Shipyard Lane

Date: March 31, 2022 Time: 7:30 p.m.

(Continued from March 10, 2022, January 13, 2022, December 9, 2021, December 2, 2021, October 28, 2021, September 9, 2021, July 29, 2021, July 8, 2021 and May 27, 2021)

Members present: Wayne Dennison, Judith Barrett, Kathleen Muncey, Philip Thorn, Borys Gojnycz & Tanya Trevisan

Members Voting: Wayne Dennison, Judith Barrett, Kathleen Muncey, Philip Thorn & Borys Gojnycz

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

The Board of Appeals will hold a public hearing via ZOOM on Thursday, May 27, 2021 at 7:30 p.m. to consider the application of Jennifer Doherty McKeag for a Special permit under Article(s) 400 and 900, Section(s) 401.3, 410.4 and 906.2 of the Duxbury Protective Bylaw. The property is located at 39 Shipyard Lane, Parcel No. 120-199-212 of the Duxbury Assessors Map, consisting of 0.178 acres in the Residential Compatibility (RC) District and owned by Jennifer Doherty McKeag. The Applicant proposes to construct an addition on to a pre-existing, non-conforming dwelling and accessory garage. A Special Permit is required.

- Wayne Dennison re-opens the public hearing and states since the last hearing we have received a memo with calculations pertaining to Bylaw section 410.4 and a letter from Surveyor Robert Phinney. So let's hear from the Applicant or the Applicants Agent
- Jessica Williams the Agent for the Applicants states we did review this in December, essentially we have a plot plan that describes the permitted work and then what we are seeking under the 3% to increase our lot coverage by 333 sq. feet but we are only requesting 16.2% and shares her screen
- Wayne Dennison states Jim did you look at the area calculations
- Jim Wasielewski states yes
- Jessica Williams shares her screen and explains the area calculation stating the allowable percentage is 18.7% and we are asking for 16.2%, well under the 18.7 allowable. We are looking to add a small covered porch
- Wayne Dennison states how much of the roof that you're proposing to put over the deck, given the garage structure, would you be able to see from the neighboring property
- Jessica Williams shares her screen
- Wayne Dennison states would anyone like to speak regarding this application

- Susanna Sheehan, Powder Point Ave., I am the daughter of Antonia Shoham, I wanted to point out that on various plot plans the one submitted with the building shows 999 sq. ft dwelling and this one shows 990 sq. ft. Also, what is the square footage of the covered porch that is to be removed, it doesn't say. Also is the special permit is for the 9 sq. ft. for the covered window or is it just for the 132 sq. ft. covered porch. Lastly, the garage on the plans shows an addition on the plan before us, how big is the addition. Also is there any intention on closing in the porch and make it living space in the future.
- Jessica Williams states the bay window we have 9 sq. ft. being removed and the proposed is 10 sq. ft. This is part of the calculation; the portion of the garage in red is calculated as 21 sq. ft.
- Wayne Dennison states these numbers are really tight, how were they measured
- Jessica Williams states the computer and the surveyor and engineers made the calculations
- Charles McKeag states the existing size of the existing covered porch, do we have that calculation
- Jessica Williams shares the plan and states it could be 20 sq. ft. maximum
- Wayne Dennison states so you're going for the existing area plus more, to 132 square feet
- Jim Wasielewski states on the existing plot plan when it calculates existing coverage calculates in totality of everything existing. The proposed plans show all of the proposed coverage totals.
- Jessica Williams states there is no intention on turning this into enclosed living space. Whether or not they want to put screens in at some point, we don't want to be restricted on. We are requesting coverage
- Philip Thorn states Jim is a screened porch considered enclosed
- Jim Wasielewski states could it be framed in with removable screens, that's ok, could it be seasonal screens removed, yes that ok. I've seen it done a few ways that don't really enclose it. It would be something that would be reviewed anyways
- Philip Thorn states is it appropriate to condition this
- Kathleen Muncey states they already agreed to this
- Jessica Williams states as the Agent, I would request no conditions on this. We are simply requesting allowable area
- Wayne Dennison states we are entitled to do so if we deem necessary
- Kathleen Muncey states if the building permit is appealed again, then the special permit can't stand. Would there be a way to consider the application as a whole or is it beyond the scope
- Wayne Dennison states so, this is why I took these out of order. My understanding is that the Applicant went and got a building permit and now wants a special permit, so I don't see how I can combine them. Wayne Dennison states Judi, any thoughts
- Judith Barrett states I am having a hard time as to why the Board would consider putting a limitation on to this application
- Kathleen Muncey states detriment to the neighborhood

- Susanna Sheehan states they originally requested an addition with more living space and now once you have it, what happens when the home changes hands and then what prohibits them from closing it in
- Antonia Shoham explains the plan and states that the surveyed plan is not correct
- Wayne Dennison states would anyone else like to weigh in; Wayne Dennison makes a motion to Close the public hearing
- Judith Barrett seconds
- All in favor WD, KM, JB, PT, BG
- Wayne Dennison asks the Board if there is any discussion
- Discussion ensues around the appeal period date and ask Jim Wasielewski confirm with own Counsel on the Appeal date
- Philip Thorn states my thought on this is that detriment to the neighborhood is taken very seriously, my only thought is that in this instance Ms. Shoham is the neighborhood
- Judith Barrett states I agree with you to a point, but the Board also has to use their judgement and determine if this is a true hard that would outweigh the owners interest. Does the harm to the Abutter outweigh the Applicants harm and right to the 3% coverage increase. We have to be careful that neighborhoods aren't dictating what a person can do with their property.
- Kathleen Muncey states I agree with Judi, it is a property right. I don't think there was any other non-support. A covered porch is a nice thing to have, it's small, it doesn't seem to have a direct impact to the neighbor and it adds to the attractiveness of the structure. I don't have a problem conditioning this
- Tanya Trevisan states I was looking at the special permit language and the detrimental language isn't in the Bylaw
- Wayne Dennison states we have to make the findings; my concern is that it would have been a much cleaner application if we considered the full thing at once
- Judith Barrett states we should be in 410.4 in the Bylaw
- Wayne Dennison states do you have the notice
- Kathleen Muncey states what would out condition be
- Wayne Dennison states so the Board for this is Judi, Kathy, Borys, Phil and me; Borys any comments
- Borys Gojnycz states it is very interesting, so should they use framing work for the screening, that would require a window permit
- Jim Wasielewski states someone could require no framing at all and use aluminum and would not require a permit
- Kathleen Muncey states so no framing
- Wayne Dennison states so pre-existing, non-conforming but
- Judith Barrett disagrees and states the lot is non-conforming
- Philip Thorn states at what extent do the neighbors detriment have an impact
- Judith Barrett states I think we can impose some conditions on this that will help mitigate some neighbor concerns
- Jim Wasielewski states if you were to condition this, could you refer to a plan
- Kathleen Muncey states I don't think screens are shown on the plan

- Judith Barrett moves to grant the special permit sought by the Applicants of the property with the condition that the use of the proposed space will not be converted at any time to habitable, enclosed living quarters. The intended use being open space for a screen porch.
- Kathleen Muncey seconds
- All those in favor JB, KM, BG, WD
- Nay PT

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

Moved by: WD

Seconded by: JB

Number in favor: 5

Number opposed: 0

Motion: It was moved, seconded and voted to grant the special permit, with conditions.

Moved by: JB

Seconded by: KM

Number in favor: 4

Number opposed: 1

BOARD OF APPEALS MINUTES

Case No: 2022-06

Petitioner: Pros Only LLC

Island Creek Oysters

Address: 403-7 Washington Street

Date: March 31, 2022 at 7:30 p.m.

(Continued from March 24, 2022)

Members present: Wayne Dennison, Judith Barrett, Emmett Sheehan, Philip Thorn, Borys Gojnycz & Tanya Trevisan

Members Voting: Wayne Dennison, Judith Barrett, 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 some correspondence today from the Water Department that states they have the capacity and means to supply the site with water. An email from Deputy Police Chief Carbone, the Police Department doesn't have any issues other than the parking and a letter from the Fire Department indicating that fire and water access will need to be in accordance with 527 CMR 18.1-18.5 in addition, the Fire Department would like to see marked fire lanes around the inside circle.
- Emmett Sheehan states Monday morning Borys, myself, a few Fire Department representatives met and walked the whole site. I have a better sense of the site and a lot of resolution was taken away from that meeting.
- Borys Gojnycz states Emmett forgot to mention that it was snowing and cold, but there are some great benefits coming from what is being proposed
- Jim Wasielewski states I did reach out to Valerie Massard, interim planner about the parking and she responded that the Planning Board reviewed the ZBA filing and believe all if the ZBA parking is exempt.
- Wayne Dennison states we have a really good application package in terms of 906.2 but there is a section in NB-1 that states 615 needs to be reviewed as administrative site plan review by the planning board. The Planning Board does the site review, so we may have to condition your special permit.
- Chris Sherman, 942 Tremont Street and CEO of Island Creek Oysters, states the parking intensity is not increasing, so we are not required to submit a parking plan. We have added the exempted use parking spots of 50 under the Agriculture use through Con. Comm. So, if there is no additional square footage being added on site, it seems the site plan review seems not applicable
- Wayne Dennison states well the use is increasing and may require you to adhere to section 615

- Judith Barrett explains the special permit requirements for site plan and then they require Applicants to go before the Planning Board for site plan review. The activity is not exempt from site plan review, but the Bylaw has you go to both ZBA and Planning. When I look at section 424 and I look to the criteria that it points to and if water is saying there is no issue and fire is saying there is no issue subject to some recommendations on the plan and police have no issue, then we have no public safety issue, what I am left with is a business that has put the name of this town on the map. I worry that it's so hard for a small business to function in this town because of the zoning Bylaws. If there are no health and safety issues, we don't have an issue; Not everybody may agree with me.
- Chris Sherman agrees and explains that they went before the Planning Board with the application and it would have been preferable had the Planning Board flagged this for site plan review at that time, rather than having to go back before them. The process doesn't seem ideal. We are not seeking a brand new special permit we are looking to amend this.
- Wayne Dennison states that is important, I looked at the chart
- Chris Sherman asks Courtney Borelli with the Dewing Schmid Kearns to share her screen if she could
- Courtney Borelli shares her screen and explains the chart numbers
- Wayne Dennison states the green portion that says restaurant in building 9 that says raw bar patio number of parking spaces 32 and the raw bar restaurant is 31 parking spaces as additional. There seems to be a threshold here that states if a building needs more than 10 spaces, you have to go to the planning board.
- Courtney Borelli explains what is previously specially permitted is listed for the outdoor patio and then show where it required for the new indoor restaurant
- Wayne Dennison states ok, thank you and that states 31 spaces. I don't know how else to explain what is required through the planning board. This use requires more than 10 spaces
- Chris Sherman states is it the addition of 10 physical spaces to the site, in my mind construction would trigger the site review, so without construction associated there is not much to review
- Wayne Dennison states that is a great question and continues to read the Bylaw stating if the proposed construction is more than 1,000 square feet, that's not this application; Mr. Dennison continues or would require a total of 10 or more spaces for existing and new development.
- Chris Sherman states we did go through this with a fine toothed comb and I think how we read that at the time, we looked at the lined spots and figured we had 10 spots.
- Judith Barrett states can't we just make a condition of approval contingent on Planning Board site approval
- Emmett Sheehan states well, what Mr. Sherman is saying is that would add weeks and weeks on to their timeline.
- Judith Barrett states I don't want to complicate this at all
- Chris Sherman agrees and states the bylaw is a little ambiguous with this

- Philip Thorn states well, the Planning Board did already consider the parking issue and they don't feel it needs site plan review according to their memo to us
- Chris Sherman states the Planning Board said if we were adding parking in the future, we would need to come back
- Wayne Dennison states I went to section 615 about spaces and there is one that says substantial change of design, but then it states any construction activity and continues where it states section 603 it would require a total of 10 or parking spaces dependent on change in use
- Philip Thorn states it points to restaurants or taverns
- Judith Barrett states we do have an obligation to interpret the Bylaw to the best of our ability but we don't want to create an unreasonable situation. Site plan approval is administrative not a discretionary approval process. What is the public benefit or gain that is not served by the special permit that the site plan review process would provide
- Emmett Sheehan states so, why don't we decide if it should go before the Planning Board or not
- Judith Barrett states I feel like if the Planning Board really felt like it belonged in front of them, they would say that
- Wayne Dennison reads the Planning Board memo from March to the ZBA regarding the case which states the new employee lot will make room for new and existing business
- Tanya Trevisan states I am conflicted because I can see the black and white of the Bylaw, but then considering the memo that Wayne just read, they specifically mention the parking and defer to us
- Wayne Dennison states right, this is mostly about the new lot and asks Emmett, I think I would like to tick off what we would have to review if we were going to do this. Is Rick Grady here, a technical review would be helpful here.
- Chris Sherman states it is a unique case because most of what we have here is already existing, we aren't making substantial changes to the site or the intensity of the use
- Judith Barrett agrees
- Wayne Dennison states I absolutely agree with you except for one word in this where it states existing
- Philip Thorn states let's apply common sense here and move forward knowing that the Planning Board has already weighed in
- Judith Barrett states we don't have to condition this because the Planning Board doesn't need our special permit to assert the jurisdiction, if they want to have them in for site plan review. They don't need us
- Wayne Dennison states does anyone else want to weigh in on this particular topic
- Deb Bowen, 38 King Caesar Road, states I am really excited about this project but I just want to understand one thing and that is it appears we have an existing approval for 108 and they are adding 107 more indoors but with no additional spaces to park.
- Wayne Dennison states the Applicants have made an additional parking lot for employees and other uses that account for 40 additional spaces
- Deb Bowen states but that is already approved

- Wayne Dennison states according to everybody that didn't require approval because it is agricultural
- Chris Sherman states the core use for the site is actually exempted from zoning because it's agricultural
- Judith Barrett states not everyone would agree with that interpretation but that's for another time
- Chris Sherman continues that we have quite a large staff on site, so the parking lot specific to the staff we free up volume of spaces for patrons
- Deb Bowen states thank you, I just always worry about parking
- Wayne Dennison states this is an amendment to the special permit, I thought this was a new special permit
- Deb Bowen states has there been a study by the police for traffic
- Judith Barrett states I don't think we have a study on this, but the Police Department did submit a memo stating they don't have an issue with this proposed project
- Chris Sherman states we did internally conduct a traffic study and we're still waiting for the results
- Tanya Trevisan states when was it conducted
- Chris Sherman states a few months ago
- Wayne Dennison states is there anyone else who would like to weigh in here; alright, for us to consider this we have to look at specific criteria in terms of the use and the site and I think these factors are covered and if the planning board want to do a site plan review, they can do that
- Judith Barrett agrees
- Wayne Dennison moves to close the public hearing
- Judith Barrett seconds
- All in favor WD, JB, PT, TT, ES
- Wayne Dennison moves to approve the special permit
- Judith Barrett states I have no problem granting this approval, I think they meet all of the criteria. My only comment that I need to get in the record is that when this Board has a public hearing that is underway, any discussion about the application needs to take place here, not at the establishment that is seeking the approval and I hope that I never hear again that an applicant for a permit yelled at a Member of this board at that establishment because of what took place at the previous public hearing. If people have a problem with what the Board is doing, bring it here. That's my only concern, people need to understand that.
- Wayne Dennison states alright I have a very different comment than that and that my comment is anybody in this town or outside of this town can talk to anyone else about anything they would like when there isn't a quorum of said Board.
- Emmett Sheehan seconds the motion
- Wayne Dennison moves to approve the amendment of special permit 2018-09 as presented
- All in favor WD, JB, PT, BG, ES

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

Moved by: WD

Seconded by: JB

Number in favor: 5

Number opposed: 0

Motion: It was moved, seconded and voted to grant the amendment to special permit 2018-09.

Moved by: WD

Seconded by: JB

Number in favor: 5

Number opposed: 0