

**Zoning Board of Appeals  
Lakeville, Massachusetts  
Minutes of Meeting  
November 20, 2008**

**Members present:**

Donald Foster, Chair; David Curtis, Vice-chair; 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 welcomed Joseph Urbanski to the Board as an Associate Member. Mr. Foster advised that they did have four continued hearings and one new hearing scheduled for tonight. After that, they would break and enter into Executive Session which meant that the room would have to be cleared.

Mr. Curtis made a motion, seconded by Mr. Oliveiri, to approve the April 17, 2008, Minutes of the Meeting.

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

**Marzelli-continued:**

Mr. Foster opened the continued Marzelli hearing at 7:15. He read the November 19, 2008, letter from Atty. Mather into the record. Atty. Mather requested the hearing be continued until the December meeting.

Mr. Curtis made the motion, seconded by Mr. Oliveiri, to continue the Marzelli hearing until December 18, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:16.

**Lee-continued**

Mr. Foster opened the continued Lee hearing at 7:16. He read the November 19, 2008 letter from the Planning Board. They recommended that the Zoning Board allow the two

Variances requested as Mr. Lee had presented a plan that showed he could develop a road which would enable him to get an additional lot. The Planning Board thought it would be more beneficial to the Town if the road was not built.

Mr. Foster asked Mr. Lee if he wanted to elaborate. Mr. Lee distributed a sketch of the property for the record. He replied that he had the lot re-engineered and had brought the plan to the Planning Board. After consulting the plan, Mr. Foster asked what was wrong with the plan and why the Planning Board did not want it to be implemented. He felt that the private road looked like a driveway. He asked Mr. Lee if he would be prepared to implement this plan. Mr. Lee responded as long as he did not have to create a road.

Mr. Foster stated that the Board had two choices. The first choice was they could deny the petition and have Mr. Lee implement this new plan, which would give him a second lot and meet the letter of the bylaw. This choice, however, was not encouraged by the Planning Board. The second choice would be to approve the petition requesting Variances, which were for the waiving of the upland circle and frontage requirements. This is the plan that was considered less offensive by the Planning Board.

Mr. Foster looked at the original plan again. He wondered if they approved the original request would it open the door for more people to come in with more creative ways to get around the bylaw. The plan presented tonight does conform to the bylaw. In his opinion, the private road looks like a driveway. It would provide the 175 feet frontage and satisfy the upland circle requirement. He asked Mr. Lee what was the downside of the plan. Mr. Lee replied that the downside was in putting in the road and meeting those requirements, such as the drainage. Mr. Foster said in the other plan the driveway was longer but in the new plan, the private road which was really going to be the driveway, would be much shorter so it shouldn't be as expensive. Mr. Foster also noted that the house and septic system placement would be about the same on either plan, so that Mr. Lee was facing the same expense in engineering with either plan. He asked what other Board members felt.

Mr. Oliveiri felt that it had been shown that the lot could be configured to meet the bylaws. His opinion was that they could approve the petition and then Mr. Lee could decide which one he wanted to execute. Mr. Curtis disagreed. He said that now there was a new plan, the other one did not need to be addressed. Ms. Zimmerman asked what the requirements of a private road were. After discussion, Mr. Foster asked Mr. Iafrate if he could address that. Mr. Iafrate responded that he was not too familiar with it but Mr. Lee would have to return to the Planning Board for the process and be granted waivers for not building the road out to the regulations. He thought that he would have to have a plan that showed drainage, etc. Mr. Lee said that he was not under that impression. Mr. Foster agreed and said that although he was also not too familiar with it, in the past when a property owner has implemented a private road, it has been more like a driveway. However, it does have to have a name, a certain width, and it has to provide access for emergency vehicles. Mr. Curtis said that he still felt that if Mr. Lee has shown that it can be done this way, then this is the way it should be done.

Mr. Foster asked Mr. Lee what he preferred to do. Mr. Lee said that he really did not want to build a private road as he did not know what the total evaluation cost for that would be. Mr. Foster asked if he would like to continue the hearing. He could then return to the Planning Board and find out what the requirements and restrictions are in building a private road and what is involved. He felt it was a good plan if it was economically feasible. It also appeared that the road was shorter and therefore, less offensive.

After further discussion, Mr. Curtis then made the motion, seconded by Mr. Oliveiri, to continue the Lee hearing until December 18, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:40.

### **Morneau hearing –continued:**

Mr. Foster opened the continued Morneau hearing at 7:40. Mr. Morneau summarized what they had done up to this point. This petition had originally opened in August when it had been recommended that the scope be reduced. They then redesigned the plan and resubmitted it to the Board and the other Boards in Town. Mr. Morneau then presented the July 24, 2008, letter from the Board of Health which had approved a three-bedroom septic system with no increase in flow.

Mr. Foster asked if anyone present would like to speak for or against the petition. An abutter who was present said that it appeared that the house was still quite large and close to the other properties as well as the street. Mr. Foster replied that from their drawings it looked like a traditional cape style house that would fit the general Lakeville community. He felt it would be an improvement from the dilapidated trailer that was presently on the property.

Mr. Foster said that there had also been a question raised in regards to the distance from the neighbor's well and the septic system. Mr. Morneau responded that after the last meeting, they found that this well doesn't exist on any Town paperwork. He then asked Mr. Pink, to do a survey from their existing approved plan to the wooden shed that houses the well pump. They do have 97 feet and if they could gain entrance into the shed they may have the additional three feet. Although the State only requires 100 feet distance if this is a shallow well, Lakeville requires 150 feet but Mr. Perry had told him that this has been waived in the past. The neighbor does not know what type of well this is. Mr. Morneau said that they were going to request a waiver from the Board of Health, but the meeting was cancelled.

Mr. Foster said that they could render a decision on the house design but they would have to wait for that Board of Health determination. Members were all okay with the modified house plans. Mr. Foster suggested that they continue the hearing until next month when

they would have a clear decision from the Board of Health. After further discussion, it was agreed to continue the hearing until December 18, 2008. The time would be at 7:15.

Mr. Curtis then made the motion, seconded by Mr. Urbanski, to continue the Morneau hearing until December 18, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 8:04.

### **Smith hearing –continued:**

Mr. Foster opened the continued Smith hearing at 8:05. Mr. Foster said that in regards to this petition, which required an easement so that a new septic system could be installed on another lot, he had been reminded of bylaw 5.1.3, which he then read. Mr. Foster explained that the square footage of the easement would reduce the other lot size and would make a non-conforming lot more non-conforming, which is something that they could not do. Mr. Foster asked why the tight tank could not be repaired. Mr. Donovan, the contractor, replied that was the original intent of the owners. He submitted, for the record, a letter from the owners which Mr. Foster read. Mr. Donovan clarified that the owners wanted to demonstrate that their intent is to be at the property for a long time. He said that they had expressed to him that they would be content with repairing or replacing the existing tight tank.

Mr. Foster felt that there were two problems with this petition. The first was a septic system on an adjoining property, which would make that non-conforming lot even more non-conforming. He did not think that they would want to do that. The second item was more qualitative. They are being urged and they feel compelled to try to restrict increases to the measure of about 105%. Mr. Donovan said the actual livable space in the revised plan is only an increase of about 200 square feet.

Mr. Foster asked if anyone present would like to speak for or against the petition. No one spoke. Mr. Foster then asked Mr. Iafrate if he had seen the new plan. Mr. Iafrate said that he had not. Mr. Foster asked what the square footage of the new plan was. Mr. Donovan replied that it was 1,690 square feet. The house was now 1,524 square feet. Mr. Foster said that was roughly a 170 foot increase which was an approximate increase of 10%.

Mr. Foster stated that two things had been presented to them tonight. The first was the revised house plans and the second was a statement only, saying that the petitioners were not expanding the septic system into the adjoining lot. He asked if the new plans had been reviewed by the other Boards in Town. Mr. Donovan said that they had not. Mr. Foster felt that they did need input from the Planning Board and the Board of Selectmen on the new house design and he would also like a firm plan that had been acknowledged by the Board of Health on the replacement of the tight tank. Mr. Foster said that there must be documentation that they were abandoning the part of the petition that deals with

the septic which was just too problematic. Mr. Foster thought the Board of Health would also require it be shown that a yearly contract for pumping was in place. Mr. Curtis noted that the Conservation Commission had also indicated that the applicant would have to file a Notice of Intent.

Mr. Curtis then made the motion, seconded by Ms. Zimmerman, to continue the Smith hearing until December 18, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 8:24.

### **Logan hearing:**

Mr. Foster opened the Logan hearing at 8:25 and read aloud the legal ad. Mr. Foster read the September 23, 2008, letter from the Building Commissioner into the record. Mr. Foster asked Mr. Iafrate if the only concern was the lot size. Mr. Iafrate responded that the lot was a unique configuration. The new structure would be a huge improvement to what is presently there. Mr. Foster also read the November 4, 2008, letter from Mr. Logan. He had submitted new plans and the design had been changed from a three-bedroom to a two-bedroom home. He advised that the Boards had all received a copy of the new plan.

Mr. Foster asked why there was a basement. Mr. Logan replied that it was a raised ranch. Mr. Foster then read the November 18, 2008, letter from the Board of Selectmen. They were concerned with the de-watering process during construction due to the high groundwater table. They were also concerned that the proposed dwelling had a full, unfinished basement and the proposed improvements would exceed the 105% allowed increase in square footage and in the height restriction. Mr. Foster asked what the height of the proposed house was. Mr. Logan said that it was 16 feet. Mr. Foster did not think that was unusual. He felt that the concern expressed by the Board of Selectmen in regards to the height was not really triggered by the height of the new building but because of the low height of the present building.

Mr. Foster next read the November 13, 2008, letter from the Conservation Commission. Mr. Logan was scheduled to appear before that Board on November 18, 2008, when a new Order of Conditions would be given. Mr. Foster asked how he would feel about a restriction on finishing the basement or the first floor. Mr. Logan said that he would prefer not to. Mr. Foster asked how he would feel about a restriction on finishing the basement and then at some point when the owner wants to finish it they could come back with plans. That would satisfy the Board of Selectmen's concerns and still leave some level of control in several Boards' hands. He felt that was a reasonable approach.

Mr. Oliveiri said that he was comfortable without the restriction because the house was so small. Mr. Foster said that he might consider a restriction that the house could only be a two-bedroom so that downstairs area could not be developed into a bedroom. Mr.

Logan said that they did have a two-bedroom deed restriction on the property. Mr. Foster noted that this was an improvement to the neighborhood.

Mr. Martowska, who was present, said that there is a bylaw that restricts changes up to 105% without exceptions for small houses or lots. Mr. Foster responded that the 105% is a yardstick that is used by the Building Inspector. Modifications below 105% generally do not have to come before the Board; it is only when they go above 105%. The problem when you look at this particular house is that it is so small, that any reasonable small house in area would exceed the 105%. Mr. Foster felt that in this case, they are within their rights to exercise some of the discretionary powers that they have to go beyond that 105%. The bylaw is trying to prevent people from building what they would call “McMansions.” His sense is that this does not come close to that extent.

Mr. Foster asked other Board members what they thought. Mr. Curtis said that he had no problem with the petition. In regards to the basement, he was okay with or without a restriction. Mr. Foster agreed. Mr. Oliveiri felt that it was a major improvement to the neighborhood and that it was customary to finish the basement in a split level.

After further discussion about a possible restriction, Mr. Oliveiri then made the motion, seconded by Mr. Curtis, to approve the petition as submitted. The vote was **unanimous for**.

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

The hearing closed at 8:45.

Mr. Curtis made a motion, seconded by Mr. Oliveiri, to approve the October 16, 2008, Minutes of the Meeting.

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

Mr. Foster said that the Board needed to go into Executive session to discuss pending litigation and a personnel issue. They would not return to regular session. He then asked for a motion.

Mr. Curtis made the motion, seconded by Mr. Oliveiri, to enter Executive session to discuss pending litigation and a personnel issue and to not return to regular session.

**ROLL CALL VOTE** – Mr. Curtis – **AYE**, Mr. Oliveiri – **AYE**, Ms. Zimmerman – **AYE**, Mr. Urbanski – **AYE**, Mr. Foster – **AYE**