

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
December 18, 2008**

Members present:

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

Regular Meeting:

Mr. Foster opened the regular meeting at 7:04 p.m.

Roll called. Bills signed.

Mr. Foster stated that they did have some business to conduct before they got into any of the continued hearings. Mr. McCarron, of Six Bridge St. Realty Trust, had sent him an email asking to be on the agenda tonight although it appeared that he was not present. Mr. Foster said that he knew that Mr. McCarron had two requests. The first was an extension to his Comprehensive Permit and the second was a request to modify it and be allowed to change from condos to rental units. Mr. Foster said that they would need to decide if those requests would be considered substantial or insubstantial. He explained that an insubstantial request would be granted by a vote of the Board whereas a substantial request would require a formal public hearing. His opinion was to grant the first request and extend the permit for one year but he felt that the request to go from condos to rental units warranted discussion with the public. Members were all in agreement with that.

Mr. Curtis then made the motion, seconded by Mr. Beneski, to grant an extension to the Six Bridge St. Realty Trust Comprehensive Permit for one year from when it currently lapses. Mr. Foster advised that the four regular members would be voting and he also asked Ms. Zimmerman to participate. The **vote** was **unanimous for**.

In regards, to the second request, Mr. Curtis noted that they did not have a written request for that and Mr. McCarron's letter had only requested an extension. Mr. Foster replied that he did have an email from him. He had expected Mr. McCarron to appear tonight to articulate his position.

Mr. Curtis then made the motion, seconded by Mr. Beneski, that the Board considered the second request to be substantial and would therefore require a public hearing. The **vote** was **unanimous for**.

Mr. Foster advised that the next issue was in regards to LeBaron and Atty. Mather was present to discuss it. Atty. Mather stated that the request to the Board is for a modification to the LeBaron Comprehensive Permit. The request is to be able to, on a limited and regulated basis, to allow some occupancy of units where none of the residents are over 55. This does require that the Board make a determination whether the request is insubstantial or substantial. However, they would like to ask the Board to make a decision on one specific case tonight.

Atty. Mather continued that it was obvious that the economy was in dire straits right now. There has been no activity at the LeBaron site for over a year now and they need to stimulate that. There are several units that are vacant and they want to rent one of those units to someone who is under the age of 55. Specifically, it was to a 48-year-old woman executive without children. If possible, they would like to ask the Board to make the determination that the rental of one specific unit to one specific person would be an insubstantial change. They will concede the fact that any other type of revision is substantial and would require a full public hearing.

Mr. Foster felt that they needed to proceed carefully. 36 units have been sold and those families believed that they were moving into a 55+ community. Any decision that they might make, will set a template for what might happen in the future as this economy was not going to get better quickly and he expected similar requests from other 40B projects. They needed to structure some kind of mechanism where decisions can be made one at a time on each applicant but it has to involve more than the Zoning Board and more than the Board of Selectmen. At a minimum, it should involve the neighbors and the Association representatives.

Atty. Mather replied that they did have three members of the Association on the Steering Committee present who had voted to support the rental of this one particular unit to this one particular individual. As far as any other changes, they do want to actively participate in that. One committee member then spoke who stated that there were five of them on the Committee and they had agreed to this one rental.

Mr. Foster asked what members thought. Mr. Curtis advised that he was going to abstain from the vote as he knew the woman. Mr. Foster stated that the request for tonight was really a finding for an insubstantial request that is tightly structured for one named person, for one rental, for one year. He presumed that if the person left, it would not be rented to another individual. Atty. Mather replied that was correct. Mr. Oliveiri said that he agreed with Mr. Foster and that it had less to do with them and the Board of Selectmen and more to do with the individuals and the Association as they were the ones that were going to be affected by it. Mr. Beneski noted that these are five individuals out of 36 that have agreed to this but what about the others? Have they been informed and what is their opinion? He felt that there should be some type of notification to the whole organization and their response must be taken into consideration.

Mr. Foster felt that there were still two issues here. The first was the specific case of this woman who wanted to rent for one year. He felt that the second issue they should take to

a public hearing and the Association would need to be involved in helping them craft a template for how they handle requests like this in the future, so that it would not have to come back for a hearing. It was then noted that it was stated in the Master Deed Declaration that there could not be any children under eighteen. Mr. Levitt asked if all five members of the Steering Committee were in agreement. Atty. Mather said that was correct. Mr. Foster said that in regard to the larger question posed by Mr. Beneski, he thought it did deserve more discussion at a later time in a public forum. He would encourage more people from LeBaron to be here to participate because it affects their property and its value as well as setting an example or template for what they might do in the future.

Mr. Curtis explained that he knew the woman was a purchasing agent. She does a lot of traveling. She is from New York and goes there every weekend. Mr. Foster asked members what they thought the downside or the risk to this was. Mr. Levitt replied that people who live there are going to be upset. Mr. Foster said that does not appear to be the case as there were representatives to the Committee present. Atty. Mather said that they certainly understood that they did not want children there and that is why they are limiting it to this particular woman who has no children. Mr. Foster asked, in regards to this first question, would someone care to propose a motion.

Mr. Beneski made the motion, seconded by Mr. Levitt, to grant the insubstantial request of LeBaron to rent one unit to a named individual for the period of one year and when the unit is vacated, it will revert back to the original condition.

Mr. Foster then confirmed with the Steering Committee that they were fully behind the request. They were in agreement. Mr. Foster asked if anyone would like to speak for against this action. No one spoke.

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

Mr. Foster said the second request they had was to formulate a mechanism for LeBaron that would permit this kind of thing to happen again in the future. He asked if that was correct. Atty. Mather responded that what they would like to discuss is to allow on a limited and regulated basis some occupancy by those who do not meet the age restriction. Mr. Foster said they would then need to develop a mechanism that would permit that to happen. It would be the named parties, the Boards, Committees, etc., that would participate in reviewing specific requests when appropriate. Mr. Foster said that he felt that because this would be written into the Comprehensive Permit it would be a substantial request. Mr. Beneski agreed and noted that all of the people should be notified so that they can understand what the proposed change is.

Mr. Beneski then made the motion, seconded by Mr. Levitt, that they considered this request to be a substantial request that required a public hearing. The **vote** was **unanimous for**.

Marzelli hearing – continued:

Mr. Foster opened the continued Marzelli hearing at 7:30. Atty. Mather requested the hearing be continued until the February meeting.

Mr. Levitt made the motion, seconded by Mr. Curtis, to continue the Marzelli hearing until February 19, 2009. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:31.

Lee-continued:

Mr. Foster opened the continued Lee hearing at 7:32. Mr. Foster advised they were considering Mr. Lee's request to create a second lot that is non-conforming and would, therefore, require a Variance. A plan had been presented that showed the lot could be divided according to the bylaws. Another plan had been submitted demonstrated that if there was a small private road it would be shorter than the driveway necessary in the original plan. It would also allow the creation of a second conforming lot. Mr. Foster reviewed for the Board that the petitioner's request was to grant a Variance that would create a non-conformity on a lot that has no geographic or topographic rational for why it needs a Variance. Two sets of plans have been presented that show the physical requirements of the property could be met without a Variance. Mr. Foster said that this left the Board in the position of taking a risk and granting a Variance when one is not required and violating the bylaw in that they would create a non-conformity where none is required.

Mr. Lee said that he had been told to go back to the Planning Board to see if they would waive the road construction requirements, but they were not in favor of doing that for one lot. Mr. Lee said that his hardship was he had the frontage but he did not have the setback. Mr. Beneski said that Mr. Lee should be questioning the Planning Board as to why they do not want to allow this as the Zoning Board had not received a letter from them outlining any reason. Mr. Foster replied that they are just going back and forth on this. He understood that Mr. Lee did not want to move the house, but that was only a personal desire and could not qualify as a hardship, which the bylaw defines as a characteristic of the land.

Mr. Lee noted that the Planning Board was supposed to send an email to the Zoning Board explaining their position. Mr. Foster said that none had been received. Did Mr. Lee know what its contents were? Mr. Lee responded that they were not in favor of waiving road construction for a one lot subdivision. Mr. Foster replied that the Zoning Board is not in favor of violating the bylaws when there is an alternative. He did not think the Zoning Board should be forced into making a decision that satisfies a desire, but there is no real need. Mr. Foster noted that was his personal opinion only. Mr. Curtis agreed. He said that the property is large enough and he understood what Mr. Lee did not want to do but he could not grant a request that would create a non-conformity. Mr. Lee said that he sees houses around Town 200 or 300 feet off the road with a paper road and

he does not feel like he is asking for anything out of the ordinary. He estimates it will cost \$30,000 to move the house.

Mr. Foster said he understood Mr. Lee's frustration but that a hardship is not a financial hardship but a situation posed by the geography or topography of the land. That does not exist in this case. He recalled that when this petition came before the Board in the past, they had granted it in their naivety and they were immediately threatened with a lawsuit by the Board of Selectmen. It was subsequently withdrawn by the petitioners. Mr. Beneski suggested that Mr. Lee return to the Planning Board. Mr. Foster said that in fairness to the Planning Board if something was done in the past that was not right that does not mean that they have to perpetuate that. Mr. Beneski said he understood that but at least let the Planning Board explain that.

Mr. Foster asked if anyone present would like to speak for or against the petition. No one spoke. There was then discussion regarding what was required for a private road. Mr. Foster felt that they needed to stop the engineering debate and move forward with the petition.

Mr. Curtis then made the motion, seconded by Mr. Levitt, to deny the petition. The vote was **unanimous for**.

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

The hearing closed at 7:51.

Morneau hearing-continued:

Mr. Foster opened the continued Morneau hearing at 7:52. 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 said that two months ago a neighbor notified them of a well that was not identified by permit. They attended the last Board of Health meeting where they were granted a waiver from the distance of the septic system to the well. Mr. Foster then read the December 4, 2008 letter from the Board of Health where they stated that two waivers had been granted. The first was the distance from a shallow well from 150 feet to 100 feet and the second was the distance from the street line to an existing deep well from 20 feet to 10 feet. These Variances were subject to receiving revised plans.

Mr. Foster asked if there was anything further. Mr. Curtis thought the only thing that they had needed was that information from the Board of Health. Mr. Foster then asked if anyone would like to speak for or against the petition. No one spoke.

Mr. Curtis then made the motion, seconded by Ms. Zimmerman, to approve the petition for a Special Permit with the following condition:

1. The house will remain a three-bedroom dwelling.

The vote was **unanimous for**.

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

The hearing closed at 8:02.

Smith hearing –continued:

Mr. Foster opened the continued Smith hearing at 8:03. Mr. Donovan, the contractor, advised that since the petition had originally been presented they had downsized the plan. These plans had been submitted at the last meeting. They had also abandoned the plans to install a new septic system on an adjacent lot and upon the Zoning Board's recommendation decided to replace the existing tight tank with a new tight tank.

Mr. Foster asked if there was anything in regards to the property remaining seasonal. Mr. Donovan replied that was one of the stipulations of the Board of Health and that a deed restriction must be recorded at the Plymouth County Registry of Deeds. Mr. Foster asked what the change was in the living area was from the old house to the proposed plan. Mr. Donovan replied that it was 1,524 square feet with the new plan calling for 1,690 square feet. Mr. Foster said the difference appears to be approximately a 12% increase.

Mr. Donovan said that they were waiting for a new Order of Conditions from the Conservation Commission. Mr. Foster said that they also had not heard back from the Selectmen or the Planning Board. He recommended that they continue until next month in order that they could receive that information.

Mr. Curtis made the motion, seconded by Mr. Levitt, to continue the Smith hearing until January 15, 2009. The time would be at 7:15.

The hearing closed at 8:10.

Little hearing:

Mr. Foster opened the Little hearing at 8:10 and read aloud the legal ad. Mr. Foster read the September 3, 2008, letter from the Building Commissioner. Mr. Foster then read the November 18, 2008, letter from the Board of Selectmen. Their only recommendation was that the property remains seasonal. The December 16, 2008, letter from the Conservation Commission advised that a Notice of Intent had been approved. It also listed the conditions that applied to the applicant before any work could begin. Mr.

Foster also read the December 8, 2008, letter from the Board of Health. It stated that an emergency tight tank had been approved on July 8, 2004, for this property and that Board of Health members had no reason to recommend denial of the petition.

Mr. Foster asked Mr. Little to explain what he wanted to do. Mr. Little responded that this is a seasonal two-bedroom cottage where the foundation is moving. Mr. Foster said that it appeared that there will be a new poured concrete foundation underneath. Mr. Little said that was correct. They will be lifting the structure and pouring the foundation and there will be a crawl space. In order to do this work, the existing family room will be taken down and rebuilt.

Mr. Beneski clarified that they were using the existing footprint. Mr. Little said that was correct. Mr. Beneski noted that this cottage was one of the furthest places down on the pond and that during the high water season, the road does get flooded. That is probably why that foundation is moving.

Mr. Foster noted that Mr. Little did want to add a deck. Mr. Foster said that they might want to consider a restriction on the deck that it not be increased in size and that it not be covered or enclosed. Mr. Little said he was fine with that. Mr. Beneski asked how wide the proposed deck was. Mr. Little replied it was eight feet wide and it was approximately three feet from the side.

Mr. Foster asked if anyone present would like to speak for or against the petition. Mrs. Blanche Richmond, of 47 Shore Avenue, was in support of the request. Mr. Foster asked if there was any further discussion. There was none.

Mr. Beneski then made the motion, seconded by Mr. Curtis, to grant the petition for a Special Permit with the following conditions:

1. The house will remain a seasonal dwelling.
2. There will be no increase to the footprint.
3. The deck will remain open, uncovered, and unenclosed.

The **vote** was **unanimous for**.

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

The hearing closed at 8:26.

Mr. Curtis made the motion, seconded by Mr. Oliveiri, to approve the Minutes of the May 15, 2008, meeting.

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

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

Meeting adjourned at 8:35.