

**Zoning Board of Appeals  
Lakeville, Massachusetts  
Minutes of Meeting  
November 18, 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 7:03 p.m.

Roll called. Bills signed. Mr. Foster advised that in accordance with the Open Meeting Law he was announcing publicly that he, as well as the secretary, was making an audio recording of the meeting.

Mr. Foster advised that they did have a few small items to cover before the hearings began. Several months ago they had taken action on a petition submitted by Jerry Velozo. They denied the petition, without prejudice, but unfortunately that part did not make it on the Decision papers. They can correct that error if the Board votes to authorize him to issue revised Decision papers. Mr. Foster asked for a motion.

Mr. Beneski made the motion, seconded by Mr. Curtis, to authorize Mr. Foster to issue a revised corrected copy of the Velozo Decision. The **vote was unanimous for.**

Mr. Foster said the second item was their yearly request to renew the existing Comprehensive Permit for Bridge Street. The property was currently under agreement to be purchased by Mr. Robert Poillucci. Mr. Beneski asked if because the project had been delayed for so long, should the future owners come in and explain what they now plan to do. Mr. Foster felt that they should just extend the Comprehensive Permit because if it lapses; the process to start the application over was very long and expensive.

Mr. Foster then read the first part of a letter from the Scituate Federal Savings Bank dated November 8, 2010. It stated that the property had been purchased at auction and that Mr. Robert Poillucci and Mr. John LeBlanc would be developing the property and taking title some time before the end of the year. The bank requested the Board take action on the extension of the Comprehensive Permit at its November 18, 2010, meeting. Mr. Foster stated that personally he did not feel why they should not extend the Permit.

Mr. Curtis asked if they could extend the Permit but with some type of language that if the plans are changed, they must return to the Zoning Board. Mr. Foster said that they

would be taking over the existing Comprehensive Permit, and it could not be modified unless the Board approved any changes. Mr. LeBlanc, who was present, advised that they did intend to remain with the 12 unit project. They might make some minor modifications and would probably like to return back to the Board at their December meeting, but they have not yet closed on the property. Mr. Foster noted that they have extended this Permit for the last three years. Mr. Beneski stated that one problem that he had was this project did not even have a water supply. Mr. LeBlanc replied that they did have a letter from the Board of Selectmen approving water for this site from the Town of Lakeville.

Mr. Foster advised that he was in favor of moving ahead and would like to vote on this matter tonight. He asked Mr. Olivieri to be a voting member as Mr. Veary was not present.

Mr. Curtis then made the motion, seconded by Mr. Levitt, to extend the Comprehensive Permit for Six Bridge Street until December 31, 2011. The **vote** was **unanimous for**.

Mr. Foster noted that the Bank was also requesting approval of a name change. Mr. Edwin Beck from Scituate Federal Savings advised that the Permit is in the name of 6 Bridge Street Realty Trust, LLC but it is actually known as Six Bridge Street Realty Trust. It was agreed that a motion was not required.

#### **LeBaron Residential LLC hearing – continued:**

Mr. Foster opened the continued LeBaron Residential LLC hearing at 7:15. He read aloud the letter from Atty. Robert Mather who advised that the consultants had not yet completed the reviews that had been requested by the Board. He therefore, asked that the hearing be continued until the following month.

Mr. Curtis made the motion, seconded by Mr. Olivieri, to continue the LeBaron Residential LLC hearing until December 16, 2010. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:16.

#### **Davis hearing, 113 Nelsons Grove Road – continued:**

Mr. Foster opened the continued Davis hearing at 7:16. Mr. Mike Barlow, builder for the project was present. He requested that the hearing be continued until the following month.

Mr. Curtis made the motion, seconded by Mr. Olivieri, to continue the Davis hearing until December 16, 2010. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:16.

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

Mr. Foster opened the continued Adams hearing at 7:17. Atty. Michael Norris advised that they planned on discussing the filing of the Special Permit, and they had plans drawn up that show the property so it would be clear as to what it is. Atty. Norris then displayed the plan. He advised that there are two areas and it was discovered that the garage is not in the area originally where it was thought to be, but is adjacent to that area. If this area was created as a lot, he would have to return to the Board and request a Variance as this lot is less than 70,000 square feet. Atty. Norris advised that he had gone to the Building Inspector who has signed off on both applications, but he hasn't filed yet because he wanted to review these issues with the Board. If it is left the way it is, it leaves the pre-existing, non-conforming use as part of the big parcel but if he wants to make it a lot, then they would need a Variance for the square footage of the lot.

Mr. Foster said that they would have to first consider the petition in front of them which was an appeal of the Building Inspector's decision. He advised that he did not speak for his colleagues on the Board, but that he felt that the use had substantially changed from what was grandfathered. He felt that tonight they should focus on that issue. Mr. Foster also asked Atty. Norris to check the bylaw regarding Variances. He noted that the Board rarely granted them, and the hardships that they do consider are to do with some sort of deficiency in the topography of the land, such as a ledge or precipice.

Atty. Norris noted that at the last meeting they indicated that they would try to talk to Mr. Adams and Mr. McGillis in order to establish and agree on some conditions. He repeatedly tried to call them and set up some type of a meeting, but neither one contacted him in response so they could not come to any type of understanding or agreement. He felt that the Board had the authority to either approve the decision of the Building Inspector and impose their own conditions or impose them through a letter or agreement with them. This would accomplish what they wanted. Mr. Foster said that this is what should have been done first. Atty. Norris did not agree. He replied that Mr. Wetherell went to the Building Inspector, who did an investigation and made his own determination that what he was doing and what he wanted to do was allowed. Mr. Foster responded that the Building Inspector had based his determination on the description of how the property had been used. Atty. Norris stated that Mr. Iafrate had performed his own investigation and Atty. Norris gave him the information that he had showing that the property had been used all these years and the pre-existing use had never stopped or been abandoned.

There was then a discussion about the expansion of the business. Mr. Foster said there is always a question about what constitutes an expanded use. In his opinion, this expansion has occurred and this is in a residential zone. Atty. Norris said that he felt that the Board wants to place some restrictions and limits on the property, all he was suggesting was that he felt that the Board had the authority to do this now instead of going all the way back to

a Special Permit. Mr. Foster did not agree. He felt the means to do this was through the Special Permit which addressed the issue of pre-existing, non-conforming use.

Mr. McGillis then explained that he had been too busy to meet with Atty. Norris. He said that he had driven by the property and seen eight vehicles and two ramp trucks in front of the building. He felt that they were losing sight of the fact that this was a residential neighborhood. They are now re-grading the property instead of focusing on the issues at hand such as the Special Permit. Mr. Foster asked members what they wanted to do. Mr. Levitt noted that he did not see any good faith effort on the part of Mr. Wetherell. Mr. Adams agreed. He felt that the Permit application should have already been filed. He also noted that their biggest hurdle would be with the Board of Health. Why would they re-grade the property when they haven't even addressed that major issue? Mr. Olivieri stated that although there was not a lot going on at the property, there was something. He did not want to stop everything and was not comfortable overturning the Building Inspector's decision.

Mr. Foster replied that Mr. Wetherell certainly knew this was coming but they have not really seen any action on his part to down scale this business. At some point, they would need to see some show of good faith. Mr. Wetherell responded that he has only been trying to clean up the property, which was an eyesore, and make it better.

There was then a discussion concerning the ramp trucks being in front of the property. Atty. Norris stated that he has had a number of conversations with Mr. Wetherell regarding the ramp trucks. Every time he has been there, the ramp trucks are always in the back. Everything is unloaded behind the building. He made a good faith effort to try to resolve this issue with these gentlemen; they are the ones that chose not to. He called each one at least three times but never received a return call. Mr. Foster stated that was unfortunate but it had no bearing on what they were discussing tonight. They are not mediators, but they are trying to decide on a petition regarding Mr. Iafrate's decision. Atty. Norris wanted to reiterate that Mr. Wetherell did go to the Building Inspector who issued him a Permit. He did go through the proper channels. If he had been told he couldn't do work there, then he wouldn't be doing work there, but that had not been the case.

Mr. Foster asked Mr. Adams if he would like to continue in order to see if the application for the Special Permit was submitted or did he want a decision. Mr. Adams said he would rather see that a decision was made tonight. They have had three months to file for a Special Permit. Mr. Foster clarified that the decision tonight was not on the Special Permit but was to decide on the petition before them which was to overturn or not overturn Mr. Iafrate's decision.

Mr. Foster asked what members thought. Mr. Curtis said that he was satisfied with what had been discussed and could make a decision. Mr. Urbanski said that the only question he had would be for the future and what type of restrictions they would want to consider. Mr. Foster replied that they could talk concerning that. He would like to think that they are headed toward a Special Permit, which allows Mr. Wetherell to run a business in a

controlled fashion, but they haven't seen substantial action in that direction yet. Ms. Zimmerman asked depending on their decision what Mr. Wetherell would do in the meantime. Mr. Foster responded that if they were to agree with the petitioner and overturn Mr. Iafrate's decision, they would then become the Zoning Enforcement Officer and it would be their right if they chose to issue a Cease and Desist Order beyond the pre-existing use. Mr. Foster said that generally with a Cease and Desist Order, it allows a length of time for the owner to come into compliance. He was only projecting, with this being the holiday season that they might want to have an extended length of time to allow for the required work to be completed. He felt that if that was the path they pursued, it would be clear what the end result should be and that the property owner would take the appropriate actions.

Mr. Foster then asked if anyone present would like to speak for or against the petition. No one spoke. Mr. Beneski then asked for further clarification concerning a Cease and Desist Order. Mr. Foster replied that if they did issue a Cease and Desist it would take effect in  $x$  number of days. Mr. Wetherell could then continue to do what he is doing up until those  $x$  days, but when it expired he would then have to do what they have said he must do. If not, then they could then take legal action. There was then a discussion about having a balance between the business and the residents.

Mr. Beneski then made the motion, seconded by Mr. Curtis, to grant the petition and overturn the decision of the Building Inspector.

**VOTE – Mr. Beneski, Mr. Curtis, Mr. Levitt, Mr. Foster - AYE**  
**Mr. Olivieri – NAY**

Mr. Foster advised that the Board is now the Zoning Enforcement Officer and it is their job to determine what to do next. They could choose to do something now or table it until a later date. After further discussion, Mr. Foster recommended tabling discussion until next month and then making a decision.

Mr. Beneski then made a motion, seconded by Mr. Olivieri, to table discussion on how they wanted to proceed until their meeting next month. The date was December 16, 2010. The **vote was unanimous for.**

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

The hearing closed at 8:04.

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

Mr. Foster opened the continued CVS/Station Street Development LLC hearing at 8:05. Mr. Richard Poyant was present. Mr. Foster advised that at the last meeting, the Board had sent Mr. McCoy away with a strongly worded request to figure out how to make these signs conform to their bylaw as Walgreens had done. Mr. Foster then read the

November 15, 2010, letter from the Planning Board where it was noted that previously the Board had agreed to recommend certain changes. Mr. Foster then asked Mr. Poyant to explain why he was here.

Mr. Poyant advised that Mr. McCoy had worked with the Planning Board to put together a sign package that they approved of and now there seemed to be some confusion about that. He had the minutes from those meetings and he then read an excerpt from the June 8, 2009, meeting into the record. It had been stated that they, the Planning Board, would recommend the changes that had been made to the sign package to the ZBA, and the vote had been unanimous. Mr. Foster responded that he thought the concern that they had was not the number of signs, or the smaller signs, but rather the sign on the peak which was quite large. The bylaw was 32 square feet, could Mr. Poyant meet that? He noted that Walgreens had.

Members then reviewed what was allowed by the bylaw. They then discussed reducing the size of this sign. After further discussion, it was determined that the sign could be reduced to 33.41 square feet, but anything less than that would require the use of a non-standard sized letter. Mr. Poyant noted that they are using a back lit style of lighting which was not typical and this would also reduce the light visible from the sign. It was then agreed that relief of 33.50 square feet could be given on Sign A.

Mr. Foster advised that their next consideration would be the remaining number of signs and their size. Mr. Foster then read the bylaw regarding directional signs. These signs were three feet but Mr. Foster noted that if they were reduced in size to two feet, they would then be exempt and not have to be considered. Mr. Poyant advised that they could be reduced but they would then be less legible and therefore, less safe. Mr. Foster said that it appears that the dimension of the signs is considerably larger than the sign portion of the structure itself. The sign is 30" x 15" but the letters are probably only 20" x 12". Could the lettering part be no greater than two feet? Ms. Linda Grubb stated that in order to meet the bylaw the sign could not be a total of more than two feet. Mr. Poyant wanted it noted that the sign package had been reduced from the original plan, and that they also had reduced the size of the pylon sign to a smaller size than is allowed by right. This was negotiated through the Planning Board. Mr. Foster asked if these exit and enter signs could be reduced but the letters could be enlarged. He felt that the larger signs actually block the view of the driver. After further discussion, Mr. Poyant agreed that they would reduce the directional signs to no more than two feet in size.

Mr. Foster reviewed that so far they had taken care of six signs, two enters, two exits, and two drive thrus. They have also discussed two signs on the peak of the building and agreed that they would go with 33.50 square feet. Discussion continued with the additional relief that was sought. It was finally agreed that six signs would be allowed and the largest of the signs, Sign A and Sign B, would not exceed 33.41 square feet. The directional signs would meet the bylaw and would be reduced to two feet.

Mr. Olivieri then made the motion, seconded by Mr. Curtis, to approve the petition with the following changes and restrictions:

1. A total of six signs will be allowed.
2. The size of the largest signs, specifically shown on the plan as Sign A and Sign B shall not exceed 33.41 feet or the size of Sign C.
3. The directional signs will all be no more than two feet in size.

**VOTE – Mr. Olivieri, Mr. Curtis, Mr. Levitt, Mr. Foster - AYE**  
**Mr. Beneski – NAY**

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

The hearing closed at 9:10.

**Betts/Peck hearing, 5 Waterview Drive – continued:**

Mr. Foster opened the continued Betts/Peck hearing at 9:11. Mr. Foster then read the November 17, 2010, letter from the Board of Health into the record. The Board of Health considered the existing septic system as passing and acceptable for a two bedroom dwelling, and adequate for the rebuilding of a two-bedroom dwelling on the site. Mr. Foster also read the letter from Mr. Robert E. Brady, an abutter at 12 Hilltop Acres into the record. Mr. Brady was not opposing the petition. Mr. Foster looked at the plan and noted that presently there was a 6 ½ foot setback on one side and almost 20 feet on the other. On the new plan, the setback was approximately 11 ½ feet on either side.

Mr. Foster then asked members what they thought of the plan. Mr. Curtis advised that at the last meeting they had been concerned about the attic space. It was advised that there would be no stairs going up to the attic. Mr. Foster felt that they could place a two-bedroom restriction with no further expansion on the decision. He noted that the Conservation Commission still needed additional information before they could make a determination. He felt this could also be handled with a restriction.

Mr. Olivieri then made the motion, seconded by Mr. Levitt, to approve the petition with the following restrictions:

1. The petitioner must receive Conservation Commission approval.
2. The home will remain a two-bedroom dwelling with no further expansion.

The vote was **unanimous for**.

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

The hearing closed at 9:20.

Mr. Curtis made the motion, seconded by Mr. Levitt, to approve the Minutes of the September 16, 2010, meeting. The **vote was unanimous for.**

Mr. Beneski made a motion, seconded by Mr. Curtis, to approve the October 21, 2010, Minutes of the Meeting. The **vote was unanimous for.**

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

Meeting adjourned at 9:30.