

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
February 20, 2014**

Members present:

Donald Foster, Chair; Eric Levitt, Member; John Olivieri, Jr., Member; Joseph Urbanski, Associate Member; Jim Gouveia, Associate Member

Regular Meeting:

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

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

Mr. Levitt made the motion, seconded by Mr. Urbanski, to approve the Minutes of the January 16, 2014, meeting.

VOTE: Mr. Levitt, Mr. Urbanski, Mr. Gouveia, Mr. Foster – **AYE**
Mr. Olivieri, Jr. – **ABSTAIN**

LeBaron Residential LLC hearing:

Mr. Foster advised that they would be hearing the LeBaron request first. The five members present would all participate in the vote. This was a request to modify their Comprehensive Permit. He explained for members that were new to the Board that the Comprehensive Permit was the vehicle that allowed the 40B development on Route 79. LeBaron has been back in front of the Board on a few different occasions as the project progressed and changes had to be made. Tonight the Board would review the proposed request and decide if the change was substantial or insubstantial. A substantial change would require a hearing so that people can learn what the change is about.

Atty. Mather was present. He advised that he represented LeBaron Residential LLC. The request is to allow the remaining 18 age restricted units in Phase 1 of the Project to be completed by Shaw Growth Ventures, Inc., as a successor in interest to LeBaron Residential. LeBaron Residential will continue to hold the Comprehensive Permit for all future development other than the 18 age restricted units in Phase 1. He explained that with condominiums in Massachusetts there is a time limit of seven years to develop them. At the end of that time, a developer can end the project or extend it. If they extend it, it requires a vote of 75% of the unit owners. As the developer still has 160 acres of this project still to be developed, they would lose that right. Therefore, they removed

everything that had not been built from the condominium. The bylaws say that this can be resubmitted at any time along with the 75% vote. Shaw Growth Ventures has come along and wants to finish these 18 units but there are two things that must happen. The first is that 75% of the condo owners have to agree to let it to go back into the condominium to finish it and Atty. Mather advised that has happened. The second is the Zoning Board has to approve the change. He advised that the statute reads that once the request is made, the Board has to have a meeting within 20 days to make a decision if the proposed change is substantial or insubstantial. If it is found to be insubstantial, it can be approved right at that time. If it is found to be substantial, a public hearing with notice to abutters must then be held.

Atty. Mather then advised that they are willing to concede without deliberation by the Board that this is a substantial request. Town Counsel feels that this is an unusual request in that the developer is just taking over a small portion of the project. For LeBaron, they need some contingencies in place such as the sale has to take place before the Permit is transferred. If not, then someone else would hold the Permit and then they would have to apply. Next month he would bring someone from Shaw Venture group to meet with the Board and show them what kind of work that they do. Mr. Foster asked if Shaw was buying the land those condos would go on. Atty. Mather replied that they were. Mr. Foster continued that they would then have the right to build and sell the units. Atty. Mather replied that was correct. However, their sale to them would be conditioned upon them obeying the terms of the Comprehensive Permit. It was made clear to Shaw Venture that the Town would require that the 18 units be finished in substantially the same manner as the existing ones. Mr. Foster asked if Board members had any additional questions. There were none.

Mr. Foster asked if anyone present had any questions. Selectmen Powderly asked if conditions could be applied to the Permit. Mr. Foster said that in order for that to happen, they must first determine that the change is substantial and then that initiates the mechanics of issuing a revision to the Comprehensive Permit that would contain the desired restrictions. Selectmen Powderly next asked if they would be able to make changes to the interiors of the homes. Atty. Mather replied that all plans would still need to be approved by the Building Inspector who is also the Zoning Enforcement Officer. If he feels that any of the changes are significant, he could send them back in front of the Board. He also asked if any of the units would be affordable. Atty. Mather responded no as when the 52 unit apartment complex was completed, they went ahead on their count and a change was made to the Permit that the remaining 18 units would not have to be affordable when they were built.

Mr. Foster stated that it appeared that Atty. Mather was recommending a vote of a substantial change which will force a hearing next month. Mr. Olivieri then made the motion that the proposed change to LeBaron was to be considered substantial. It was seconded by Mr. Levitt. The **vote** was **unanimous for**. The date for the hearing would be March 20, 2014.

The hearing closed at 7:30

Wetherell hearing, 1 Fern Avenue:

Mr. Foster advised that Mr. Wetherell has requested an extension of his Special Permit for his auto repair business. The Board has been granting these extensions six months at a time as he continues to show progress on things that need to be done. He asked Mr. Wetherell what has been completed. Mr. Wetherell replied that the septic and water are now in. Mr. Foster then read the January 17, 2014, letter from Mr. Perry, the Health Agent. It explained that Mr. Wetherell had not complied with some of the Board of Health requirements, and they would not recommend an extension of his Special Permit.

Mr. Wetherell replied that he did attend the last Board of Health meeting, and he did file for the Permit to install the bathroom. Mr. Foster said that they did not have any paperwork that would indicate that. Mr. Foster asked if installing the bathroom was his last step before he was up to code. Mr. Wetherell said that was correct. Mr. Foster asked what members thought. Mr. Olivieri said that it appeared that something had been done since Mr. Perry had written that memo, but they had yet to receive that paperwork. Perhaps, they should extend the Permit for an additional month, and wait to receive an update from the Board of Health. Mr. Olivieri asked Mr. Wetherell if the Board would receive a positive recommendation from them. Mr. Wetherell said that they would. After further discussion, members agreed that a three month extension would be more appropriate.

Mr. Olivieri then made the motion, seconded by Mr. Urbanski, to extend the Special Permit until the Board's meeting in May which was May 15, 2014. Mr. Foster asked if anyone present would like to comment. No one spoke. The vote was then taken and it was **unanimous for**.

Riley hearing, 81 Highland Road:

Mr. Foster opened the Riley hearing at 7:35 and read the legal ad into the record. Mr. Foster stated that he understood a Special Permit had been issued some years ago for this lot, but the Permit had since lapsed. Mr. Foster asked if they were asking for anything different from what had been approved the last time. Mr. David Clarion, who was representing Mr. and Mrs. Riley, advised that the last Special Permit had been issued in 2006 to a previous owner. He was unsure of what that plan had been but the Permit had been to tear down a home and rebuild. It was going to be the same size or less and no closer to the street. At that point, the bank came in and because there was a mortgage on the home and it had already been torn down, they foreclosed on the property. It was then that the whole project died. Mr. Clarion advised that right now there is a stone foundation and it is perpendicular to where they want to put the proposed house. The foundation is 2,180 square feet and they want to put roughly the same size house there. They do not want to make the house any larger, and they will meet all the zoning setbacks.

Mr. Foster said that the only issue now is that the lot is non-conforming. He asked what is planned for the property. Mr. Clarion said the proposed home is the same area as the one that was torn down. He then displayed the plan. Mr. Foster asked how many bedrooms there would be. Mr. Riley replied that it was two bedrooms and two baths. He then explained the lay out of the proposed house. Mr. Foster asked what they would do with the existing foundation. Mr. Riley said they will fill it or remove it. He said that previously there had been a fence around it, but the owner had removed it. Now there was only caution tape around it. Mr. Foster said that he was concerned about the safety of the area.

Mr. Foster then read several communications from Town Boards. The first was the February 13, 2014, letter from the Board of Health. They would need a passing Title V Report and a water analysis on the well. In the February 11, 2014, letter from Mr. Darling, he discussed if the petition should be requesting a Special Permit rather than a Variance. The February 19, 2014 letter from the Conservation Commission advised that the applicant would need to file with them before any work began. Mr. Foster said that he did not have any objection to this petition. Did Board members have any questions or concerns? No one spoke.

Mr. Foster then asked if anyone present had any comments or questions. Mr. Gene Medeiros asked how much of the property was wetlands. Mr. Foster said that by looking at the plan it appeared about 20%. He questioned where a leaching area could be located. Mr. Foster replied that would be the purview of the engineer. Mrs. Medeiros said that there had been other owners to the property. When they had inquired about it, they had been told that it was a non-buildable lot. Mr. Olivieri noted that even if they approved this petition, Board of Health and Conservation Commission approvals would also still be required. Mr. Foster asked Mr. Medeiros if he was in favor of the petition or opposed. Mr. Medeiros said that they were in favor but that it needed to be done right.

Mr. Foster asked if there was anything further. Ms. Ruth Gross, of Mullein Hill Drive spoke. She said that her concern was the open foundation. Mr. Foster asked Selectman Powderly how that should be handled. Selectman Powderly replied that now that they have been made aware of this issue, they would go to the owners and have them either put a fence around the foundation, or advise them that it needs to be filled in. Ms. Gross asked if the house was going in the same spot. Mr. Clarion replied that it was actually being moved further away from the wetlands about 32 feet off the fence.

Mr. Foster asked if there was anything additional. No one spoke. Mr. Olivieri then made a motion, seconded by Mr. Levitt, to approve the petition for a Special Permit for a dwelling on a non-conforming lot. The **vote** was **unanimous for**.

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

The hearing closed at 8:00.

Mr. Foster then adjourned the meeting at 8:00.