

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
February 21, 2008**

Members present:

Donald Foster, Chair; David Curtis, Vice-chair; Joseph Beneski, Member; John Oliveiri, Jr., Associate Member

Atty. Laura Pawle and David Varga from BSC Engineering were also present

Regular Meeting:

Mr. Foster opened the regular meeting at 7:10 p.m.

Roll called. Bills signed.

Six Bridge St. Realty Trust hearing:

Mr. Foster opened the Six Bridge St. Realty Trust hearing at 7:15. He advised Board members that Mr. McCarron had contacted him and requested that the Board extend his Six Bridge Street Comprehensive Permit for one year. He was not present yet but Mr. Foster suggested that they act on his request now before they opened their other hearings. After a brief discussion, members agreed that the Permit should be extended.

Mr. Curtis made the motion, seconded by Mr. Beneski, to extend the Comprehensive Permit for Six Bridge St. Realty Trust for an additional year. The **vote** was **unanimous for**.

The hearing closed at 7:20.

Robbins hearing – continued:

Mr. Foster reopened the Robbins hearing at 7:20. He advised Mr. Robbins that there were only four members present tonight. He could continue until five members were present or proceed but he would need a unanimous vote of the four members. Mr. Robbins chose to go forward with the petition.

Mr. Foster said they had sent them away with some homework. Had everything been taken care of? Mr. Robbins replied that the Board should have received a letter from the Board of Health and the Conservation Commission. Mr. Foster said that they had only received something from the Board of Health. They approved it subject to several

stipulations. Mr. Robbins said that he had all the various approvals with him; he thought that they would have already been provided to the Board. Mr. Foster said that it was the responsibility of the petitioner to do that. He suggested that they go through each point and then Mr. Robbins could supply them to the Board for the record.

Mr. Robbins then submitted for review the Notice of Intent from the Conservation Commission, a letter from the Department of Fish and Wildlife, a copy of the Deed Restriction that was recorded at the Plymouth County Registry of Deeds, and an approval from the Department of Environmental Protection approving the use of the Presby Enviro Septic System.

Mr. Robbins advised that he had also sat down with Mr. Iafrate and they had adjusted the plan. The wall has been taken out where the stairs come down. They did not move the stairs over because structurally it was more complicated and it would disrupt the entire second floor. Mr. Iafrate was not concerned with the bath and shower. Mr. Robbins noted that the trailer was 10 x 40 and the proposed cape was 28 x 32 which was a 350% increase but that it still took up only 4% of the property.

Mr. Foster said that he felt that house was not too large and that it was an improvement to the neighborhood. Mr. Beneski was concerned because the house was right next to the pond. Mr. Foster replied that was true but because they are upgrading the system, the leaching field was actually further away than what was there now. Mr. Foster felt that the Robbins' have met all the requirements and they were willing to change the plan to meet the Board's objectives. They were also going from an old cesspool to a modern system.

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

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

The vote was **unanimous for**.

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

The hearing closed at 7:35.

LeFever hearing:

Mr. Foster opened the LeFever hearing at 7:36 and read aloud the legal ad. He advised Mr. & Mrs. LeFever that there were only four members present tonight. They could continue until five members were present or proceed but they would need a unanimous vote of the four members. The LeFever's chose to go forward with the petition.

Mr. Foster asked the LeFever's to briefly describe what it was they wanted to do. Ms. LeFever responded that currently the first floor has two bedrooms, a kitchen, a bathroom, and a living room. They would like to remove the existing wall between the kitchen and

the second bedroom and the wall between the bedroom and the living room. This would increase the size of the kitchen and living area. They would then like to build a second floor, where the second bedroom will be relocated as well as a sitting area and a half bath. Ms. LeFever then pointed this all out on the plan.

Mr. Foster then read the January 11, 2008 letter from the Planning Board who recommended approval of the petition. The January 17, 2008 letter from the Board of Health stated that they had no health reasons to deny the petition and that the septic system had passed Title V. The January 10, 2008 letter from the Conservation Commission advised that any work that was done beyond the existing foot print would require a permit from them. The January 10, 2008 letter from the Board of Selectmen also stated that any work that was done beyond the existing foot would require a permit from the Conservation Commission. Ms. LeFever responded that there would not be any work done outside of the footprint. The Selectmen also noted that a Variance might be required under 6.1.3. After discussion, members did not feel this applied in this case.

Mr. Curtis asked about the other area on the second floor. Ms. LeFever replied that this was to be like a den or toy room. There was no door but it was rather like an alcove. Mr. Curtis then asked that some adjustments be made to the plan but it was found that this had already been done.

Mr. Foster asked if they had an objection to a condition that the house must remain a two-bedroom house. Ms. LeFever had no objection to that.

Ms. LeFever had a letter from Kevin Poyant who was a direct abutter to her property. He was in favor of the petition. Mr. Roger Poyant was present and he was also in favor of the petition. It was noted that both were relatives of Ms. LeFever.

Mr. Foster asked if there was anything further. No one spoke.

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

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

The vote was **unanimous for**.

Mr. Foster then explained to Mr. & Mrs. LeFever the timing of the filings, the appeal period, etc.

The hearing closed at 7:55.

LeBaron Residential LLC Hearing –continued:

Mr. Foster reopened the LeBaron Residential LLC Hearing at 8:00. Atty. Freeman and Atty. Mather were present to go over the draft decision. Mr. Foster noted that the document really has to capture the two possible paths. Path A is the path they have

articulated and are working towards and Path B would be if they do not get the tax credits and they have to do something else. The document has to capture all the elements around what would be in there for affordable units and when and how that would occur. He felt that was important to keep in mind as they go through the restrictions.

Atty. Freeman agreed that Path B was flexible but still with oversight which provided protection for the Board. He then read Item 10, Part c, from the Decision which addressed the number of affordable units in Phase I depending upon the 'path' they were using, Part d addressed Phase II, and Part e addressed their future plans. This represents what they had agreed to. Atty. Mather said that they understand that they might have given some things up in regards to future plans but they are okay with being somewhat at the mercy of the Board for future modifications. Mr. Foster replied that he did not think the Board wanted to constrain the development of the project but just make sure that the phases meet the needs of the community and the original intent of the project.

Atty. Mather said there are two things that they need to discuss tonight. One was the number that needed to be filled in for shadow parking and the other was the location of the remaining affordable units if they did not get financing. These units would be in five buildings and they would like to talk about where they would be located. Atty. Mather displayed a copy of the plan for the Board. He advised that ideally they would like this to be market driven and feel that in a few months, this will be a moot point. Mr. Foster clarified that would be five buildings or ten units. Atty. Mather asked if they could let the first one be market driven and then they would alternate from there. Members discussed that option and agreed that it was the best one as the affordable units would not be placed one after another.

The next item discussed was the shadow parking spots. The original permit provided for, in subsequent phases, one hundred spaces but that was over the remaining 386 units. They would like to propose a figure of one and half per dwelling unit and they have room for approximately 25-30 spots which are related to the 56 units. It was noted that the least that they would want to have is 27. Mr. Varga said that he would like to have that engineered out in the plan to confirm the fact that those spots are available. The location of these spots was also discussed. Atty. Mather said that in order to qualify for financing they have to have a designated lot and in this case it's the lot inside the condominium. Mr. Beneski stated that the back part should be left alone for residents to be able to utilize as they see fit. It was agreed that 27 spots would be the amount required.

Atty. Pawle said the next question she had was in regard to item #15, the parking. The original permit read Phase I and II because those were cottage units but she changed that to Phase I and Phase III and now they do not have to leave that reference in to Phase III because they don't know what Phase III will be. Also on Page 9, Item d this refers to a charitable donation that would be made to the Senior Center. Atty. Pawle asked how they wanted to handle that. Atty. Mather replied that it appeared that neither he nor Atty. Freeman was involved with the project at that time but it looked like that was going to commence with the sale of units but they were not selling units at this point and there is no cash because the benefit to the developer is cash flow. Atty. Pawle said that looking

forward they don't know whether future phases will have ownership. Mr. Foster said that they also did not know if this plan or Path B will happen. He felt that this item d also had to capture the Path A and Path B concept. If the new plan of the tax credits come through, he would recommend that the \$200,000 be payable at the completion of the building. Atty. Mather said the problem is that they are not selling units. Mr. Foster responded that as soon as the building is open for business then he thought that the endowment that was agreed upon should be paid. Atty. Mather said that was going to be paid pro rata over the remaining units beginning in Phase II. He felt that would kill the profitability of the project if the entire amount had to be paid in one lump sum. Atty. Freeman said that something had to be worked out that was practical and fair but that it did have to be addressed.

Mr. Curtis suggested leaving as is if the tax credits don't come through, but if they do just changing Phase II to Phase III. Mr. Oliveiri said that he assumed the reason for the \$200,000 was for the possible impact on the Senior Center. He suggested as there is a smaller amount of units a smaller amount such as \$100,000 and then at the beginning of Phase III the balance. Atty. Mather said that even prorated that would be too much. He said that they are not asking to eliminate this but rather just postpone it. Mr. Beneski agreed with Mr. Oliveiri and noted that even if the units are rented those people are going to be utilizing the Senior Center so some proportionate number would be appropriate.

Atty. Mather said originally it was going to be spread out over 324 units, which is 386 minus the 62 in the first phase. That would have been 11% and if you prorate that over 56 units that would be \$22,000. Mr. Varga noted that the units in Phase 4, the assisted living, should be removed from the computation in terms of the number of remaining units to be sold if they are keeping that same proportion. Mr. Foster said that he liked Mr. Curtis's suggestion. After further discussion, Atty. Mather recommended taking the original 386 units and deducting the 62 from the first phase and the 45 from the assisted rentals, leaving 279 units and spreading it out over what had previously been agreed upon. That came out to \$717 per unit and at 56 units that came to \$38,000. Mr. Foster suggested \$40,000 as a number to resolve the issue and move forward. It was agreed that a \$40,000 fee will be paid at the rental of the final unit and the balance will be paid beginning in Phase III keeping the same language. Mr. Foster noted that Atty. Pawle will also have to capture if the tax credits don't occur and paragraph d will then persist.

Mr. Varga said that he had a couple of items to bring to their attention. The first was a typo on page 7, paragraph 10, for some reason there was no sub-paragraph b. It was agreed that it would be noted that b would be stated as left blank. Atty. Pawle noted that on page 8 the words, in the event, stuck out into the margin and that would also need to be corrected. Mr. Varga also noted condition #22 which referred to access. His understanding was that further construction was going to be using this limited access so that trucks would not have to be driving thru the Phase I area which would be fully built out. Mr. Foster said that he did not read this as being addressed in this condition. He felt that should be addressed in additional conditions such as 22a and 22b.

Mr. Foster asked if there was anything further. All agreed that all the items had been covered. He advised that once the document was updated and printed, the Board needed to sign it or he could sign on behalf of the Board if he had their approval to do so.

Mr. Curtis then made the motion, seconded by Mr. Beneski, to authorize Mr. Foster to sign the Decision on their behalf.

Mr. Curtis then made the motion, seconded by Mr. Beneski, to table the motion. The **vote** was **unanimous for**.

Mr. Curtis then made the motion, seconded by Mr. Beneski, to approve the modifications to the Lebaron Comprehensive Permit as reviewed this evening. The **vote** was **unanimous for**.

Mr. Curtis then made the motion, seconded by Mr. Beneski, to authorize Mr. Foster to sign the Decision on their behalf.

VOTE – Mr. Curtis, Mr. Beneski, Mr. Oliveiri - **AYE**

Mr. Foster – **ABSTAIN**

Mr. Curtis made the motion, seconded by Mr. Beneski that Unit 1 and Unit 2 will be affordable units, Unit 31 and Unit 32 will be market rate units, and in Units 47-62, the first market rate choice will determine the location of other affordable units on an alternating basis. The **vote** was **unanimous for**.

Mr. Curtis made the motion, seconded by Mr. Beneski, to close the hearing. The **vote** was **unanimous for**.

The hearing closed at 9:18.

Mr. Curtis made the motion, seconded by Mr. Beneski, to approve the Minutes of the January 17, 2008 meeting. The **vote** was **unanimous for**.

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

Meeting adjourned at 9:20.