

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
August 21, 2014**

Members present:

Donald Foster, Chair; David Curtis, Vice-Chair; Eric Levitt, Member; John Olivieri, Jr., Member; Joseph Urbanski, Associate Member; Janice Swanson, Associate Member; Jim Gouveia, Associate Member

Regular Meeting:

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

Roll called. Bills signed. Mr. Foster advised that in accordance with the Open Meeting Law he was announcing publicly that he and the secretary were making an audio recording of the meeting. LakeCam was making a video recording.

Wetherell hearing-continued, 1 Fern Avenue:

Mr. Foster opened the continued Wetherell hearing at 7:15. He advised that from what he had heard the status at the property was 99% completed. He then said that he had received an email from the Board of Health which essentially stated that what still needed to be done was to complete the drawings and get the As-Builts logged into the system. A final inspection by the Building Inspector and the Health Inspector was also required. He asked if that was correct and when Mr. Wetherell felt that those final items would be completed. Mr. Wetherell replied that they were working on the As-Builts. He felt that everything should be completed by the November meeting.

Mr. Curtis made a motion, seconded by Mr. Levitt, to continue the Wetherell hearing to November 20, 2014. The time would be 7:15. There was no further discussion. The **vote was unanimous for.**

The hearing closed at 7:16.

Bernardo hearing, 149 Staples Shore Road:

Mr. Foster opened the Bernardo hearing at 7:16 and read the legal ad into the record. Mr. Nelson Bernardo was present for his brother. Mr. Foster then read the June 18, 2014, letter from the Building Inspector. He also read the July 28, 2014, letter in which Mr. Darling stated that he did not feel that the proposed change would be substantially more

detrimental than the existing non-conformity. An email dated August 21, 2014, from the Health Agent, Mr. Perry, stated that although they did have an expired plan on file, at this time they did not know if this plan would be approvable until the Board saw current detailed engineered plans. There also might be a need for a new deep well unless the present shallow well could be proven of acceptable quality. Finally, the leaching field appears to have only enough area for a one-bedroom flow but the minimum design under Title V is for two bedrooms. Mr. Foster stated that it was apparent that the Board of Health had some serious reservations about this proposal. The Zoning Board would need their approval before they could consider granting any type of Permit. Mr. Foster noted that this was not an official finding from the Board of Health as their meeting had been cancelled but it was their perspective on this proposal.

Mr. Bernardo replied that there had been an informal conversation with the Board of Health. Their intention is to install a new septic system and deep well. They had discussed some different options with the Board of Health. They have also spoken with the Building Commissioner as well as the Conservation Commission. They did not realize that they needed their approvals first but they had no problem proceeding that way. Mr. Foster then read the August 20, 2014, letter from the Conservation Commission. They had stated that it is mandatory that they file with them and all work must be completed in accordance with an Order of Conditions. Mr. Foster said the Board would need this all this information before they would make any decision or finding.

Mr. Foster then referred to the plan. He advised that it appeared that there were two lots on either side of Staples Shore Road and they were comingled to form one lot. Mr. Bernardo replied that was correct. Staples Shore Road was a paved road which required them to get the sewerage from the house under the paved road and over to the proposed leaching field. He advised that their proposal was consistent with other houses in the neighborhood. Mr. Bernardo stated that there is a house there now but there is significant structural and water damage. They are proposing a concrete foundation instead of the series of columns that are presently there.

Ms. Swanson then noted that the proposed porch appears to be only seven feet from the pond. She also asked if the balcony was presently there. Mr. Bernardo replied that they were proposing adding that to the back. It would be approximately seven feet off the ground level. All the boards would have space between them so it would not hold water. It also might be within seven feet from the pond but Mr. Bernardo stated that they have not been able to establish the level of the pond as it is always moving. They will, however, be maintaining all the setbacks that they are able to verify. Mr. Foster noted that the balcony might be an issue that they would discuss but before they get into that discussion, they need an approval from the Board of Health.

Mr. Foster asked if there were any additional questions. There were none. He also asked if anyone present would like to speak for or against the petition. No one spoke. Mr. Levitt then noted that he would like to see a more detailed layout of the proposed home. Mr. Foster agreed. He said they would particularly like to see more information concerning the number of bedrooms or rooms that could potentially be converted to

bedrooms. Mr. Foster asked how long Mr. Bernardo felt it would take to consult with the other Boards. Mr. Bernardo thought two months would be appropriate.

Mr. Olivieri made a motion, seconded by Mr. Levitt, to continue the Bernardo hearing to October 16, 2014. The time would be 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:33.

Marzelli hearing, 7 Pine Bluff:

Mr. Foster opened the Marzelli hearing at 7:34 and read the legal ad into the record. Mr. Marzelli was present. Mr. Foster asked why he had applied for both a Special Permit and Variance. Mr. Marzelli replied that he was not sure which was one was appropriate and was leaving it up to the discretion of the Board. Mr. Foster said the definition of a Variance is quite narrow, and it is only allowed if there is a deficiency in the property. Mr. Foster then read the August 20, 2014, memo from the Conservation Commission. They had no concerns with the petition. The Board of Health email recommended that a proposed septic upgrade reserve area be shown to verify that they would not be creating their own hardship for the future and also for a possible legal consult to determine if building within an undeveloped way would intrude on access rights of any others within the subdivision, specifically anyone that needed access rights to Pine Cleft Way.

Mr. Foster then read the July 1, 2014, letter from the Building Inspector. Mr. Foster said that it seems that the problem is this is a small lot and Mr. Marzelli would like to build a garage within an undeveloped way. Mr. Foster asked if this was a right of way. Mr. Marzelli replied that it is a paper road. The undeveloped way is part of a subdivision that was put together in 1941. In 1986, one of the neighbors applied for a permit to construct a barn and it straddles that paper road. In addition, many of the paper roads have septic systems. The existing gravel ways are the two roads that provide access for his abutters. Mr. Marzelli noted in regard to the Board of Health recommendation that on his previous plan there is a reserve area for the septic system. Mr. Marzelli felt that he could put in a system in the undeveloped way, and he could also repair his system. This was a moot point to him.

Mr. Foster asked what the impact would be if he shifted the garage up ten feet. Mr. Marzelli responded that the impact would be more detrimental to the neighborhood. The access roads come into a V shape and the further the garage is into that, the more that vision is obstructed. This is also a wooded area and if he had to take down those trees, it would not be aesthetically pleasing to Pine Bluff. The area he is proposing is also adjacent to his other neighbors' garages. Mr. Foster noted that they could not consider aesthetics in a petition, but they could consider a safety issue. He then read the August 21, 2014, letter from Mr. and Mrs. Hotz of 9 Pine Bluff. They were in support of the petition. Mr. Foster also read the July 28, 2014, letter from Mr. Darling. He had noted that moving the garage closer to the merging ways could prove to be dangerous but some

slight modification to the location could be made still requiring some type of relief but not compromising safety.

Mrs. Connie Bebis of 16 Pine Bluff then spoke. She advised that is on the right of the first gravel road of the V on Pine Cleft. That is the only way to get in and out of her home. Right now that V is quite narrow and some larger delivery trucks are even unable to make that turn. She felt that if they brought that in any closer a fire truck would also not be able to make the turn. Mrs. Bebis then consulted the plan and indicated where she was on it.

Dennis Savas of 6 Pine Bluff stated that one of the issues that he had was a water issue which was prevalent in that area. He said that when the Board gave permission to build the house a swale was supposed to be put in to take some of this water away. His question was where the swale is, and how is it relevant to the garage. Mr. Marzelli replied that he did not recall that being a condition of his Permit. The only recommendation was to redesign the main bathroom so access was from the hallway. He also noted that he had put in a drainage pit to mitigate the run off from the neighbors above him.

Mr. Foster stated that he did not recall that condition but they could go back and look at the minutes to see if a swale had been addressed. He then asked Planning Board member, Mr. Zienkiewicz, if the Planning Board would be considered the authority on surface water and runoff. Mr. Zienkiewicz replied only in the case of a new subdivision. Surface water is addressed by the Building Inspector. Mr. Scanlon, the builder, said that it appeared to him that people are already flooding out their neighbors and they are asking Mr. Marzelli to solve everyone's drainage problems and yet other people are flooding him. Mr. Foster reiterated that drainage and water was not the purview of the Zoning Board.

Mr. Olivieri noted that the issue was the ten foot setback in the back but Mr. Marzelli could move the garage and then he would not even need to be in front of the Board. Mr. Marzelli said that he understood that as well after speaking to the Building Inspector, but that he was trying to also do the right thing for the neighborhood. Mr. Foster replied that their only concern was with the bylaws not with the preference of the neighbors. Mr. Scanlon noted that the compelling reason to keep the location where it is would be for safety reasons. That would be for access for fire trucks, delivery trucks for Mrs. Bebis, and the view would be more obstructed if the garage was moved closer into the fork in the road. It was those reasons that should play into any decision made by the Board.

There was then a discussion about pivoting the placement of the garage and moving it. Ms. Swanson noted that there was already a defined setback of 17.6 feet. Members discussed if moving the garage would enable that setback to be met. Mr. Foster felt that was a solution that the Board would consider. Would Mr. Marzelli consider this? He replied that he would.

Mr. Marzelli then asked for a straw poll of the Board of how they would vote on the petition as presented. Mr. Foster, Mr. Urbanski, and Mr. Levitt would not be in favor. Mr. Foster said that he would really like for the engineer to come back with modified drawings showing the garage rotated and moved to achieve a 17.6 foot setback or what had been defined by the house. Mr. Foster also suggested returning to the Board of Health to speak about the reserve area. Mr. Foster asked if Mr. Marzelli could be ready to come back in one month. Mr. Marzelli felt that he could.

Mr. Olivieri then made a motion, seconded by Mr. Levitt, to continue the Marzelli hearing to September 18, 2014. The time would be 7:15. The **vote** was **unanimous for**.

The hearing closed at 8:19.

Esposito hearing, 80 Pickens Street:

Mr. Foster opened the Esposito hearing at 8:20 and read the legal ad into the record. Mr. Esposito was present. Mr. Foster asked why he had also requested a Special Permit and Variance. Mr. Esposito replied that he had also not been sure which one was appropriate and was leaving it to the discretion of the Board. Mr. Foster explained again that the definition of a Variance is quite narrow and it is only allowed if there is a deficiency in the property.

Mr. Foster then read the August 12, 2014, letter from the Building Inspector. It advised that a shed had been permitted in 2003. An inadvertent error had been made while determining the side setback and after a recent survey it had been discovered that the shed setback was at eight feet. As the Statue of Limitations had expired, this would now be considered the existing setback. The Planning Board had no opinion concerning the petition. The email from the Board of Health recommended that an engineering As-Built plan be performed after construction to verify the setback is met and to update their records. The August 20, 2014, letter from the Conservation Commission advised that the project had been approved with conditions. There were considerable wetlands on the property and this appeared to be the only available area that would not impact those wetlands.

Mr. Levitt noted that he was an abutter and that he would be abstaining from any vote on this petition. Mr. Esposito then read the letter that he had submitted with his petition into the record. Mr. Esposito explained that the Conservation Commission had walked the property and this is the place that had been determined to be the best place for the garage. It will be a low profile, single story garage. Mr. Foster stated that the garage would be no closer to the property line than the existing shed. Mr. Esposito said that was correct. Mr. Foster asked if there were any comments or questions from the Board. Mr. Olivieri said that it appeared that he was not further infringing into the setback as in the previous petition. Mr. Foster replied that as he understood it 11 years ago Mr. Esposito thought that he had the correct setback but through no fault of his own or intention, there was an error made. Mr. Esposito said that was correct and the error was only discovered in

February of this year. There is a stone wall monument that the property line straddles and apparently at some point it veers off.

Mr. John Jenkins of 82 Pickens Street then spoke. He advised that he was the property owner that discovered this error. He had been inquiring about a home equity loan and extending the back deck of his home and the bank had questioned the property lines. When the initial shed went up he felt that it was quite close but had assumed that everything had been done within the law. Then a large Quonset Hut was put up which is practically on the property line. Trees were also taken down. He then called the Building Inspector who came out to the property. A letter had been sent as the Quonset Hut had been put up without any Permit. He did not understand how that is allowed to be on the property line. They were definitely against this petition and did not see any hardship. Mr. Foster said that all the Board could consider was the requested waiver from the setback.

Mr. Esposito noted that the Quonset Hut would be coming down. Mr. Foster asked what the shed was used for. Mr. Esposito replied that it was for the storage of tools and their riding lawn mower. Mr. Foster asked if he would move those articles and take down the shed. Mr. Esposito responded that they did not plan to take down the shed. Mr. Foster stated that he was hoping the shed might be removed with the addition of the garage. When possible, they try to negotiate compromises in certain situations.

The plan was then consulted to see if the garage could be placed in another location. Mr. Esposito stated that Nancy Yeatts had walked the property and determined that due to the extensive wetland areas this was the best area to locate the garage. Mr. Foster asked what other people thought. Mr. Olivieri stated that at the last hearing it was discussed that the established setback could be used as long as it was no more non-conforming. Mr. Foster replied that the distinction is that lot was 32,000 feet and this one was close to 70,000 feet. Mr. Jenkins then asked why it was now possible to construct another building within the setback. Mr. Foster explained that if there is a structure on the property that intrudes into the setback as the shed does, that defines the new setback line on that one property line.

Mr. Olivieri asked what would happen if they granted the Special Permit but they there was a condition that the petitioner would be required to put in and maintain some type of vegetation. This would be a help in blocking the view of the garage from the neighbor. Mr. Esposito said that he could plant some trees if that is what the Board desired.

Mr. Lawson Billings of 4 Jamies Way stated that this time of the year you cannot see anyone's house or buildings. In the winter, there might be some limited visibility. He did not agree with the discussion of the loss of view. He noted that they have both been great neighbors and he hoped that they could all get along.

Mr. Foster then asked Mr. Jenkins to come up and consult the plan. Mr. Jenkins then indicated where the shed was in relation to his property line and where the garage was. It

was found that the garage would actually be further away from the house than the shed presently was.

Mr. Foster reiterated that this Board was not concerned with the aesthetics or visibility. They are concerned about the setback. The question is if Mr. Esposito can have that eight foot setback or not. Although some of the issues that have come up have been regrettable and unfortunate, the Board has to determine if he can intrude into the 20 foot setback. Based upon what they have done in the past and because of the unfortunate misplacement of the property line that created the eight foot setback for the existing shed, he thought the answer was yes.

After further discussion, Mr. Foster asked Mr. Jenkins if he would object to the garage if it was placed 12 feet further from the property line. Mr. Jenkins replied that he would not be able to formally object but that he would not like it. He considered this a visibility as well as a building code issue.

Mr. Foster then asked if anyone else would like to speak. Ms. Signori of 85 Pickens Street had no problem with the petition. She stated that nothing could be seen from the street. Mr. and Mrs. Krone of Jamie Way had sent an email that was read into the record. They had no problem with the petition. Ms. Adams of 86 Pickens Street was also not opposed to the petition. She had not even realized that there was a shed on the property.

Mr. Olivieri made motion, seconded by Mr. Curtis to deny the request for a Variance for an eight foot setback for a garage.

VOTE: Mr. Foster, Mr. Curtis, Mr. Olivieri, Mr. Urbanski, Ms. Swanson – **AYE**
Mr. Levitt – **ABSTAIN**

Mr. Olivieri then made the motion, seconded by Mr. Curtis to grant a Special Permit for an eight foot setback for a garage with the following condition:

1. The property owner will plant a visual barrier of some type of evergreen that will block the view of the garage from the neighbor.

VOTE: Mr. Foster, Mr. Curtis, Mr. Olivieri, Mr. Urbanski, Ms. Swanson – **AYE**
Mr. Levitt – **ABSTAIN**

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

The hearing closed at 9:18.

Mr. Foster adjourned the meeting at 9:19.