

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
January 17, 2008**

Members present:

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

Regular Meeting:

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

Roll called. Bills signed.

Mr. Foster reminded members that they would be continuing the LeBaron considerations and deliberations of their request to make modifications to their Comprehensive Permit. That will occur two weeks from tonight on January 31, 2008 at 7:30 in the Selectmen's office.

Robbins hearing-continued:

Mr. Foster reopened the Robbins hearing at 7:15. Mr. John Ashley was present to speak for the petitioner. He felt that the proposal was advantageous for everyone, the Town, the neighbors, and for Mr. Robbins. It will be more economical for Mr. Robbins to heat a home instead of a trailer, it will be more eye appealing for the neighborhood, and it will provide the Town with more taxes. What Mr. Robbins wants to do is replace the two-bedroom trailer that is there with a two-bedroom home with a deed restriction that it will never be bigger than that. He stated that they did have approval from the Conservation Commission and the Board of Health.

Mr. Foster replied that he did not think that they had received anything in writing from the Board of Health. Mr. Beneski noted that it had been passed last night provided it had DEP approval, ZBA approval, and Conservation approval. Mr. Foster said that if they went strictly by the bylaws they could not even consider this anymore until they had Board of Health approval. He felt that they needed either thumbs up or thumbs down with some definition from the Board of Health before they could render a Decision. He had looked at the plans briefly and did agree that it would be an improvement to the Stetson Street neighborhood. However, the plans that he had showed two bedrooms upstairs and a suspicious looking den downstairs that could be represented as a bedroom. Mr. Beneski also noted that there was a full bath on the first floor and he questioned if that was necessary.

Mr. Foster then read the September 14, 2007 letter from Gardner and Eunice Sherman of 17 Stetson Street. They were in favor of the petition and thought it would improve Stetson Street.

Mr. Foster said to Mr. Robbins, father of the petitioner and architect of the plan, that his objection was that the den or computer room looks a lot like a bedroom. It was discussed how they could move the stairs or eliminate the wall where the landing was so that there would be complete flow and that it could not be blocked off to make a bedroom.

Mr. Beneski stated that lately there were more people renovating homes and building new ones but that the Town gives the Board a certain amount of rules that they have to work with. You always want to make your plan the best you can, but the Board needs to determine how they can make it better for the Town. Mr. Beneski spoke about the water table and also how this is a tributary to a water supply. The home was increasing from 400 square feet to 1,700 square feet with a second floor and an attic area. This increase is 400% when you are only allowed 105% if the home burned down. Mr. Robbins replied that this was a relatively small house compared to what people are building and if you go much smaller than this it is not practical for the builder.

Mr. Foster asked what other members of the Board thought. Ms. Zimmerman agreed that a restriction was needed so that it would remain a two-bedroom home. Mr. Levitt liked the plan. Mr. Robbins noted that they realized that it is a small piece of property and they are trying not to over power it. They are very conscious of the land and the wild life and they do not want to disturb or harm either that piece of property or the neighborhood.

Mr. Foster asked if anyone present would like to speak for or against the petition. Selectmen Maksy thought that Mr. Beneski had brought up a good point concerning the water table. He advised that he controlled the dam and that he would not raise the water up much higher than it was now because it would affect him as well. He felt that the lot size was good and that they had seen a lot smaller in Town. He felt that this was a definite improvement for the neighborhood.

Mr. Curtis said that they need to come up with an idea to eliminate that den on the first floor. However, he was not too concerned with the full bath on the first floor especially if they move the stairway and completely open it up. Mr. Robbins said the reason for the full bath on the first floor is that Matthew is a landscaper and he felt that it would be easier to shower on the first floor rather than having to go upstairs.

Mr. Foster said that he was reluctant to suggest that they decide tonight. He would like to have clear cut decisions from both the Conservation Commission and the Board of Health. All members agreed with that but Mr. Beneski said that he was still not happy with the size and that he would be leery of approving it. Mr. Foster felt that it was not a tiny lot but that at 26,000 square feet it was a modest size lot and that this was a modest size cape. He felt that in general the Board was favorably inclined but that the petitioner

needed to go back to the Board of Health and get an approval letter and that the Board would need to review new plans.

Mr. Curtis made the motion, seconded by Mr. Levitt, to continue the Robbins hearing until February 21, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:40.

Lee hearing:

Mr. Foster opened the Lee hearing at 7:42 and read aloud the legal ad. Mr. Lee advised that the plans that he has tonight that he wants to present to the Board represent land that he owns at 60 Taunton Street. He is recently engaged and plans on starting a family. The house that he lives in now was built in 1937 and he has been led to believe that it has asbestos and lead paint. He would like to build a new house and upgrade the existing house.

Mr. Foster noted that the plans were dated 2002 and that they had previously been submitted and approved by the Board. The Board had been taken to Court and the Special Permit was then annulled. Mr. Foster stated that the lot in question, Lot B, fails zoning on two measures, the frontage and the required 160' upland circle. After reviewing the plan, members noted that they were unsure of what the petitioner was requesting.

Lori Schubert was present for the petitioner. She advised that Mr. Lee had been given that plan and that neither of them had been able to figure out what had gone wrong at the last hearing. They are more than willing to do whatever is needed so that Mr. Lee can put up a structure on the lot. Mr. Foster said that they may have made a mistake before in granting the Special Permit on a non-conforming lot because it had only 127' of frontage. Ms. Schubert noted that she did not think that this was the only plan that could be drawn up.

Selectman Maksy said that he was sitting on the Board at the time the plan was approved and that it had then been appealed by the Board of Selectmen. It was then that the applicant withdrew. He felt that the 160' upland circle could be met, but that the house would have to be moved. Mr. Foster said that maybe they needed to face the facts that Lot B shouldn't be built on as it does not meet the requirements.

Mr. Iafrate, the Building Commissioner, noted that the lot does have the proper frontage; the issue is the location and size of the upland circle. Selectmen Maksy said that the petitioner had agreed to not develop other lots because there had been additional land in the back. Mr. Foster said that they need to look at a set of plans that are current and make sense. Ms. Schubert said that she would take care of that.

Mr. Foster then read the January 10, 2008 letter from the Board of Selectmen which stated that the petitioner had resubmitted a plan which showed a 150' upland circle. They felt that a new set of plans would need to be submitted and that the petitioner was actually requesting a Variance not a Special Permit. The January 10, 2008 letter from the Conservation Commission noted that there may be wetlands in the northern section of the lot and that a wetland scientist should be contacted to determine that. The January 17, 2008 letter from the Board of Health said that the Board could not determine whether or not to approve or deny the petition due to insufficient information.

Mr. Foster said that they will need to satisfy the other Boards. He said that the Board was going to require a definitive answer or recommendation from ConComm and the Board of Health. Mr. Foster also stated that new plans are needed for the Board to review. It will also have to be considered if this petition is for a Variance or Special Permit.

Mr. Foster asked how long it would take to come up with new plans. Ms. Shubert thought by next month. She would also contact the other Boards. Mr. Foster said that the Zoning Board would need approval from those Boards before they seriously consider approval of the petition. Mr. Beneski noted that when they have a new plan they also need to go in front of the Planning Board. He felt that the Board of Health would need a perc test on the property to see if a system could even be put in the back. Mr. Foster noted as that will cost money, did he want to go through that expense and then come in front of the Board or did he want to go to the Board first. However, there could be no approval until the work was done.

Mr. Iafrate felt that before a petitioner comes in front of the Board, they should have a denial from the Zoning Enforcement Officer as it appears that the Board doesn't always know what they are looking at. He has been trying to find out what the procedure has been. If the petitioner is looking for a Variance for the upland circle perhaps going through Conservation and the Board of Health would not be the proper avenue to take as they might go through all that work only to be denied. He did not know if they did approvals with restrictions. Mr. Foster said that quite often they do, but the frustration of the Board is that increasing they are faced with terribly incomplete applications. Even when the petitioner has done the work, then the other Boards have let them down. Their posture has been if they have an incomplete package they do what they can and then tell the petitioner to complete the details.

Ms. Schubert responded that she was the one who advised Mr. Lee to submit the petition because she had been unable to figure out why it had been denied. Secondly, it has been her experience that if a lot cannot be subdivided it does not make sense to do all the rest of these things which are the requirements for a house going on the lot. Ms. Schubert said that one of the reasons for Mr. Lee appealing to the Board was so that he could get some input. Mr. Foster said that the original petition was appealed by the Board of the Selectmen and then the original petitioners withdrew. He suggested that some new and updated plans be put together that show the frontage and the upland circle.

Mr. Curtis noted that the Planning Board had stated in its recommendation letter that there was not adequate frontage at the setback line. There was a discussion about using the driveway for frontage. Mr. Foster asked members what they thought. Mr. Levitt said that they needed to see new plans. Ms. Schubert said that she would like the opportunity to redo the plans and submit them to the Board. Mr. Foster said that they do need a clear reading from the Planning Board as they are the ones that subdivide. The Zoning Board cannot give them a Variance on a piece of property that does not exist. Once it exists then they can decide if they will give them a Variance to build on it or not.

Mr. Curtis then made the motion, seconded by Mr. Levitt, to continue the Lee hearing until March 20, 2008. The time would be at 7:15. The vote was **unanimous for**.

The hearing closed at 8:30.

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

Meeting adjourned at 8:32.