

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
May 21, 2009**

Members present:

Donald Foster, Chair; David Curtis, Vice-chair; Joseph Beneski, Member; Eric Levitt, Member; John Oliveiri, Jr., Associate Member; Carol Zimmerman; Associate Member, Joseph Urbanski, Associate Member

Regular Meeting:

Mr. Foster opened the regular meeting at 7:05 p.m.

Roll called. Bills signed.

Mr. Foster advised that he had ideas for some changes to their regulations that he would like to first run by Town Counsel. One is a more defined structure for how people apply for petitions. The concept is that they would arrange their packages and make their copies and then go to the various Boards and one copy would get the signatures as previously discussed. This would ensure that the copies they get would be the same copies that the Boards have seen whether or not they had been approved or denied. The plans would need to be stapled and show no evidence of re-stapling. Those plans would then go to Mr. Iafrate if they approve. Mr. Foster said that the second part of the proposal would be that they grant a single continuance to a petitioner and after that if continuances are needed or requested, there would be a \$35 per continuance fee. This could generate income as well as discourage the constant continuing they have seen on some recent petitions.

Mr. Foster said that next item he wanted to discuss was LeBaron. They should expect to see them again. Apparently, there have been some changes in the State laws regarding Comprehensive Permits and several items in the Permit need to be modified. Atty. Mather has agreed to hold back the letter of request until the 20 day period is within the window of their June meeting so that they will not have to hold a special meeting to address that. Atty. Mather also wanted him to relay the message to the Board of how appreciative they are of the hard work of Atty. Pawle and Town Counsel on their behalf as well as the Board's behalf.

Marzelli hearing, 7 Pine Bluff Road – continued:

Mr. Foster opened the continued Marzelli hearing at 7:15. He read the May 20, 2009, correspondence from Atty. Mather into the record. Atty. Mather advised that they were

still attempting to obtain approval of the septic disposal system from the DEP and were requesting that the hearing be continued until the June meeting.

Mr. Curtis made the motion, seconded by Ms. Zimmerman, to continue the Marzelli hearing until June 18, 2009. The time would be at 7:15. The vote was **unanimous for**.

The hearing closed at 7:16.

DeMoura hearing, 129/127 Hemlock Shore Road:

Mr. Foster opened the DeMoura hearing at 7:16 and read the legal ad into the record. Mr. Paul Spurling was representing Mr. DeMoura. Mr. Foster said that there appears to be some issue as to the property, the lots, and who owns what. Mr. Spurling replied that the paperwork they have should indicate that there is one lot under one name. Mr. DeMoura bought the adjoining property in order to have a conforming 20,000 square foot lot. Mr. Foster asked him to speak on the septic system. Mr. Spurling said that Jonathon Pink had been working with two clients on this in regard to a shared system. This system had been approved in March. Mr. Foster stated that the septic system would be on an adjacent property. Mr. Spurling replied that was correct. He asked how big that property was. Mr. Pink responded that it was 12,500 square feet. Mr. Foster noted that would then require an easement, which if approved would then deduct from the size of the lot making the lot more non-conforming.

Mr. Foster then read the May 21, 2009, letter from the Planning Board. They recommended disapproval of the petition for lack of information. Mr. Foster also read the May 21, 2009, letter from the Building Commissioner. He felt that the proposed plan would be a significant improvement to the conditions on both lots. Mr. Foster advised that the May 18, 2009, letter from the Board of Health was rather lengthy and appeared to be a recounting of all the facts as they knew them. Mr. Beneski stated that the Board of Health had approved a set of drawings from Foresight Engineering but had not approved the drawings from Azor that were now in front of them. There was also some conflict in regard to the numbering system and what lots were combined. Mr. Beneski noted that the approval was also dependent on DEP approval which they still did not have. Mr. Foster said this was another example of a petition that came to them too early. He was not sure, even if they had approvals, if they could knowingly create a situation that would increase the non-conformity of a lot.

Mr. Foster then asked why the septic system could not go on the 21,000 square foot lot. Mr. Pink replied that there is a stream on one side of the property, wetlands in the back, and the pond in the front. As Title V wants you to stay as far away as possible, to put two systems in was not practical. Mr. Foster said that maybe the lot is deficient for development. Mr. Spurling said that there are houses on the lot now. He then distributed pictures for the Board to review. Mr. Foster noted that those dwellings barely fit the definition of a house. He asked what the various homes presently had for septic systems. Mr. Pink replied that they had a shared cesspool. Mr. Foster said that was for the two-

bedroom and three-bedroom homes but what did the small cottages have? Mr. Spurling and Mr. Pink were unsure. Mr. Foster asked if the proposed leaching field that was on lot 129A or the northern property would serve the existing two-bedroom dwelling on that property. Mr. Spurling said that was what was proposed. Mr. Pink had been working to get the approval for the shared system, which would be two bedrooms for 129A and three bedrooms for 127. Mr. Foster clarified that this system was then for five bedrooms. Mr. Spurling said that was correct.

Mr. Foster asked what would happen if the other property owner, who was presently Mr. DeMoura's cousin, sold the property and it was no longer family. Mr. Pink advised that it was all set up and done by DEP. Mr. Beneski noted that was true and a fund would be established. There was actually a listing of items that must go through that they still do not have copies of.

Mr. Foster said that they were here to raze three small houses and build a new dwelling, but they had no information on this new house as far as a footprint or floor plan. Mr. Spurling responded that they had followed the application and supplied everything that was required. If, however, they needed more information, that was no problem at all. Mr. Beneski asked how big the proposed house was. Mr. Spurling replied that it was 2,195 square feet and the structures that are on the property now are over 1,200 square feet. The footprint is 1,100 feet which is smaller than what is presently there.

Mr. Pink asked if the Board was saying that they could not grant an easement of any type. Mr. Foster said that they could not. The bylaws prohibit them from making a non-conforming lot more non-conforming. They can do things like that when they believe it is not detrimental, but when they have a 7,000 or 10,000 square foot lot, they must look very carefully at whether it is more detrimental than what is there now. Mr. Spurling said that he did not know if it was possible, but how would the Board feel if Mr. DeMoura had this system on his own property. Mr. Foster said that the Board would be happier with that. Mr. Beneski said that then next door, the people who have the cesspool, would not be legal anymore and there would then be a problem finding another system for that lot. Mr. Spurling said that was the purpose of going with this shared system and that was what was in front of DEP. Mr. Foster suggested that they wait until they hear from DEP, in order to get further guidance from their findings. Mr. Foster said that they also want to see floor plans as well as a recommendation from the Conservation Commission.

Mr. Foster asked what other Board members thought. Mr. Levitt liked the idea but said that it would depend on what they could do about the easement. Mr. Foster asked if anyone present would like to speak for or against the petition. The residents of 119 Hemlock Shore Road were in favor of the petition. Mr. Pink then advised that DEP is in favor of shared systems and he did not think they would approve another system because they would be getting too close to the stream that is on the property. Mr. Foster noted the Zoning Board must look very carefully at continued expansion on the waterfront for many reasons. Although getting rid of these small cottages and putting in a system that works may be a real benefit, in general, they need to look cautiously at plans that come in

front of them because so many of them are ill suited for the size of the property and the land.

After further discussion, Mr. Foster advised that he felt it would be prudent to wait for DEP approval. He also thought that the petitioner should take action on the following items:

- The relevant set of drawings should be taken to the Board of Health to make sure that they are aware of what is being approved. They must also provide copies of documents that are missing according to the May 18, 2009, letter from Mr. Perry, the Health Agent.
- The lot numbering should be clarified in either a memo to the Board or some other type of vehicle so there will be an understanding among the Boards as to what lots are identified by what number.
- Floor plans need to be submitted.
- Meet with the Planning Board to determine what information they need in order to make a recommendation.

Mr. Foster asked if there was anything further. Mr. Dan Maus of 123 Hemlock Shore Road then spoke. He was in favor of the petition.

It was then agreed that they would continue until the June meeting. Mr. Curtis made the motion, seconded by Mr. Oliveiri, to continue the DeMoura hearing until June 18, 2009. The time would be at 7:15. The **vote was unanimous for.**

The hearing closed at 8:02.

Mr. Foster advised that the last item of business was a discussion regarding the extension of a Special Permit for property located on Annie's Path. He reminded the Board that in 2006 they had granted a Special Permit to build a house in an Industrial B zone to the then owner, Mr. Matthew Medeiros. They had also given, by letter, a one year extension to that Permit. It was his understanding that the Special Permit they gave was attached to the property but it lapsed because the extension was given to the owner. He felt that if the Board voted to do so, he could write a letter to the new owners that would extend that Special Permit. The new owners, Mr. Adrian Morgado and Ms. Sarah Cook, could then take that letter, which would have all the relevant information on it, to the Registry of Deeds to be recorded. A building permit could then be issued to them.

Mr. Foster noted that the extension for Mr. Medeiros will run out in June and once an extension runs out it cannot be renewed. However, if an extension is in place, you can extend it again. This would be a request to grant a new extension, with the relevant information on it, but in the new owner's name. Board members did not have any problem granting the request.

Mr. Oliveiri made a motion, seconded by Mr. Curtis, to grant Mr. Foster the permission to write the extension letter as had been stated. The **vote was unanimous for.**

Mr. Curtis made the motion, seconded by Mr. Levitt, to approve the Minutes of the April 16, 2009, meeting.

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

Mr. Curtis made the motion, seconded by Ms. Zimmerman, to approve the Minutes of the March 19, 2009, meeting.

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

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

Meeting adjourned at 8:10.