

**Zoning Board of Appeals  
Lakeville, Massachusetts  
Minutes of Meeting  
June 17, 2010**

**Members present:**

Donald Foster, Chair; John Veary, Clerk; Eric Levitt, Member; John Oliveiri, Jr., Associate Member; Carol Zimmerman; Associate Member, Joseph Urbanski, Associate Member

**Regular Meeting:**

Mr. Foster opened the regular meeting at 7:05 p.m.

Roll called. Bills signed.

Mr. Foster advised that they had received a letter dated May 21, 2010, from Mass Housing. It is a financial review that concerns the Woods Edge project to determine if the amount of profit that was generated meets what the developer said. In summary, Mass Housing states that the project earned 17.79% profit and the developer claimed it would earn 11.39% profit. This had to do with the way the purchase of the land was considered. The point of this was that Ms. Garbitt would like them to look this over and feed back any comments that they might have to her so they could be fed back to Mass Housing.

**LeBaron Residential LLC hearing:**

Mr. Foster advised for the record that he was making an audio recording of the meeting which he uses for his personal use in preparing the final papers. He then opened the LeBaron Residential LLC hearing at 7:15 and read aloud the legal ad.

Atty. Mather was present. He advised that the principal of LeBaron, Ed Fish, had passed away unexpectedly. Since he and his family members were personally involved in this project, they felt it was inappropriate for them to go forward at this time. They would respectfully request that they be granted a continuance for one month. The family feels that they will be ready within that time to go forward. He has advised the residents' representative of these facts.

Mr. Oliveiri made the motion, seconded by Mr. Levitt, to continue the LeBaron Residential LLC hearing until July 15, 2010. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:17.

**Gonsalves hearing, 28 Central Avenue – continued:**

Mr. Foster opened the continued Gonsalves hearing at 7:17. He read the June 14, 2010, letter from Mr. Bob Whalen into the record. He had requested a continuance for one month as he expected that the plans for the new septic system would be completed this week and then he would be able to submit them to the Board of Health by next week.

Mr. Oliveiri made the motion, seconded by Mr. Levitt, to continue the Gonsalves hearing until July 15, 2010. The time would be at 7:15.

The hearing closed at 7:19.

**Kenney hearing, 103 Hackett Avenue – continued:**

Mr. Foster opened the continued Kenney hearing at 7:20. Mr. Foster advised that the issue with this petition had been the coverage of the lot which had now been reduced to 24.8%. He felt this met the requirement and was a reasonable compromise. Mr. Pink noted that the width had also been narrowed as mentioned the previous month to maintain the present setback.

Mr. Oliveiri then made the motion, seconded by Mr. Veary, to approve the petition with the following condition:

1. The approval is based on the plans dated 5/21/10.

The vote was **unanimous for**.

Mr. Foster then explained to Mr. Kenney the timing of the filings, the appeal period, etc.

The hearing closed at 7:24.

**Barys hearing, 3 Hollis Avenue:**

Mr. Foster opened the Barys hearing at 7:25 and read aloud the legal ad. Atty. Brian Hughes and Mr. Barys were both present.

Atty. Hughes advised that the Board had previously heard a petition on demolition and reconstruction of this dwelling which had been granted. At that time, the Board had not been comfortable approving the porch because of the lot coverage, and they had then agreed to withdraw that portion of the petition and return. Mr. Foster asked if the porch would be covered. Atty. Hughes indicated the portion that would be covered on the plan.

Mr. Foster asked how the Board could be assured that the covered portion of the porch would not someday have windows and become living space. Atty. Hughes advised that this was a seasonal dwelling only. Mr. Foster asked if there was heat. Mr. Barys replied that there was no heat.

Mr. Foster asked if there were any questions or comments from Board members. There were none. Mr. Foster then read the June 5, 2010, Conservation Commission letter into the record. They had no issues with the petition. The June 2, 2010, letter from the Board of Health recommended approval of the petition as long as the deck was no closer than five feet from the leaching field. Mr. Foster estimated from the plan that it was approximately three feet away.

Mr. Foster said that the Board would request that the uncovered part of the porch be reduced in width to accommodate the five foot distance. Atty. Hughes said that the Board could also approve with the stipulation that they be outside the five feet or they would have to get a Variance from the Board of Health. Mr. Foster suggested that they cut off a corner of the deck which would also reduce the coverage of the lot slightly. Although they do meet the 25% and don't need to distract themselves with that issue, his point was if they could reduce the deck slightly, they would improve their numbers slightly. The real concern is meeting the request of the Board of Health which is having a five foot setback from the leaching field. Mr. Foster felt that could be achieved with a condition in the decision.

Mr. Veary then made the motion, seconded by Mr. Levitt, to approve the petition with the following condition:

1. The deck size will be reduced on the corner in order to meet the requirement of the Board of Health that it be no closer than five feet to the leaching field.

The vote was **unanimous for**.

Mr. Foster then explained to Mr. Barys the timing of the filings, the appeal period, etc.

The hearing closed at 7:38.

#### **Kuketz hearing, 2 Devon Drive:**

Mr. Foster opened the Kuketz hearing at 7:40 and read the legal ad into the record. Mr. Foster also read the March 20, 2010, letter from Mr. Iafrate. Mr. Foster asked how much this renovation would change the footprint. Mr. Kuketz replied that it would increase from 1,030 square feet to 1,100 square feet or approximately 14%. Presently, it is a three-bedroom dwelling and they would like to square it off and go up to the second floor. It will be no closer to the lot lines. Mr. Kuketz stated that it will remain a three-bedroom with a deed restriction.

Mr. Foster read the June 3, 2010, letter from the Board of Health. They found no health reasons to recommend approval or denial of the petition. The June 7, 2010, letter from the Planning Board recommended approval of the petition.

Mr. Foster asked if Board members had any comments or questions. There were none. Mr. Foster asked for clarification on the plan. It appeared to show a porch or deck in the front. Mr. Kuketz advised that the concrete patio would be extended and expanded on the east side by eight feet. Mr. Foster noted that this patio would be over the septic distribution box. He was not comfortable with this expansion and was surprised that it was not an issue with the Board of Health, as it did not seem to be good engineering. Mr. Pink replied that there would be a cover for access. Mr. Oliveiri stated that he would have to defer to the Board of Health and if they didn't have an issue with it, then neither should the Zoning Board. Mr. Foster said that one of the requirements in the bylaws that they address is that the proposals submitted should subscribe to the principles of good engineering and he felt that this was not good engineering.

Mr. Veary asked if the roof covered the entire patio. Mr. Kuketz replied that it will be over the original patio but not the expansion. Mr. Foster asked what other Board members thought. Members felt that the covering of the tank by the patio was a Board of Health issue.

Mr. Oliveiri then made the motion, seconded by Mr. Veary, to approve the petition with the following condition:

1. The roof over the patio will not be enclosed.

**VOTE – Mr. Veary, Mr. Levitt, Mr. Oliveiri, Ms. Zimmerman - AYE**  
**Mr. Foster – NAY**

Mr. Foster then explained to Mr. Kuketz the timing of the filings, the appeal period, etc.

The hearing closed at 8:13.

### **Conway hearing, 33 Southworth Street:**

Mr. Foster opened the Conway hearing at 8:13 and read aloud the legal ad. He read the May 13, 2010, letter from the Building Commissioner. Mr. Foster also read the June 3, 2010, letter from the Board of Health. They found no health reasons involved with the petition to recommend approval or denial. The June 7, 2010, letter from the Planning Board recommended approval of the petition. The Conservation Commission advised in its June 15, 2010, letter that it had no concerns with this dwelling.

Mr. Foster asked Mr. Conway how big the lot was. He replied that it was 7.1 acres. Mr. Foster then read Section 8.2.2 of the bylaws. He explained that a Variance should only

be granted when the petitioner cannot do what is desired because a defect in the topography of the land prevents it from conforming to the bylaw. He asked why the porch could not be put on the side of the house. Mr. Conway advised that the house had flooded during the heavy spring rains. The lawn is very flat and the porch will help to disperse the rain and hopefully prevent the house from flooding again. Mr. Foster clarified that the reason for the porch was water control. Mr. Conway said that was correct.

Mr. Foster asked why they couldn't re-grade the front of the house to control that. Mrs. Conway replied that the road was right there. Mr. Foster was skeptical that this porch would make a difference in the way the water flows when it lands on it. He felt that if their goal was to control the water, there were many better methods to address it.

Members discussed what the new setback would be. Mr. Foster noted that the current setback was 20.5 feet and that the stoop would be exempt from that. Therefore, the new setback would be 27 feet. Mr. Foster stated again that he felt that there were better ways to control water and the rain would fall off the roof and still run back to the house. He asked what Board members thought. Mr. Oliveiri asked if there was another option. Ms. Zimmerman asked if they had anyone else look at this. Mr. Pink, who was also present, advised that he had not looked at the plan in that regard at all.

After additional discussion, Mr. Levitt then made the motion, seconded by Mr. Veary, to approve the petition with the following condition:

1. The roof over the patio will not be enclosed.

The vote was **unanimous for**.

Mr. Foster then explained to Mr. and Mrs. Conway the timing of the filings, the appeal period, etc.

The hearing closed at 8:21.

Mr. Levitt made the motion, seconded by Ms. Zimmerman, to approve the Minutes of the December 17, 2009, meeting.

**VOTE** – Mr. Veary, Mr. Levitt, Ms. Zimmerman, Mr. Urbanski, Mr. Foster - **AYE**  
Mr. Oliveiri – **ABSTAIN**

Mr. Foster asked if there were any additional comments on Woods Edge. Members noted that even though the profit had been more than anticipated for the developer, it still came in under 20%.

Mr. Levitt made the motion, seconded by Mr. Veary, to adjourn the meeting. The vote was **unanimous for**.

Meeting adjourned at 8:35.