

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
March 19, 2009**

Members present:

Donald Foster, Chair; David Curtis, Vice-chair; Eric Levitt, Member; Carol Zimmerman; Associate Member, Joseph Urbanski, Associate Member

Regular Meeting:

Mr. Foster opened the regular meeting at 7:06 p.m.

Roll called. Bills signed.

Mr. Curtis made the motion, seconded by Mr. Levitt, to approve the Minutes of the June 19, 2008, meeting.

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

Mr. Curtis made the motion, seconded by Mr. Urbanski, to approve the Minutes of the February 19, 2009, meeting. The **vote** was **unanimous for**.

Mr. Foster advised that they were going to reinstitute a form that they previously used when a hearing was continued. They used to ask the petitioner to sign a document which had their name, when the hearing was opened, and the date continued to. When this was signed, it would stop the clock. The reason they are doing this is that apparently there has been some dispute in the Courts as to when the clock starts and stops. This eliminates that question and provides additional protection.

LeBaron Residential LLC hearing – continued:

Mr. Foster opened the continued LeBaron Residential LLC hearing at 7:15. He read the March 17, 2009, letter from Atty. Mather into the record. Atty. Mather requested the hearing be continued until the April meeting. His clients had not yet decided what type of relief, if any, was needed.

Mr. Curtis made the motion, seconded by Ms. Zimmerman, to continue the LeBaron Residential LLC hearing until April 16, 2009. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:18.

Smith hearing, 325 Pond Lane – continued:

Mr. Foster opened the continued Smith hearing at 7:18. Mr. George Collins, Engineer, was present for the petitioner. Mr. Collins advised that he was here on behalf of B & D Construction, and he was the engineer of record but that he had not been part of the proceedings up to this point. Mr. Foster felt that they needed to talk about a fundamental issue concerning this petition. This issue was the plan and project had changed considerably from what was originally submitted. Mr. Foster noted that legally they are required to act on the petition that is submitted and he felt that the plan now is quite different. The original petition was to remodel the existing home raising the roof to allow for a third story. The work was to remain within the footprint with the exception of deck extension.

Mr. Foster advised that they had to vote on this with slight variations which he felt they had gone beyond. He suspected that other Boards may have seen various revisions and versions and that they may not all be looking at the same plan. He would recommend they withdraw without prejudice. When they know exactly what they want to do, they can then go to the other Boards and get conceptual approval, and then come back to the Appeals Board with a new petition.

Mr. Collins advised that it would be helpful for him to go through the plan so that the issues could be pointed out before a new petition was submitted. The original plan called for a leaching field on an adjacent property. That plan was subsequently abandoned and modified to replace a failed tight tank. Mr. Collins noted that this property was not on the seasonal list according to the Selectmen's office and it was his understanding it was a year round property when the owner purchased it. Mr. Foster said that he thought this property had been in the family for years. Mr. Collins replied that he just recently met the owner and he did not know when it was actually bought. Mr. Foster then read the February 17, 2009, letter from the Board of Health where it was noted that this property was on the list but he said it appears that they do have some conflicting data. Mr. Foster asked Mr. Collins to keep in mind that their definition of seasonal property is property that does not have a full Title V system. Town Counsel's interpretation of a tight tank is Title V with variances which is not a full system.

Mr. Foster also read the February 17, 2009, letter from the Board of Selectmen. They advised that the plan exceeded the 105% increase and would require a Variance but they had only applied for a Special Permit. Mr. Foster noted that this is something else that would have to be looked at. Mr. Collins then asked to withdraw the application without prejudice.

Mr. Curtis made the motion, seconded by Mr. Urbanski to accept the withdrawal. The **vote was unanimous for.**

Mr. Foster recommended that Mr. Collins follow these steps in order to move ahead with the project:

- Work with the DEP and the Board of Health to determine exactly what can legally be done and what would make sense.
- Pay close attention to the bylaw that encourages expansion of no more than 105%. Their interpretation of that is that it applies to living area.
- Revise the plans to reflect that consideration of the bylaw.
- In regard to the deck, make sure that the plan shows that it could not be turned into living space at a later time.
- Once they have plans in hand, get on the agenda of the various Boards in Town and get their suggestions and approval.

Mr. Foster said that he could also come back in and speak to the Board, without having to file the petition fee, to check in or get further direction.

The hearing closed at 7:37.

Saia hearing, 4 Fuller Shores Road:

Mr. Foster opened the continued Saia hearing at 7:38. Mr. Niles Zager from Outback Engineering was present and he briefly outlined the plan. The lot was 42,135 feet with the existing house being 1,170 square feet. The existing shed is to be removed. The proposed house is 2,540 feet and the proposed barn is 1,400 feet. The entire impervious area would be 19.9%. Mr. Zager noted that they did have Conservation approval. They also now have approval from the Board of Health. There had been an issue that they did not agree with and they went in front of the Board again last week. The Board of Health rescinded their original letter and a new one for approval was issued. Mr. Zager advised that they meet all setback and height requirements. He asked if the Board had any questions.

Mr. Foster asked how many bedrooms there were and how many there would be in the proposed house. Mr. Zager replied that there were three now and three in the new home. Mr. Foster asked if the basement would be finished. Mr. Zager said that they did not have any plans to finish the basement. The house will be on a slope so it would be a walk out basement to lessen the amount of fill needed and the impact on Long Pond. Mr. Foster asked for more information on the barn. Mr. Zager responded that it was 1,400 square feet. The owner, who was also present, advised that the barn was for the storage of a boat, jet skis, etc. It would be on a slab with a four foot frost wall. Mr. Foster asked to see the plan as it had not been submitted with the petition.

Mr. Foster asked if there was a second floor in the barn. Mr. Saia replied that there was but that it would be for storage. Mr. Foster noted that they have seen cases where storage had been converted to living area. If they were to consider this petition, they may entertain a restriction of no heat or water in the barn. Mr. Saia said there are plans for a wood working shop and asked if there could be a stove. Mr. Foster said that would go through the Fire Department. He asked what other Board members thought.

Mr. Curtis said that it appears that the house is closer to the pond. Mr. Zager replied that it is approximately 45 feet out. The existing deck is six to eight feet closer to the pond. Mr. Zager noted that they did have Conservation approval. Mr. Foster then read the February 10, 2009, letter into the record. It stated that the Notice of Intent was pending but that they were waiting for approval or denial from the Appeals Board and the Board of Health. Mr. Foster next read the February 12, 2009, letter from the Planning Board. They were in favor of the petition. The February 17, 2009, letter from the Board of Selectmen also recommended approval as they had no concerns with the petition.

Mr. Foster asked if anyone present would like to speak for or against the petition. Mr. Ed Faria of Nelson Shore Road said that he had reviewed the plan and found it to be a refreshing change. He was in favor of it. Mr. St. George, of the Planning Board, advised that the vote for approval had been unanimous. He felt that it would be an improvement to the neighborhood. Mr. Foster asked what Board members thought. Mr. Levitt felt it was a good project. Mr. Urbanski agreed. Mr. Curtis suggested a restriction on the height of the barn. Mr. Foster felt that it was not appropriate that the petition had been submitted without plans for the barn but that they could still apply some restrictions to it without the plan that would limit its use. Some of these restrictions might be that it could not be finished, nor insulated, no central heat, and no water. Mr. Foster said that the concern is the potential of a future owner using the second floor as a summer dormitory.

Members continued to discuss possible restrictions, such as limiting the pitch of the roof. Mr. Levitt felt that the same restrictions should be applied to the garage. Mr. Foster replied that if there is a three-bedroom restriction then that entire dwelling should be covered. Mr. Curtis suggested a center line restriction on the ceiling of the barn, of 7 ½ feet in the loft. Mr. Zager then found a copy of the plan in his file and submitted it to the Board. The plan showed only a six foot maximum head room.

Mr. Curtis then made the motion, seconded by Ms. Zimmerman, to approve the petition with the following conditions:

1. There is to be no insulation in the barn except in the workshop area.
2. There is to be no water in the barn.
3. There is to be no central heat in the barn.
4. The dwelling which includes the attached garage will remain a three-bedroom dwelling.

The vote was **unanimous for**.

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

The hearing closed at 8:15.

Mr. Castignetti of Long Built Homes was present and wanted to discuss the Board's interpretation of the definition of frontage. He advised that the property in question is on County Road. The language calls for the frontage to be suitable for development of a driveway that provides access to the upland area of the property. However, it does not seem to require that the access be from the frontage. Mr. Foster felt that the purpose of the frontage is to allow access for emergency vehicles. This also eliminates irregular shaped lots. Mr. Castignetti explained that the property was conveyed with an access easement off of South Pickens Street. His question is does their interpretation require that physical access to be from the frontage. If so, then in order to provide the access from a different point that would require a Variance.

Mr. Foster said that his interpretation would be that if this property has 255 feet of frontage on County Road that is where the driveway would go because that is where the safety vehicles would show up. He thought that there were provisions in the wetland laws where if they were wetland areas filled, they would have to be created elsewhere on the property. Mr. Castignetti replied that was correct. He explained that access from South Pickens Street would result in an environmental impact of 2,420 feet compared to almost 10,000 square feet with the access from County Road. That also would not be economically feasible to do as a driveway. If that is the route that has to be taken, then the owner would likely develop that driveway into a roadway so that he could get additional lots to offset the cost of construction. He does not want to do that but wants to minimize the development of the property to one lot. If the Board feels that the interpretation requires the access on County Road and a Variance for access to be from Pickens Street, then the owner would agree to limit development in perpetuity to be a single house lot.

Mr. Foster felt that the plan with the 485 foot driveway coming off County Road made the most logical sense but it was also much more expensive. Mr. Castignetti felt that environmentally, it was the most illogical. Ms. Zimmerman asked if there were any laws or rules that governed the access or address. After some discussion concerning alternatives, Mr. Foster said that he did not think that there was any reason that they could not grant a Variance but that it had to be based on characteristics of the property and not a financial hardship. Mr. Castignetti advised that Chapter 31 actually demands an alternative analysis so before they could even do that roadway or driveway, they would have to be denied the alternative. Mr. Foster asked that before this came in front of them he would like the Police Chief and Fire Chief to see if it was acceptable to them. He also recommended that it go to the Open Space Committee which was also involved in wetland issues and conservation. Mr. Foster was also a member so he could represent him there and hear their comments on this. Mr. Foster asked if they had any further business for the evening. There was none.

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

Meeting adjourned at 8:37.