

**Zoning Board of Appeals  
Lakeville, Massachusetts  
Minutes of Meeting  
September 16, 2010**

**Members present:**

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

**Regular Meeting:**

Mr. Foster opened the regular meeting at 7:05 p.m. He advised that in accordance with the Open Meeting Law he was announcing publicly that he was making an audio recording of the meeting.

Roll called. Bills signed.

Mr. Beneski made the motion, seconded by Mr. Curtis, to approve the Minutes of the August 19, 2010, meeting. The **vote** was **unanimous for**.

Regarding the Minutes of the Meeting of February 18, 2010, Mr. Curtis noted that motions made by Mr. Olivieri had mistakenly been attributed to Mr. Veary who was not present. Mr. Curtis then made the motion, seconded by Mr. Levitt, to approve the Minutes of the February 18, 2010, meeting as amended.

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

**LeBaron Residential LLC hearing – continued:**

Mr. Foster opened the continued LeBaron Residential LLC hearing at 7:15. He read aloud the September 16, 2010, letter from Atty. Mather. Atty. Mather advised that they were prepared to make a presentation to the Board this evening, but were asking for a continuance at the request of Atty. John Libertine, representative of the individual town house owners. Mr. Foster then read the September 15, 2010, letter from Atty. Libertine. He felt that the parties were continuing to work cooperatively but he still needed some additional time to review the plan with the owners and solidify an agreement.

Mr. Olivieri made the motion, seconded by Mr. Curtis, to continue the LeBaron Residential LLC hearing until October 21, 2010. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:17.

**Adams hearing, 90 Precinct Street/1 Fern Avenue – continued:**

Mr. Foster opened the continued Adams hearing at 7:18. He advised that they left this hearing looking for some level of validation that the property had been used within two years for the purposes it is used now. Atty. Michael Norris said that they have presented evidence that supports that view. The Building Inspector has made a determination that this is a continuing use of this property. Mr. Foster stated that he did not have that letter. He noted the concern was that, on the one hand some say the property has been used, and others say the property has really been idle for a number of years.

Atty. Norris replied that as long as the continued use of the property within that time was determined, the Variance would still remain in affect. Mr. Foster felt there was a large grey area that constituted what the definition of continuance use was. If it was used every day by Mr. DeMoura until Mr. Wetherell started his towing business, that might be very clear. If cars were parked on the property and Mr. DeMoura stopped in every two or three months, that would be a different interpretation of continuous use. If cars were left there for five years without anybody setting foot on the property that would be a third interpretation. As he understood it, now the intent is to use this as an every day repair shop.

Atty. Norris said that he has discussed with Mr. Wetherell what he can and cannot do with the property. His understanding is they take cars in, take off the tires and catalytic converters, and then sell the vehicles off. The repairs that are done are minor. This is consistent with what a tow company would do. Mr. Foster disagreed and stated that sounded more like a scrap operation. Atty. Norris replied that they do store vehicles there when people don't want them, and they then dispose of the vehicle. They are not stripping all the parts off these cars. Mr. Foster said that he was under the impression that part of Mr. Wetherell's request was to perform light repairs. Atty. Norris said that was correct. Mr. Foster stated that they then had several uses of the property. One is for the towing and disassembly of cars to be scrapped, the next is maintenance to ramp trucks, and the third is light repairs to clients or customers' cars. Mr. Foster asked if that was accurate. Atty. Norris replied that it was.

Mr. Adams felt that the use of the property had completely changed. Mr. McGillis agreed, and noted that this is a very active business in a residential zone. Mr. Foster advised that bylaws do permit to continue the non-conforming use in certain circumstances and they are trying to determine those circumstances now. Mr. Foster asked Mr. DeMoura, the previous owner of the property who was present, to give the Board a background of the property. Mr. DeMoura responded that he would put cars out there, and then he would junk them. He did do repairs approximately 15 years ago. Mr. Foster clarified that Mr. DeMoura used the property as interim storage and he would pick up a car to be scrapped and then afterwards would get rid of the car. Mr. DeMoura said that was correct. Mr. Foster asked how often that was. Mr. DeMoura replied probably

one or two a month. Mr. Foster said from this information his interpretation of the definition of the use of the property was low intensity. It included interim storage with no disassembly or repairs of cars.

Mr. Foster asked the petitioner how he would feel about Mr. Wetherell requesting a Special Permit for the continued non-conforming use where they could collectively define the limits on the use of the property. Mr. Adams said that first he did not want to see any cars out for sale on Precinct Street. He also noted that there were no sanitary facilities at the building. He also thought that the lot should be split and a deed restriction placed on the residential piece. Mr. Foster replied that all the Board could do was either agree with the Building Inspector or agree with the petitioner meaning they could either make a decision tonight or they could wait for a Special Permit application to be filed for a continued non-conforming use. This would allow them to collectively put some measure of boundaries of what can and cannot be done. Atty. Norris advised that he did have the applications for the Special Permit but the engineer is still working on the plans which he needed before he could file with the Town Clerk. He would represent that they will submit all the applications and request the Board to continue this hearing until that date so they could resolve this.

Mr. Adams advised that he did not mind continuing the hearing but he wanted to make sure that Mr. Wetherell realized what needed to be done and if he was committed to completing it all. Mr. Wetherell explained that they were in a bad economy, and he was not sure what would be required of him. Mr. Foster replied that the Board did understand, but if he was going to run a business there he would have to subscribe to certain requirements. Part of the reason he is facing this dilemma is because he wants to use the property in a different way from how it was used preceding him.

Mr. Adams agreed to continue until the November meeting but at that meeting he wanted to see the decisions from all the major boards as well as the application for the Special Permit filed. Atty. Norris replied that he would meet with these gentlemen and his client prior to that time and see if they can work out some sort of understanding.

Mr. Beneski then made the motion, seconded by Mr. Curtis, to continue the Adams hearing until November 18, 2010. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:46.

#### **Velozo hearing, Ram Island, M49-B1-L1:**

Mr. Foster opened the Velozo hearing at 7:47 and read aloud the legal ad. Mr. Foster asked Mr. Velozo to clarify what kind of structure he was proposing. Mr. Velozo replied that the Board of Health had called it a camp and that it would just be a structure with the intent of being able to get out of the weather. He did have sign offs from the Board of Health, Conservation, and National Heritage. Mr. Foster then read the June 23, 2010,

letter from the Building Commissioner detailing the reasons the permit had been denied. Mr. Foster next read the September 15, 2010, memo from the Board of Selectmen. They agreed with the Building Inspector. The September 16, 2010, letter from the Board of Health stated they had no problem with a day structure but they would not allow any overnight stay or any toilet facilities. The September 9, 2010, letter from the Planning Board recommended disapproval of the petition.

Mr. Velozo noted that originally he did have a sign off from the Board of Health but that it was the Conservation Commission that was insisting on a composting toilet. He felt that they were overstepping their authority. Mr. Foster said that the problem is someone builds a shed or other building, the property is sold, and the building turns into a bedroom. He would suggest that he seek permission to build a platform and then put up a tent.

Mr. Foster then discussed the lack of frontage. He advised that the reason for the bylaw was to provide for safety vehicles but this was an island. Regarding the upland circle, this was instituted to eliminate pie-shaped lots and have square rectangular lots. In his opinion, this was meaningless in terms of an island. He felt these were moot points.

Mr. Velozo noted that the reason he was requesting permission to build a structure was that there had been a lot of vandalism on the island and his hope was having a structure would alleviate some of this. Mr. Foster said that he did not see the logic of that unless the vandals saw people in activity or dogs around, and that a structure would not prevent vandalism. Mr. Curtis asked if the structure would be closed in. Mr. Velozo said that it would. Mr. Foster said that the issue here is this is an accessory structure which has to accompany an existing structure and there is no home here. Mr. Curtis suggested putting up a temporary screen house and then discarding it after the season was over. Mr. Foster agreed that he could ask the Building Inspector for a permit for a platform and then put up something like a screen house. Board members then discussed the limited options that they felt were open to Mr. Velozo.

Mr. Foster asked if anyone present would like to speak for or against the petition. None spoke.

Mr. Beneski then made the motion, seconded by Mr. Curtis, to deny the petition.

Mr. Foster asked if the Board would like to amend the denial to be without prejudice as that would allow the petitioner to return to the Board before the two year time period.

Mr. Beneski agreed and made the motion to amend. It was seconded by Mr. Levitt.

The vote was **unanimous for**.

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

The hearing closed at 8:15.

**CVS/Station Street Development LLC hearing, 11 Main Street:**

Mr. Foster opened the CVS/Station Street Development LLC hearing at 8:16 and read aloud the legal ad. Mr. McCoy of Poyant Signs was present. He advised that what they were presenting had been proposed in 2009 over approximately three meetings with the Planning Board. He believed there should be some type of recommendation from them. They did get to that point, and this is the package they felt was appropriate for that site.

Mr. Foster then read the September 15, 2010, letter from the Board of Selectmen. They recommended that the Zoning Board uphold the Town sign bylaw and be consistent with new businesses. The September 9, 2010, letter from the Planning Board recommended disapproval of the petition. Mr. McCoy stated that he was a little confused by the letter from the Planning Board as they had negotiated the sign package down to this level. On June 8, 2009, he left that meeting with this sign package approved.

Mr. McCoy then explained the sign package. He has three sets of CVS letters on the building. These are 36 inch letters on the North elevation and the East elevation. The third set of letters is 24 inch in height and they are on the South side of the building. The total square footage on the North side is 75 square feet. Mr. Foster asked why so many signs were needed. Mr. McCoy replied that there were many concessions made at the Planning Board level for this style building, which is not a pro-typical style CVS building. When you do that, you have to reinforce the brand in other ways. He also noted that the Planning Board said that they would not count the signage for the drive-thru.

Mr. Foster advised that it appeared that there are four signs that are building mounted and the drive-thru. There are six traffic signs and a pedestal out front. Mr. McCoy said that was correct. Mr. Foster wanted to point out that Walgreens had a similar layout and his position would be to ask CVS to maintain the same standard set by Walgreens. He felt there should be a level playing field. Mr. McCoy noted that he was still puzzled over this. As far as he knew, this sign package had been intensely negotiated and approved by the Planning Board. He then discussed some of the changes that had been made from the original plan.

Mr. McCoy noted again that this signage was to be allowed because of the concessions that CVS had made in the building design. Mr. Foster replied that he was not willing to accept the argument that an early American or Cape style building is a non-branded style for CVS. These buildings may not be typical, but they are around. He did not agree that just because they were willing to use a more attractive building that the Board had to give them bigger signs. Mr. Foster suggested that they talk about a compromise that makes sense. Mr. McCoy said that his expectation right now was to continue this as he was not happy with the letter that came from the Planning Board.

Mr. Olivieri said he would be curious about the discussions with the Planning Board, and if they negotiated putting up a more suitable and expensive building and then approving additional signage. They do not have the right to do that. Mr. Levitt agreed and would

also like to know what had been discussed at those meetings. Mr. Foster encouraged Mr. McCoy to go back to his client and see if they would be willing to meet the size standards set by Walgreens. He felt that the traffic signs might be okay but his concern was that the building signs were too large.

After further discussion, Mr. McCoy stated that he would return to the Planning Board and get the Minutes from those meetings. At this point, he would like to request to continue this hearing. Mr. Foster replied that he would like to recommend the following: go back to the Planning Board and have them clarify their posture, next go back to the client and inform them that the Zoning Board does not like the size of the on-building signage and see if it can be reduced to the Walgreens standard.

Mr. McCoy said that he did have one more question concerning placing graphics in the lower portion of the windows. Mr. Iafrate had been uncertain as this was not addressed in the bylaw. After looking at what was proposed, members felt that the letters did make it a sign.

Mr. Olivieri then made the motion, seconded by Mr. Levitt, to continue the CVS/Station Street Development LLC hearing until November 18, 2010. The time would be at 7:15. The **vote was unanimous for.**

The hearing closed at 8:54.

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

Meeting adjourned at 8:55.