

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

Members present:

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

Members absent:

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. He asked if anyone present was making a recording. There was no response.

Mr. Foster advised that next month they would hear five petitions. Two of these petitions were for the Town of Lakeville and they related to the old Library and the Assessors building. He suggested that, in this case, they waive the fee requirement as in essence it would just be a payment to the Town.

Mr. Curtis made the motion, seconded by Mr. Olivieri, to waive the fee for the two petitions for the Town of Lakeville. The **vote** was **unanimous for**.

Mr. Olivieri made the motion, seconded by Mr. Curtis, to approve the Minutes from the February 16, 2017, meeting.

VOTE: Mr. Curtis, Mr. Olivieri, Mr. Gouveia, Mr. Urbanski, Mr. Gillis,
Mr. Foster - **AYE**
Ms. Swanson, Mr. Carmichael – **ABSTAIN**

Rocco Realty II hearing – 9 Harding Street:

Mr. Foster opened the Rocco Realty II hearing at 7:15 and read the legal ad into the record. Mr. Jaimie Bissonnette from Zenith Consulting Engineers was present. He advised that they are petitioning for a sign that is higher and larger than specified in the Zoning Bylaws. They are proposing a billboard and it would roughly be 14' x 48' which is a standard billboard size. They are looking for an electronic style billboard so it would have two faces which would face each direction. The billboard would be no taller to the top of the building than 35 feet.

Mr. Bissonnette advised that when they had met to discuss this conceptually, the Board had asked him to find some of the local billboards in the area. He displayed a map which indicated where the billboards were located. He discussed their locations which were in Middleboro, Raynham, and Bridgewater. The majority of them were similar in size and the feature they had in common was they were paper. He explained that paper was being replaced by the electronic style. One of the positive aspects with electronics was the public service announcements. As part of the permitting process, the State will get 15 hours per month and the Town will get 15 hours per month for amber alerts, meeting notifications, storm alerts, etc.

Mr. Foster asked what time slot would those 15 hours be in. Mr. Bissonnette thought that was somewhat negotiable. That State had a protocol for their hours but it could be negotiated with the Town. Mr. Foster asked what the nature of the business was that this sign would support. Mr. Bissonnette replied that local businesses could solicit for the advertising. The digital sign would allow them to change and not have the same sign up there and not have to send a crew in to change it. The company that is responsible for the maintenance of the sign would program it.

Mr. Foster asked if they had any reasonable control over the nature of the material that would go on the billboard. Mr. Bissonnette responded that the Board could condition it as such. Mr. Foster asked the size of the billboard again. Mr. Bissonnette said that it is going to be a two sided billboard with a "V" shape to it so they could take advantage of the curve of Route 44. It would be approximately 700 square feet. Mr. Foster asked if there were restrictions on how rapidly the visual content could be changed. Mr. Bissonnette said that he believed that is where Mass DOT comes in with their oversight as you cannot put up anything that casts a glare into the roadway or anything that will cause any type of issue. However, they cannot submit anything to the State until they have all their approvals. The State will then tell them exactly what they want.

Ms. Swanson noted that the bylaw does not allow for any flashing, scrolling, or animation. Was he aware of that? Ms. Bissonnette stated that he had spoken with the Building Inspector and asked him his opinion on it. What they were looking for was static pictures that would go up and then be replaced by a different static picture. It would not be rapid. Ms. Swanson said that according to the bylaw 6.6.6 you could only advertise businesses that were on that premise. Mr. Foster noted that there was a distinction as the bylaw addresses a sign for a business which this is not. This is a

billboard which is fundamentally different and not addressed in the bylaw. After further discussion, Mr. Foster asked Mr. Olivieri to bring this question back to his Committee. Ms. Swanson felt that the fact it is an off premise sign should be addressed in the Special Permit if it were to be granted.

Mr. Foster asked who owned the property. Mr. Bissonnette replied that the Stelmach's own the property and Mr. Quagliere was purchasing it. Mr. Foster asked if he was going to run a business out of the building or rent it out. Mr. Quagliere said that he is working with the State to get water to the building. Mr. Foster stated that he was looking for the potential for a relationship between a business on the property and what the sign is doing. He asked what the height above the ground of the lowest part of the sign would be. Mr. Bissonnette said it would be approximately 20 feet. The highest structure might not be the sign but some of the support. Mr. Foster asked if there would be some type of foundation that would hold the posts. Mr. Bissonnette said there would be. The foundation would be approximately 15' x 15' of concrete that would be buried in the ground with a piling system that comes up. They are planning to use a single piling at the far end of the sign itself.

Mr. Foster noted that a concern to him is that sometimes these structures that support signs, or the sign itself, impedes the vision of a driver who is trying to pull out and Route 44 can be a difficult road to get onto. However, it sounds like there won't be any visual obstruction in this case. Mr. Bissonnette stated that they have to keep the beginning of their sign 10 feet off the property line and the edge of pavement right now is roughly 15 feet off the property line so that is not an issue. Mr. Urbanski asked about a fall zone. Mr. Bissonnette said that has not been part of the plan up to this point but he was sure it was something taken under account and looked at by the structural engineer.

Mr. Foster asked if anyone present would like to speak. One audience member said it did seem to be similar to boards that are up on the way through Braintree and Quincy to Boston. Mr. Foster noted that he was not opposed and thought that this would be the only place in Lakeville that they would consider something like this. He asked what other members thought. Ms. Swanson said that she was not opposed to it but wondered if they had any control over what type of advertising would be displayed. Mr. Foster said that they have found themselves in times where it could be possible that something on the sign could be embarrassing or denigrating to a candidate or to anybody, and it could be in bad taste. He did not know if they should even consider that point. Mr. Olivieri said that they would have to assume that there's some authority that regulates that. Mr. Bissonnette said that typically what happens if somebody steps out of bounds, they feel backlash businesswise. He thought that these companies do a lot of self vetting in the regard of content and questionable requests would not be entertained as ultimately it would not be good for business.

Mr. Quagliere explained that he thought this was a good use for that spot. He is trying to improve the property by bringing in water and utilities. There are also some environmental challenges on the property and he thought that this would be a good way to jumpstart that area. Mr. Foster asked if anyone had anything to add. No one spoke.

Mr. Foster then asked members if they felt they had the liberty to include any restriction on the nature and type of material that would be put on the billboard. Mr. Foster also asked Mr. Bissonnette if this had been reviewed with the Selectmen. He felt it was sufficiently different, unusual, and eye catching enough so that the Selectmen should have the opportunity to comment on it particularly with regard to the potential for inappropriate or offensive messages. Members then discussed if that was something that could even be restricted or if there was some type of agency already in place that addressed that.

Mr. Olivieri then made the motion, seconded by Mr. Curtis, to approve the petition with the following restriction.

1. This is subject to review and approval by the Board of Selectmen.

Mr. Foster then read the February 22, 2017, memo from the Conservation Commission into the record. An Order of Conditions was issued to the applicant in December of 2016. The March 13, 2017, email from the Larry Perry, the Health Agent, indicated that there was no reason for the Board of Health to recommend approval or denial in this case as there were no public health issues associated with the petition.

The **vote** was **unanimous for**.

The hearing closed at 7:48.

Betts hearing, continued – 74 Lakeside Avenue:

Mr. Foster opened the continued Betts hearing at 7:48. He recalled that they had left the situation where the applicants were going to get properly engineered and dimensioned drawings showing what they wanted to do. Mr. Betts then submitted the plan to Board members and for the record. Mr. Foster said that he believed that the biggest issue that they had was they did not know the setbacks. He said it now appears that the setback has gone from 9 ½ feet to 10 feet on one side and from 17 ½ feet to 10 feet on the other side. Mrs. Betts noted that there was an established retaining wall on that side. Mr. Foster said that if they consider the retaining wall to define the setback then both sides are now greater than the existing setbacks. They have also gone from about 6 feet off the pond to 35 or 40 feet.

Mr. Foster said that he recalled there was the question on the original plan showing a shed which was their neighbors. Ms. Betts said the original plan had been labeled as a shed and it was actually the neighbor's canvas carport. That was partially on their property as well as a basketball court. Mr. Foster asked how that basketball court had ended up on their property. The neighbor replied that they had put in a paved driveway. There used to be a requirement by the Town that there was access to all their properties through Hackett Avenue. When they put pavement on Hackett Avenue, they put rocks so

when they did their driveway which is 800 feet, they put in a turnaround for emergency vehicles. There was a small piece there so they put in the basketball hoop for their son. Mrs. Betts said that this was never really a problem for her.

Mr. Foster agreed that was not the issue. The neighbors on one side do have a garage like thing that extends onto this property and there is also a basketball play area and hoop that are on this property and these neighbors are upset that this home is too close to the property line. Mr. Olivieri said that they asked them to come back with plans which they did. He noted that according to the definition of a structure, the retaining wall does qualify. That wall defines the setback and the new structure is within it. He advised that by right the Betts could go up two and a half stories which he did not think the neighbors would want.

Neighbors then approached the Board so that they could examine the plan that had been submitted. They noted that the house was two and a half times the size of what was presently there. Mr. Foster advised that the Zoning Board does not control house size until the size of the structure is greater than 25% of the lot coverage. Mr. Smith said that there has been no reason or basis for obtaining this request under a Special Permit. He then read the three criteria that were under 7.4, which were 7.4.11, 7.4.12, and 7.4.13. Mr. Smith also discussed the dimensions of the lot. He felt there was a discrepancy in the plan as the deed stated the lot was 50 feet wide but the plan measurements added up to 54 feet.

Mr. Smith next discussed the Variance request. He read Section 5.0 which he said had not been met. He also read Section 5.2.2 which he felt they should be denied under and it was the Committee's expectation to do that. He also read Section 8.22. He felt that none of the requirements that he had read had been met by the application. The small size of the lot does not create an expectation or legal basis for them to obtain a Variance. Ms. Swanson asked Mr. Smith if he had come in front of the Board for a Special Permit for his garage in 2001. He said that he had. It was noted that the permit had been granted and the setback was for .2 feet. Mr. Smith responded that setback was from an existing garage.

Mr. Olivieri then read the definition of a structure into the record. He noted that there was nothing in the bylaw about a retaining wall so it appears, based on Mr. Smith's own argument, that the Betts were actually infringing less into the setback based on that. It was also discussed that emergency vehicles would not be able to get through the lot now. It was also pointed out by a neighbor that there was a lot of objection to this. The biggest problem is what they are doing does not conform to the neighborhood. They are moving the structure up and sandwiching it between the two houses. Mr. Foster said from their perspective that is an improvement because it moves the house further away from the lake.

Mrs. Betts said that in response to the neighbors concern the houses would not be side by side but rather the proposed house would be staggered in the middle of the two neighbor's homes. Mr. Foster asked if there was anything additional to be offered. Mr.

Smith wanted to look at the old plans and stated that if the new plan was substantially different then the petition would need to be withdrawn and a new application submitted. Mr. Foster replied that in his opinion, they were not even slightly different with maybe a slight difference in the depiction of the garage but it was measured now. If there was nothing further, he would like a motion to close the hearing. Mr. Olivieri made the motion. It was seconded by Mr. Curtis. The **vote** was **unanimous for**.

Ms. Swanson said that she would like to recuse herself as she had not been at the last meeting. Mr. Foster replied that nothing substantial had been presented. Mr. Foster said that in keeping with the bylaw it was their job to make sure that this use was under 7.4.11 and was not noxious, harmful, or hazardous and is economically desirable and meets an existing or potential need. His opinion is this proposed project meets that standard. He felt that in the terms of socially it means it is an improvement in the neighborhood in that it is a better and more expensive house and will improve the property values. He asked if there were any comments on that. Mr. Olivieri agreed. Mr. Curtis noted that not only that but the septic system would be also be upgraded.

Mr. Foster said point 2 the advantages that the proposed use outweighs any detrimental effects. The detrimental effect of leaving it is the septic system is degraded and it is close to the lake which means a greater chance of contamination particularly if there is a flood. Mr. Foster said 7.4.13 the applicant has no reasonable alternative available to accomplish the purpose in a manner more compatible with the character of the immediate neighborhood. Mr. Foster noted that one alternative would be to go to a two story house. He asked Mr. Betts if he would consider that. Mr. Betts said that he would not. Mr. Foster said the next item is the proposal generally conforms to the principals of good engineering, sound planning, and correct land use, and that the applicant has the means to implement was met by the proposal. Mr. Foster said that they also had the power to impose reasonable conditions and modifications. Would they consider a condition? Mr. Curtis said that he would want them to have both Board of Health and Conservation Commission approval. Mr. Foster then read the February 2, 2017, letter from the Board of Health into the record. The letter stated that the Board of Health did not have the necessary information to make a recommendation on the feasibility of the project based on the information that had been provided.

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

1. The setbacks will intrude no further than shown on the plan dated March 9, 2017.

The **vote** was **unanimous for**.

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

The hearing closed at 8:30.

Mr. Foster adjourned the meeting at 8:30.