

**Zoning Board of Appeals  
Lakeville, Massachusetts  
Minutes of Meeting  
October 16, 2008**

**Members present:**

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

**Regular Meeting:**

Mr. Foster opened the regular meeting at 7:05 p.m.

Roll called. Bills signed.

Mr. Foster advised that a letter had been received from Mr. Urbansky requesting an appointment to the Zoning Board of Appeals. He asked members what they thought about that. Members agreed that it would be a good idea to have an additional associate member. Mr. Foster said that he would email Ms. Garbitt and have her convey that message to the Board of Selectmen.

Mr. Beneski made a motion, seconded by Mr. Curtis, to approve the August 14, 2008, and September 18, 2008, Minutes of the Meeting. The **vote** was **unanimous for**.

Mr. Foster said that another thing that the Board should do soon is the annual election of officers. He suggested that be on the agenda of their next meeting.

**Arruda– continued:**

Mr. Foster opened the continued Arruda hearing at 7:15. Mr. Arruda said that he was requesting to withdraw his petition without prejudice. He advised that the reason was he and his wife had decided to put their house on the market.

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

The hearing closed at 7:16.

### **Marzelli hearing - continued:**

Mr. Foster opened the continued Marzelli hearing at 7:16. He stated that he had received an October 14<sup>th</sup> letter from Atty. Mather which he read into the record. Atty. Mather had requested the hearing be continued until the November meeting.

Mr. Curtis made the motion, seconded by Mr. Beneski, to continue the Marzelli hearing until November 20, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:16.

### **Morneau hearing –continued**

Mr. Foster opened the continued Morneau hearing at 7:17. Mr. Morneau had submitted new plans to all the Boards prior to the meeting. He advised that in August, plans had been presented for a two bedroom house. They had then been approved by the Board of Health for a three-bedroom house. There was then some confusion because of the different plans. At that time, a big concern had been the size of the second floor and the potential for additional bedrooms being created.

Mr. Foster then read the October 14, 2008, memo from the Board of Selectmen. They felt that the revised plan was more suitable for the property. Mr. Beneski noted that there was also an October 6, 2008 email from Mr. Perry, the Health Agent. Mr. Foster then read the email into the record. Mr. Beneski noted that the position of the Board of Health is unclear. Mr. Perry is recommending a two-bedroom design only because of the nitrogen loading, but the Board of Health is not meeting until October 22, 2008. Mr. Morneau replied that they had been granted a waiver in regards to the nitrogen loading system. Mr. Beneski said that they have not seen anything stating that and he personally would like to see something from the Board of Health due to this conflicting information.

Mr. Foster suggested that they put the issue of the septic system aside and see if they are content with the reduced scope of the house. If so, a possibility is that they could approve with a restriction requiring Board of Health approval. Mr. Beneski said that he did not see a big reduction. Mr. Morneau replied that they did reduce the size of the second floor and 300 square feet had been removed. Mr. Foster asked if they had asked him to reduce the number of bedrooms. Mr. Morneau responded that in conversations with every other Board that Mr. Foster had sent him to, they were comfortable with the footprint but not with the fact that the second floor could subdivide into additional bedrooms. Mr. Foster asked if Mr. Gamache required three bedrooms. Mr. Morneau said that the bank says a three-bedroom house justifies the loan but a two-bedroom does not. Mr. Gamache also has two children, a boy and a girl.

Mr. Foster asked the abutters present if they had any concerns. One did have a concern about her well being within 20 feet of the proposed leaching field. Mr. Beneski noted that the well was not shown on the plan and that by law it could not be within 100 feet.

Mr. Foster felt that at this point they should stop the proceeding and insist that they get a clear reading from the Board of Health. They also want a copy of the documented waiver from the Board of Health. Another concern now was the issue raised that the proposed leaching field may be within the allowed setback for the well. Mr. Morneau noted that he could not answer that question but Azur had been hired to represent them on that matter and they assumed that all rules had been followed. Mr. Foster said that one of their responsibilities is to make sure that sound engineering judgment is used. He thought that at a minimum they needed to ask the Board of Health to validate that there is sufficient legal room between the well and the proposed septic system and while they are doing that they can provide them with the paperwork that they do not have tonight.

Mr. Beneski noted that the July 24, 2008, letter from the Board of Health approves a three bedroom design but the Certificate of Compliance is approved for only 220 gallons which is two bedrooms. Mr. Morneau replied that they did apply for a two bedroom house and the approval was matched to that but were told that they could apply and modify to a three bedroom.

An abutter questioned why the Board had not pursued the issue of abandonment. Mr. Foster replied that if they had taken that path, the likely outcome would be that Mr. Gamache would have walked away and left an eyesore of a property. This might be a much more favorable outcome for all involved, Mr. Gamache, the neighbors, and the Town. After further discussion, it was agreed to continue the hearing so the Board of Health issues could be answered satisfactorily.

Mr. Curtis then made the motion, seconded by Mr. Beneski, to continue the Morneau hearing until November 20, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:52.

### **Smith hearing:**

Mr. Foster opened the Smith hearing at 7:53 and read aloud the legal ad. Mr. Christopher Donovan, the builder was present for the property owner, the Julie A. Smith Trust. Mr. Foster read the October 9, 2008, letter from the Board of Health. Although they were not meeting until October 22, 2008, Board member Garvey did not feel that there would be a problem as long as the property remained a three bedroom dwelling with no increase in flow and the Board received all the requested information pertaining to their April 11, 2007, approval. The Conservation Commission letter of October 14, 2008 stated that the applicant was required to submit a Notice of Intent as the work borders a tributary water body to a fresh drinking water supply. The Board of Selectmen letter of October 14, 2008, noted several issues with the petition including the septic easement on the adjoining property, which would increase that property's non-conformity.

Mr. Foster suggested that they take a look at the plans. Mr. Iafrate advised that the petitioner had submitted additional plans which he presented to Mr. Foster. He noted that although they want to build off the existing footprint, the plan had not shown the proposed deck.

Mr. Beneski asked how tall the house was. Mr. Donovan replied that it was 33 feet. Mr. Beneski said that the septic system that they were proposing was on a lot that already had a septic system. He was unsure if the State even allowed that. Mr. Donovan said that the plan had already been approved by the Board of Health. Mr. Beneski understood that but if there was a problem, where would they put another system? There has to be a reserve area. He would like to see a letter from the Board of Health stating how they could approve a septic system with no plans for a reserve area on a lot that is so undersized the system is on a lot where there is already one existing.

Mr. Foster noted that they could not grant a Permit that would increase a non-conformity. He said that if they did, this would reduce the lot size by 25% which makes that lot even more non-conforming. Mr. Iafrate did not agree that an easement would reduce the size of the lot. After further discussion, Mr. Foster said that he had a real problem with this whole petition. This is an extremely small lot and there is no room for anything. That is a problem and maybe that means that it should not be developed any further. He is also concerned with replacing a traditional three bedroom house with a three floor house that will encourage more use of the septic system and more nitrogen loading, especially since they now have a tight tank with 0% nitrogen loading into Long Pond. This is an increase in the environmental impact on the area. Mr. Foster asked what other members thought.

Mr. Curtis felt the house was too big. Mr. Foster advised Mr. Donavan that they could send him away to do the homework needed, but personally he would not be in favor of the petition because it was just too much for the land. Mr. Donavan replied that the owners just want to make the home more livable. Presently, there is not even enough head room for the owner. Mr. Beneski was not in favor of the septic system plan. Mr. Levitt did not like the style of the house but said that he would be okay with it as long as they stayed within the existing footprint.

Mr. Foster noted that one of the requirements for a Special Permit was that the applicant has no reasonable alternative available to accomplish this purpose in a manner more compatible with the character of the immediate neighborhood. He said that the Special Permit granting authority, the ZBA, shall also determine that the proposal generally conforms to good engineering, sound planning, and correct land use and the applicant has the means to implement the proposal. Mr. Foster said that they could require them to re-submit a plan for a comparable three-bedroom house that is taller so the owner does not bang his head but he felt that the whole issue of the septic violates the principle of good engineering.

Mr. Martowska, of 2 Edgewater Drive, asked if the lot was less than 20,000 square feet why the expansion was not being limited to the 105% allowed in the bylaw. Mr. Foster explained that the bylaw permits the Building Inspector to grant a permit without coming

to the Zoning Board if the rebuilding is up to 105%. If the owner wants to increase the expansion size over that, then the Building Inspector will send them to the Zoning Board. It does not limit the size of the expansion but is the trigger for what will come before them.

Mr. Foster asked Mr. Donovan how big the house was presently. Mr. Donovan replied that it was 1,524 square feet. The proposed plan was for 2,582 square feet. Mr. Foster asked what the coverage of the lot was with the proposed deck. Mr. Donovan was not sure.

Mr. Foster reiterated that in his opinion only, putting two septic systems on one under sized lot that is 160 feet from a water supply is not good judgment. Mr. Curtis was also concerned about the size of the house, the septic, and that it was just too much in a small spot. Mr. Oliveiri felt that more clarification was needed regarding the septic including the interpretation that the easement decreased the size of the lot. Mr. Foster said that one way to approach this might be to tear down the existing dwelling on the adjoining lot they own and then combine the lots. Mr. Donovan replied the owners parents lived there.

Mr. Beneski then made the motion to deny the petition as submitted. The reasons would be that it was over the design spec of 105%, and the septic system is on an easement on an undersized lot which already has a septic system on it, which exhibits poor engineering. Mr. Levitt suggested a continuance instead so Mr. Donovan could go back to the owners and tell them that the proposed plan was too big and to resolve the septic system issue. Mr. Foster said that he wanted to make sure that Mr. Donovan heard what was said about the 105% as this plan was at about 175%.

Mr. Beneski then withdrew his motion and made a motion to continue the Smith hearing until November 20, 2008. The time would be at 7:15. This would give Mr. Donovan time to get the information from the owner and a letter from the Board of Health with the reasons why they approved this system. Mr. Curtis seconded the motion. The **vote** was **unanimous for**.

Mr. Foster noted that the Board of Selectmen had raised the concern of the impact on Lot 213. However, that lot was not before them and even though putting the septic system on that lot increases its non-conformity, he did not know if they were within their rights to consider that. Mr. Foster felt that was a question for Town Counsel.

The hearing closed at 8:33.

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

Meeting adjourned at 8:35.