

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
August 19, 2010**

Members present:

Donald Foster, Chair; David Curtis, Vice-chair; John Veary, Clerk; Joseph Beneski, Member; Eric Levitt, Member; John Olivieri, 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 noted, for the record, that he and the secretary were making audio recordings of the meeting. They are used to clarify the Minutes and also in preparing the final Decision papers. He also advised that the Adams hearing had been put on the agenda in error. That continued hearing would be reopened at their next meeting in September.

LeBaron Residential LLC hearing – continued:

Mr. Foster opened the continued LeBaron Residential LLC hearing at 7:15. He read aloud the August 17, 2010, letter from Atty. Mather. Atty. Mather had requested a continuance as there had been a meeting with the residents' attorney and it was felt that with a little more time, they could arrive at a compromise agreement.

Mr. Curtis made the motion, seconded by Mr. Olivieri, to continue the LeBaron Residential LLC hearing until September 16, 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 7:18 and asked Mr. Bob Whalen, who was present for the petitioner, what the status of the petition was as it had already been continued several times. Mr. Whalen replied that they had been asked to get approvals from the Planning Board and Board of Selectmen. The Zoning Board should have correspondence from both Boards indicating their approval of the petition. They

met with the Board of Health last night and they do have approval for a two-bedroom, deed restricted, septic system. The Health Agent was going to send an email to the Secretary and Chairman as there was a slight issue that was discovered this morning. One of the abutters was not notified of the hearing which is why an official letter could not be distributed. They are scheduled to meet with the Conservation Commission on September 7, 2010. Mr. Whalen then submitted a revised site plan. He advised that the impervious coverage had been reduced to 24.7%.

Mr. Foster then read the August 19, 2010, email from Mr. Perry, the Health Agent. He advised that the Board of Health had preliminarily approved all requested divergences of State Variances subject to concerns and approvals and ultimately DEP approval. Therefore, they would have sent a favorable recommendation but it was then found out that one of the affected abutters was not notified by Certified mail prior to the meeting. This most likely will not change what the system is proposed to be nor the Board's recommendation but it will delay a preliminary approval letter from the Board. Mr. Whalen suggested that petition could still be approved with a condition subject to Board of Health approval.

Mr. Foster noted that at this point, the only real concern was the non-conforming setback which was a little over eight feet. Mr. Beneski noted that they had no paperwork from the Board of Health indicating there was a two-bedroom deed restriction. Mr. Foster felt that could be overcome via a clearly articulated restriction. He noted that approval was also needed from the Conservation Commission and that the options would be to continue or to include an additional restriction requiring their approval as well. Mr. Whalen replied that the Building Inspector would not issue a building permit until they had those approvals.

Mr. Foster asked what Board members thought. Mr. Olivieri felt that the petitioner had done all that had been asked and the Zoning Board could make a decision tonight which included clearly defined conditions. Mr. Foster asked if anyone present would like to speak for or against the petition. Mr. Vincent Fernandes felt that there was a lack of communication among the Boards. Mr. Foster agreed but stated that part of the problem was the legal issue concerning the time permitted once a petition is submitted and must be heard.

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

1. The home will remain a two-bedroom home.
2. Approval is contingent on approvals from both the Board of Health and the Conservation Commission.

Mr. Whalen agreed that he would personally submit the approval letters from the Board of Health and Conservation Commission for the record.

The vote was **unanimous for**.

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

The hearing closed at 7:31.

Smith/Richards hearing, 325 Pond Lane – continued:

Mr. Foster opened the continued Smith/Richards hearing at 7:32. Mr. Collins, from Collins Engineering, was present and he submitted the new attic plans for the record. They detailed the elimination of the dormer windows and identified the back height of the attic and utility space. He also displayed the plan on the presentation board for those present.

Mr. Collins also displayed the original copy of the deed restriction from the Registry of Deeds that had been returned to the petitioners after it had been recorded. They also had the pre-approval and approval form that had to be signed before they could submit their petition. The Conservation Agent had indicated that an Order of Conditions had been issued. Mr. Collins advised that this project did require a DEP State Variance, and he submitted a copy for the record. They also were in the Natural Heritage and Endangered Species jurisdiction, and it had been determined that the project would not adversely impact the environment. Mr. Collins asked the Board if they had any additional questions or concerns.

Mr. Foster replied that the main concern was the potential use of the third floor which looked like it had been addressed by removing the dormers and lowering the height. There was a question about the stairs. Mr. Collins responded that the stairs would be as shown on the plan or they would do the pull down stairs. Mr. Foster asked if this would be built on the same footprint as the original. Mr. Collins stated that it would be the same foundation and first floor and they would then be taking off the roof. The plan is to re-use the foundation and the majority of the first floor framework unless some structural situation arises.

Mr. Foster asked if anyone present would like to speak for or against the petition. No one spoke. Mr. Foster asked if Board members had any comments or questions. Mr. Beneski asked about the Board of Health issue concerning the well and water tie-in. Mr. Collins replied that they did have a commitment letter from the Association for water service.

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

1. The home will remain a two-bedroom home.

The vote was **unanimous for**.

Mr. Foster then explained to Mr. Collins and Mr. Smith the timing of the filings, the appeal period, etc.

The hearing closed at 7:44.

Servis hearing, 211 Old Main Street:

Mr. Foster opened the Servis hearing at 7:45 and read aloud the legal notice. He advised that he had a note from Mr. Servis stating that he could not attend this meeting and that his father would be representing him. Mr. Foster noted that a Variance had been granted on this property in December of 2005. Mr. Servis had built an addition of a farmer's porch, a bedroom expansion, and a shed that was placed on a pre-existing shed foundation within the setback on a non-conforming lot. Mr. Foster also read the restrictions that had been part of that Decision.

Mr. Foster said that it appears that Mr. Servis wants to considerably increase the size of the house by replacing the garage and adding a guest room above that. Mr. Peter Servis, father of the petitioner, responded that it was a great room or entertainment area with a bathroom. Mr. Foster then read the letters from the various Town Boards into the record. In their August 12, 2010, letter, the Selectmen raised a concern about the exterior, separate entrance, which would allow the second story space to be used as in-law apartment. The August 19, 2010, letter from the Board of Health stated that it had been brought to their attention that a replacement well that had been installed was off the property and now requires a town easement to be in the road layout as well as a Variance from the Board's local well regulations. They felt the Zoning Board should postpone any decision on this petition until this situation is corrected as there is not a legal water supply. The August 10, 2010, letter from the Planning Board recommended disapproval of the petition as it appeared that an apartment was being added to the structure.

Mr. Foster advised that it appears the Board has two sets of concerns before it. This is a non-conforming house on a non-conforming lot and a large area of additional living space is being added. The way this is laid out with an exterior entrance and a bathroom could lead a future owner of the property to eye this as an apartment for rent which is not allowed by the bylaws. The second issue is the one raised by the Board of Health regarding the well. Mr. Foster felt that it would be imprudent for them to take any action on this petition until that matter was resolved. Mr. Servis then submitted the August 18, 2010, letter from his son that had been sent to the Board of Selectmen. It explained how the error with the well had occurred and requested an easement to accommodate the existing well.

Mr. Foster advised that this problem was not part of the Zoning Board's purview. An easement would have to be granted by the Town to the property owner. As they have to make sure that any plans submitted to them conform to sound engineering practices. They would have to be comfortable with that before they could approve this plan. Mr. Servis asked what would make them comfortable. Mr. Foster replied that they would first have to get the easement. They would then need a letter from the Board of Health stating that issue was satisfied. Finally, the plans need to be modified so that there is a different form of entrance and exit into this room. Different exits were then discussed.

Mr. Beneski suggested removing the shower from the bathroom and making it a powder room. Mr. Servis replied that it was designed like that because they were disrupting the bathroom downstairs. Mr. Curtis said that if they were changing that bathroom, they would need to see the plans indicating what they were doing.

Mr. Foster said that their options were to take a vote tonight, but he did not feel that Mr. Servis would like the outcome of that, or they could continue this hearing until the issues are worked out with the Board of Health, the Town and the Selectmen over the well issue, as well as the design to eliminate what appeared to be an apartment.

Mr. Justin Paquette of 213 Old Main Street clarified that if the shower was eliminated, but the sink remained would that satisfy the Board? Mr. Beneski replied that would be making it a smaller powder room. He asked what if they removed the shower from the original bathroom. Mr. Beneski stated that they would then be raising the question as to why they are changing the house. If they are doing this, look at the whole structure and do something that makes the most sense. After further discussion regarding the reconfiguration of the floor plan, it was agreed to continue for at least two months.

Mr. Curtis made the motion, seconded by Mr. Veary, to continue the Servis hearing until October 21, 2010. The time would be 7:15. The **vote was unanimous for.**

The hearing closed at 8:06.

Mr. Curtis made the motion, seconded by Mr. Veary, to approve the Minutes of the July 15, 2010, meeting.

VOTE – Mr. Curtis, Mr. Veary, Mr. Beneski, Mr. Levitt, Mr. Olivieri, Mr. Urbanski,
Mr. Foster - **AYE**
Ms. Zimmerman – **ABSTAIN**

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

Meeting adjourned at 8:10.