

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
May 15, 2008**

Members present:

Donald Foster, Chair; David Curtis, Vice-chair; John Veary, Clerk; Eric Levitt, Member; John Oliveiri, Jr., Associate Member

David Varga from BSC Engineering was also present

Regular Meeting:

Mr. Foster opened the regular meeting at 7:00 p.m.

Roll called. Bills signed.

Mr. Foster asked members to look at the material that had been distributed concerning drive-thru facilities. He thought they had already looked at this about a year ago but they had to acknowledge that right board name is in place. After the regulations were reviewed, Mr. Foster asked if there were any thoughts or comments. There were none.

Mr. Curtis then made the motion, seconded by Mr. Levitt, to adopt the regulations as written. The **vote** was **unanimous for**.

Mr. Foster advised that they did have some business to take care of in regards to LeBaron. He asked Mr. Varga if he had received the updated plans. Mr. Varga replied that he had received a set of plans and general specifications on Monday and the engineering calculations this morning. He was able to look at them only briefly. He did have some comments that he had not had time to put in writing in terms of reviewing the specifications of a couple of things but he has relayed this information to Ed Sofu of Dellbrook. The first item is in Section 01100 relative to Site Work Special Conditions, there is no definition of access. He recalled that when the Permit was modified all construction access was to be from the west and not through the finished part of the project. Mr. Reed advised that was understood and would be incorporated into everyone's contract.

Mr. Varga said that in Section 2200, 315A, there is only one sentence regarding erosion control, but it was then mentioned that an erosion control section would be added. Section 21G is defining plastic pipe and needs more classification. Mr. Varga continued that in the section regarding paving, under asphalt and curb, he recommended that there be a reference included prefacing the Mass Highway standard specifications for construction materials. There is a fire protection section 15500, but there is no general plumbing section, which would normally be section 15000. Under section 16000

electrical, there are no specifications for any of the facilities in the wastewater treatment plant, but he was told that was a separate set of information. Mr. Reed responded that there would be a different set of drawings for this and it should be submitted sometime next week.

Mr. Varga said that another issue was that there was no turn around at the end of what was going to be this phase of construction, which has to be built in somewhere. Mr. Reed replied that there was a turnaround in front of the building. Mr. Varga said that they needed something that they would be sure could accommodate emergency vehicles, he said that it looked like that turn around was designed for cars. Mr. Reed said that they would verify that. Mr. Foster suggested that the Fire Chief also look at the plans.

Mr. Foster asked Mr. Varga if he thought there were any stoppers. Mr. Varga replied that he did not think so but it was too early for him to make that statement. Mr. Foster said it appeared that there was nothing obvious; however, there were a lot of details that still needed to be provided. He said the recommendation appears that they should move ahead with caution but they could give Mr. Iafrate the green light to issue a building permit as long as it was understood that they would be doing a bit of fine tuning. Mr. Varga said that he would ask for a clarification on where they are on approval as he understood that they haven't yet received the tax credit confirmation. Mr. Reed said that there was a huge rush on this but if they would be like them to come back to another meeting when Mr. Varga had done further review that would be fine. Mr. Reed explained that they would like to get the building permit as they needed it in order to receive the funding.

Mr. Foster advised that their next meeting was June 19, 2008. Mr. Reed asked if it was possible to get the permit and not start construction, as two out of three of the funding sources for the project wanted to see that building permit. They will then come back and work out the details. Mr. Foster asked members if they were okay with that. Members did not have a problem with it. Mr. Varga noted that they have consistently worked with them so there was a comfort level. Mr. Foster felt the issue was that Mr. Iafrate wanted to leave tonight with consent from them to issue a building permit. LeBaron could then move ahead with the understanding that they would be back next month to continue the discussion on the details. Mr. Iafrate said that for the record it would take a while for him to review the plans as well as the electrical, gas, and plumbing inspectors. If they got the plans to him by next week, he should have enough time to be ready for the next meeting.

Mr. Veary then made a motion, seconded by Mr. Curtis, to authorize Mr. Iafrate to use his best judgment in approving the plans, as he saw fit. The vote was **unanimous for**.

The hearing closed at 7:23.

Rogers/Pond Realty hearing:

Mr. Foster opened the Rogers/Pond Realty hearing at 7:24 and read aloud the legal ad. Mr. George Collins, from Collins Engineering, was present. He displayed the proposed plan for the Board which was a plan for the existing Capt Bub's Marine. Recently, Mr. Rogers was able to purchase the abutting parcel and the plan was to raze the existing building and construct a garage. This is to enhance the existing facility by providing indoor space. This will contain a lot of the work that has historically been outside. There will be no windows so that it will not greatly impact the neighbors. They have also placed the building so that it is outside of the 100 foot wetlands buffer. They are asking for a reduction from the required 40 foot setback on the southerly lot line to 10 feet. The lots do not have adequate area at about 50,000 square feet but they are now under common ownership and will be combined.

Mr. Foster clarified that they were asking for Variance. Mr. Collins said that was correct. Mr. Foster asked if he understood the restrictions for granting a Variance which were essentially that the waiver is granted only in situations where the conditions of the land such as ledge or precipice, contour, or topography, etc. preclude conforming to the bylaw. He was not speaking for the Board, but in his opinion, the building has been designed to require a waiver no matter what. The issue is this building is huge relative to the lot size. Maybe this is the wrong piece of property for this use with a 10 foot setback next to a residential property.

Mr. Foster then read the May 7, 2008 letter from Mr. Iafrate, the Building Commissioner. He had advised that a 40 foot landscape buffer is required when a business use abuts a residential use. Mr. Iafrate said that since writing that memo, he has done additional research and found that the business zone actually extends all the way to the water and on the south all the way to the Eagle Club. Mr. Foster next read the May 12, 2008 letter from the Board of Selectmen. The Selectmen felt that the building could be resized and the orientation adjusted in an attempt to meet the 40 foot setback. Mr. Foster said that he did agree with that and asked the property owner, Mr. Rogers, what he thought about that. Mr. Rogers replied that he was open to that but he was concerned about making the building too small and then outgrowing it. Mr. Foster asked if he had considered expanding the present building. Mr. Rogers said that he had not.

An abutter present said that they have always believed that their property was residential. How does this affect her property and the setbacks? Mr. Foster felt that this increased the value of her property but that it did require a 40 foot setback. The Board did have some authority to grant a waiver, but as for him, he was less inclined to consider a waiver when this new construction would abut a residence even though it was zoned for business. Mr. Foster was also concerned about two buildings on one property and the fact that they did not really have any reason to grant a waiver.

There was a discussion regarding the zoning of the area. Mr. Foster said that he would prefer to look at the issue of the use of the property and a second building on it. He could see no extraordinary problem with the land that compelled a ten foot setback. Mr. Curtis

agreed. He felt that Mr. Rogers could extend the existing building to achieve his goals. Mr. Rogers responded that one of the issues of doing that was what the height of the building would have to be in order to join the buildings. Mr. Foster said that would be a design issue for the architect and the engineer. Mr. Charlie Edson of 205 County Road asked for clarification of what the setback was. Mr. Foster replied that setback was a margin that goes around the edge of the property like an apron that you are not supposed to build into. It is from the property line into the property.

Mr. Foster then read the May 12, 2008 letter from the Board of Health. Board members stated that the project needs further evaluation and that a Title V inspection would need to be done before they could comment or give a recommendation. Mr. Collins said that he had spoken to Larry Perry, the Health Agent, and they planned to do a Title V and also test the wells as required. Mr. Foster asked again why Mr. Rogers felt it was necessary to intrude into the setback with a new building. Mr. Rogers explained that he had concerns about tying into the roof line if he expanded the present building. He also wanted a new modern facility that would better meet his needs in the future. They also needed to maintain the 100 foot Conservation buffer.

Mr. Foster said that another concern is what a future owner might do on the property. He felt that the 40 foot setback was important. Mr. Rogers, Sr. said that it sounds like they do not want them to construct a building there. What do they want to see on that property? Mr. Foster replied that they have to subscribe to the bylaws and personally, he did not see a compelling reason to grant the waiver. Mr. Iafrate noted that if they did redesign and expand the existing building, they still might extend into the setback but it would be much better than ten feet. Mr. Foster replied that a two foot extension was much better than 30 and also they would then only have one building on the property.

Mr. Collins said that at this point he would like to request a continuance on behalf of the applicant so that they could look at some alternatives. They could then take under consideration some of the concerns discussed and present something at a later date to the Board. After further discussion it was agreed to continue until the June meeting. Mr. Veary then made the motion, seconded by Mr. Levitt, to continue the Rogers/Pond Realty hearing until June 19, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:59.

Urbanski hearing-continued:

Mr. Foster reopened the Urbanski hearing at 8:00. It had been requested that the hearing be continued. Mr. Ieronimo was present and was agreeable to the hearing being continued until the July meeting. Mr. Veary then made the motion, seconded by Mr. Levitt, to continue the Urbanski hearing until July 10, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 8:00.

St. Don hearing:

Mr. Foster opened the St. Don hearing at 8:01 and read aloud the legal ad. Mr. Foster read the May 7, 2008 letter from the Building Inspector. The applicant had not come to his office before the application was submitted to the Appeals Board so he would need to review the As-Built Plan as well as the proposed construction plans for accuracy. The May 12, 2008 letter from the Town Administrator noted that there were no plans submitted with the petition and that it was incomplete. They also questioned if the applicant should have applied for a Variance rather than a Special Permit.

Mr. Foster said that if that was the case and they did need a Variance, then technically the Board should either deny the petition or allow them to withdraw so that it could be properly submitted and abutters would then have accurate notification of what they were proposing. Mr. Rick Charon replied that they applied under 6.1.3 which allows the extension or alteration of pre-existing, non-conforming structures as long as the change is not substantially more detrimental than the existing use. The structure on the property is a non-conforming cottage with a Board of Health approved Title V two-bedroom system. Mr. Charon said that the bylaw exempts lots 20,000 feet or more. Bylaw 6.1.2 which limits restoration seems to apply only to a structure that has been destroyed by fire or an act of God.

Mr. Charon said the site plan shows the existing house which does not meet Town setbacks. The proposed plan would meet all setbacks. There is an existing septic for a two bedroom house and they had a Title V done which passed. The Conservation Commission has granted them an Order of Conditions as they are within the buffer zone of Long Pond. They now have Board of Health and Conservation approvals. They meet all setbacks and fall under the 25% lot coverage. Mr. Charon said that he felt that this expansion fell under 6.1.3 and would be for a Special Permit.

Mr. Foster said his interpretation of the bylaw was that you start with 6.1.8. In the situation of demolition or replacement, because the lot is less than 20,000 square feet, it points you to the restrictions articulated in 6.1.2. It does not mean that 6.1.2, in this case, applies only to acts of God. Mr. Foster asked Mr. Iafrate if he agreed. Mr. Iafrate agreed. After further discussion concerning the interpretation of the bylaw, Mr. Foster asked Mr. Iafrate if the applicants had come to him with plans to demolish and rebuild a structure that was 104% of the original would they still be here. Mr. Iafrate said that they would only because the lot was less than 20,000 square feet. Mr. Iafrate said the Town should take another look at this as many people are trying to build homes on small lots now.

Mr. Foster agreed but asked what they were going to do with the petition that was now before them. He asked Mr. Iafrate if he had seen the plans. Mr. Iafrate responded that he had seen them tonight but only briefly. He suggested that a copy be left at his office so that he could go over them and then issue a letter to the Board. Mr. Foster said that it appears that there are three floors of living space. Mr. Collins said the third floor is an

attic. Mr. Curtis said the first thing that he would request was the removal of the dormers. Mr. Foster said that he would request a sketch of what is presently on the lot.

Mr. Collins asked if Town Counsel could be consulted in regards to if they are incorrect about their understanding of 6.1.3. Mr. Foster replied that when they request an opinion from Counsel the Town is charged for the time. Personally, he was confident in his interpretation of the bylaw but they were welcome to bring in their own lawyer. Mr. Collins said that he would then request a continuance so that the Building Inspector could review the plans and they could make some of the changes as suggested. Mr. Foster thought that they should try to stick pretty close to the 105% restriction. Mr. Collins asked if they should withdraw without prejudice and then reapply for a Variance for the 105% limitation on restoration. Mr. Foster said that he felt that they would have to come back to them because the lot is less than 20,000 square feet and in his opinion it would be difficult to justify an expansion beyond 105%. There has to be a solid reason for it. He understood that they wanted a larger home but the bylaws are there to restrict unfettered growth. The growth must conform to health and safety, traffic, etc. Ms. St. Don said that within the past year down the road from them was a cottage like theirs, on a lot approximately the same size. It was torn down and a house was built similar to the size that they want to build.

After further discussion it was agreed to continue until the June meeting. Mr. Curtis made the motion, seconded by Mr. Veary, to continue the St. Don hearing until June 19, 2008. The time would be at 7:15. The vote was **unanimous for**.

The hearing closed at 8:34.

G/B New England 2 LLC hearing:

Mr. Foster opened the G/B New England 2 LLC hearing at 8:35 and read aloud the legal ad. Atty. Robert Mather was present for the applicant. He advised that the site will be at the intersection when the new Route 79 comes in. That project is Number one on the TIP list for 2009 and construction is expected to start in the summer of 2009. Atty. Mather also introduced Paul Beck, Vice-President of Gershman Brown Crowley Inc., David Flanagan, Civil Engineer and traffic expert, and the owner of the property, Marcus Baptiste, who were all available to answer any questions the Board might have.

Atty. Mather said that they were here specifically for a Special Permit pursuant to 7.4.6 because it is a drive-thru facility. They are aware that this is a relatively new bylaw and he believed that the plans in front of them complied with all the requirements. They did meet with the Planning Board and that hearing has been continued. They do understand that the petition can be granted upon the condition of the site plan approval and they are willing to handle that the way the Board prefers. This would be either with a condition written into the Decision or they would return to the Board after they have their site plan approval. Atty. Mather said that one issue the Planning Board discussed was that the Zoning Board should not just approve a drive-thru but rather a drive-thru for this site and

this use only, as a pharmacy. Atty. Mather noted that the ENF study that was done for Route 79 includes this development and the determination was that it would not be a negative impact as far as traffic was concerned.

Mr. Flanagan then displayed the site plan for the Board. He advised that it was for a CVS Pharmacy, approximately 12,900 square feet. The building is located in the center of the lot. There would be parking in the front and on the side. There is an access point from the front off of Route 105 and the second will be off the relocated Route 79 layout. The entrance of the store is facing the intersection, and the drive-thru is at the opposite corner, in the back. There will be two lanes. The drive-thru is really a pick up and drop off and not like a fast food drive-thru. A high volume store might see 15 cars per hour, which translates to three cars per lane. They do not expect that at this store but they can accommodate a queue of at least six cars per lane. They are proposing this in order to remain competitive. He noted that the drive-thru was for prescription use only and not for any general sales.

Mr. Foster said that it appears that traffic would be low and he agreed with that, but he asked why there would be two lanes. Mr. Beck replied that this was for the convenience of the customer. The interior lane is primarily used to pick up the prescriptions if there is nobody else there and adds the ability to consult with the pharmacist. If there is somebody in the interior lane, they can drop off at the outside lane. Mr. Foster was concerned lights might be an issue but it was found that there would be no residences that would be affected by the drive-thru.

Mr. Brian Delriipple, who was the manager of the Jack Conway office across the street, said that his company was in favor of this request. Mr. Foster asked if anyone present had any comments or questions. No one spoke. Mr. Foster noted that this Special Permit would be granted for the current use only.

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

1. Planning Board approval of the Site Plan is required.
2. The Special Permit is for a pharmaceutical drive-thru only.

The vote was **unanimous for**.

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

The hearing closed at 8:52.

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

Meeting adjourned at 9:00.