

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
February 16, 2017**

Members present:

Donald Foster, Chair; David Curtis, Vice-Chair; John Olivieri, Jr., Clerk; Jim Gouveia, Member; Joseph Urbanski, Associate Member; Daniel Gillis, Associate Member

Members absent:

Janice Swanson, Member; Eric Levitt, Associate Member

Regular Meeting:

Mr. Foster opened the regular meeting at 7:13 p.m.

Roll called. Bills signed.

Mr. Foster stated that in accordance with the Open Meeting Law he was announcing that he and the secretary were making an audio recording of the meeting. LakeCam was making a video recording.

Mr. Olivieri made the motion, seconded by Mr. Curtis, to approve the Minutes from the August 18, 2016, meeting.

VOTE: Mr. Curtis, Mr. Olivieri, Mr. Gouveia, Mr. Urbanski, Mr. Foster – **AYE**
Mr. Gillis – **ABSTAIN**

Mr. Olivieri made the motion, seconded by Mr. Curtis, to approve the Minutes from the November 17, 2016, meeting.

VOTE: Mr. Curtis, Mr. Olivieri, Mr. Gouveia, Mr. Foster – **AYE**
Mr. Urbanski, Mr. Gillis – **ABSTAIN**

Mr. Foster advised that since this was the first meeting of this year, he would like to vote on the officers of the Zoning Board. Mr. Olivieri nominated Mr. Foster for Chair. Mr. Curtis then nominated Mr. Olivieri for Clerk. Mr. Olivieri nominated Mr. Curtis for Vice-Chair. Mr. Olivieri then made a motion, seconded by Mr. Curtis, that all positions remain the same as in the previous year. The **vote** was **unanimous for**.

Betts hearing – 74 Lakeside Avenue:

Mr. Foster opened the Betts hearing at 7:15. Mr. and Ms. Betts were present. Mr. Foster read the legal ad into the record and asked for an overview of the project. Ms. Betts advised that currently, on the property, there is a summer cottage that sits right on the pond. There is a retaining wall and the porch is approximately one foot from it. They would like to knock down the house and keep that space as an open deck. There is another retaining wall made out of stone and concrete and at approximately that location is where they would begin their home and put up a ranch with a two car attached garage.

Mr. Foster then asked them to approach the Board and clarify the plan that had been submitted. After Ms. Betts had explained the plan on the drawings, Mr. Foster noted that there was a seventeen and a half foot setback on one side and a nine and a half foot setback on the other. Ms. Betts said that was correct. Mr. Foster asked what the setback of the retaining wall to the property line was. It was thought to be comparable to the nine and a half foot setback. Mr. Betts said what they intend to do is take this down and move the dwelling six inches above flood. Mr. Foster asked if they were going to keep the porch. Ms. Betts replied they would like to keep it as a deck so they can run the dock off of it. She noted it was currently like a sunroom but on the plan it was called a porch.

Mr. Foster reviewed what had been discussed so that those present could hear. He stated that they have an existing porch that they would like to keep. They would like to demolish this dwelling and build a new home with the dimensions that had been read within the legal ad. The setbacks had been defined as seventeen and a half feet and nine and a half feet. Their judgment is that the setback from the corner of the retaining wall to the property line is comparable to the nine and a half foot setback. The lot is a little larger than 42,000 square feet. Ms. Betts said that was all correct.

Mr. Foster asked what type of septic system was on the lot. Ms. Betts replied that currently there was a cesspool and there is no well. Ms. Betts said that they do have a letter from Mr. Perry stating that he needs more information regarding them doing a perc test, etc. Mr. Foster then read the January 18, 2017, letter from the Conservation Commission into the record. It stated that all of the work occurs within the buffer zone to a resource area. The applicant would be required to file with Conservation before any work could begin.

Mr. Foster noted that one thing that was missing from the drawings were any dimensions. Mr. Betts replied for a 32 foot-wide house, centered, it would be approximately nine feet on all sides. Mr. Foster stated that although the lot was reasonably large, it was quite narrow which restrains the use situation. Mr. Foster asked Board members if they had any questions for the applicants. There were none.

Mr. Foster then asked if anyone present would like to speak regarding the petition. Atty. Michael Kehoe of Partridge, Snow, and Hahn, located in New Bedford, then spoke. He advised that he represented Alan and Julie Smith. He stated that one of the fundamental issues that the Board is struggling with right now is that the submittal does not have the

proper engineered plans that are required by the bylaw. They do not have the material in front of them to properly assess this project. He would suggest, by their bylaws, that it has to be an engineered plan which would include pertinent information applicable to the following: lot boundaries, names of abutting owners, contiguous streets, vegetation, existing and proposed roadways, existing and proposed buildings, location of sources of water, sewerage disposal, parking, etc. He noted that none of that was before them. Mr. Foster asked why Atty. Kehoe was present. He replied that he represented Alan and Julie Smith who were direct abutters to the project. He advised that there was a Land Court case presently existing regarding the easement. There is an established easement that goes from the street, across the front part of the property, and it makes a right turn. That is not in dispute but the balance of it is.

Atty. Kehoe said that what they have before them, by their own bylaws, is insufficient for them to even consider the application. You could not take a drawing that was not done by an engineer and take their word for how many feet it was from property lines, etc. He asked where the septic systems of the neighbors were. Where is this septic system and well going to go? Where are the neighbors' wells? What are the elevations? Mr. Betts responded that first they needed an okay to build before they do all that other work. Atty. Kehoe said that they do have other issues, but essentially when looking at this and with the requirements of the bylaws there hasn't been any mention of how they meet the requirements of the bylaws. What evidence is there that the literal enforcement of the bylaws would create a hardship? There is evidence that the lot is too small but that is not grounds for a Variance according to Massachusetts law.

Mr. Foster asked what the objection was. Atty. Kehoe replied that the objection is the conversion of a roughly 900 square foot structure with half of that being a crawl space into a 2,368 square foot home on a lot that is 50 feet wide. Homes of that size, in that neighborhood, are all on at least an acre and a quarter and in some cases as much as four or five acres.

Ms. Lynn Morely of 72 Lakeside Avenue spoke next. She stated that the building, according to the plans, would be closer and encroach on her property. She did not believe that any survey had been done and also noted that her electrical lines run right where they plan on locating the proposed house. She would want to know what the plan is regarding those lines. Mr. Foster said that there appears to be a shed on the property as well. It was found that it was not a shed but a tent and a neighbor was in the process of moving that as it was not the Betts. After further discussion, it was said that the structure was actually a carport.

Mr. Foster said the plans indicate a shed but it is a carport. They also designate an enclosed room as a porch. In his opinion only, he would tend to agree with the attorney and call these plans lacking. They really need appropriate plans with dimensions. As this is a 50 foot wide lot and a 30 foot wide structure is planned, it does raise the issue of encroaching a lot more into the setback. This means they are even more non-conforming than the existing dwelling. He saw that as a problem. He would like to see the property

improved and the property values improved in the area, so this petition does have pluses as well as minuses.

He then asked members what they thought about the issue raised by the attorney. He also asked the petitioners if they had an alternative plan. Ms. Betts responded that they did, but it would require a second story. They had thought a one story would be more in keeping with the neighborhood. She also wanted to clarify that the dimensions of the house were 32 feet by 50 feet which would be 1,600 square feet. The previously mentioned 2,800 square feet includes the attached garage. Mr. Foster said that from a zoning standpoint they would consider looking at the total percent coverage of a lot. However, they would not include the garage footage as dwelling space.

Mr. Foster said that he understood Mr. Betts point that he would like to get an approval before paying for engineered plans. He would suggest that he go to a design firm of his choosing with the problems that they are facing such the narrow lot, setback concerns, dwelling size that they would like, etc. and see how these constraints can be met? The setbacks were then discussed. Mr. Foster advised that the setback is twenty feet but because the existing dwelling is nine and a half feet from one setback that would define a new setback on that one property line. On the other property line, there is a possibility that the retaining wall defines a new setback, and there is even the possibility that the shed could define a new setback although it appears that it is not really a shed but just a carport. Someone in the audience noted that it is more like a tent or canvas-covered carport. Mr. Foster noted that he did not know if this was willful or not, but the engineers who laid this out and called a canvas-covered carport a shed was a bit misleading.

Mr. Foster asked what they wanted to do from here. Their options were to have them take a vote on the petition, continue the hearing, or withdraw the petition. Mr. Olivieri thought that the Board did need more information if they were inclined to approve this. His personal opinion was that this would be an improvement to the property. He just wanted to make sure that they made the right decision and they did this the right way according to their bylaws. Mr. Foster noted that some things such as the color of the house, the view, or the scenic characteristics of the adjacent property are not Zoning Board issues. They have to look at the appropriate and best use of the land for the property owner, the neighborhood, the community, and the Town. They try very hard to come up with compromises that make sense and satisfy the most people but sometimes a difficult decision will leave someone angry. Mr. Foster suggested that they take another attempt at the engineering design and layout and determine what will satisfy their needs and is the least intrusive to what the neighbors want.

Mr. Richard Bache of 78 Lakeside Avenue then clarified that if they had a ranch house with a walk out basement that would actually be two stories, and a two story home would actually be a three story home. Mr. Foster said that he would not count a basement as a story. Mr. Bache said he just wanted to clarify that fact. He also wanted to point out that what is being proposed is bringing the structure extremely close to 76 and 72 Lakeside. Although the retaining wall has established the setback, the fact that the house is being

moved up the property and coming closer to other houses is really what is the concerning factor.

Mr. Foster then asked the Betts what they would like to do now. After discussion, it was agreed that they would continue until next month. Mr. Foster suggested that Mr. Betts return to the Building Inspector and ask him to help with the things that the bylaws states need to be provided.

Mr. Olivieri made a motion, seconded by Mr. Curtis, to continue the petition until March 16, 2017. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 8:00.

Darling hearing – 13 Dunbar Road:

Mr. Foster opened the Darling hearing at 8:00 and read the legal ad into the record. Mr. and Mrs. Darling were present. Mr. Foster asked how big the lot was. It was found to be 6,156 square feet approximately. Mr. Foster stated that they wanted to raze an existing two bedroom home and build almost on the same footprint a two bedroom home. Mr. Darling said yes. It was a small home and was beyond repair. It was an old cabin that was now falling apart.

Ms. Darling noted that they did have engineered plans and they were not looking to change a lot. There would be a new septic system and well. Mr. Darling approached the Board and displayed on the plan what they wanted to do. Mr. Foster said that the only place that there is a non-conformity, excluding the size of the lot, is the intrusion into the setback on one side. This project would improve that by five to six inches.

Mr. Foster then read the January 16, 2017, letter from the Conservation Commission. They had no concerns with the petition as the work would be more than 100 feet from the pond. Mr. Foster asked if there were any questions or comments. Members agreed that this would be an improvement to the property.

Mr. Olivieri then made a motion, seconded by Mr. Curtis, to approve the petition. The **vote** was **unanimous for**.

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

The hearing closed at 8:09.

Mr. Foster adjourned the meeting at 8:10.