

**Zoning Board of Appeals  
Lakeville, Massachusetts  
Minutes of Meeting  
August 17, 2023**

On August 17, 2023, the Zoning Board held a meeting at the Lakeville Public Library. The meeting was called to order by Chairman Olivieri at 7:06 p.m. LakeCam was making a video recording.

**Members present:**

John Olivieri, Jr., Chair; Jeff Youngquist, Vice-Chair; Gerald Noble, Clerk; Christopher Campeau, Member; Christopher Sheedy, Member

**Others present:**

Atty. Amy Kwesell, Town Counsel; Marc Resnick, Town Planner

**NSA Property Holdings, LLC hearing, continued – 156 County Street**

Mr. Olivieri opened the continued NSA Property Holdings, LLC hearing at 7:06. He advised the applicant had submitted an email requesting the hearing be continued for one month, which he then read into the record.

Mr. Youngquist made a motion, seconded by Mr. Noble, to continue the NSA Property Holdings, LLC hearing until September 21, 2023. The time would be at 7:00 p.m. The **vote was unanimous for.**

The hearing closed at 7:07.

**Garbitt/Pike hearing, continued – 29 Staples Shore Road**

Mr. Olivieri opened the continued Garbitt/Pike hearing at 7:07. Mr. Jamie Bissonnette from Zenith Consulting Engineers was present for the applicant. Mr. Bissonnette advised that at the last hearing there had been discussion regarding the electrical services and the hardship. Since that time, the applicant has had an electrician change, and they now have one meter on the house. Therefore, they would like to withdraw their Variance request.

Mr. Bissonnette said they are still in need of a Special Permit for the setback. He asked if there were any questions. There were none.

Mr. Youngquist made a motion, seconded by Mr. Sheedy, to approve the Special Permit requested under Section 7.4 and Section 6.1.3. The vote was **unanimous for.**

The hearing closed at 7:09.

### **Benatti hearing, continued – an appeal related to 434 Bedford Street**

Mr. Olivieri opened the continued Benatti hearing at 7:09. He advised this was an appeal from the decision of the Building Inspector, Zoning Enforcement Officer, relative to business activity in the residential district at 434 Bedford Street. Mr. Olivieri wanted to point out that there has not been a decision issued by the Building Commissioner at this point. He was going to go forward and asked Mr. Benatti to come up and present the information he had. He first asked Atty. Kwesell to clarify the burden of proof that needs to be taken into consideration by the Board.

Atty. Kwesell stated that this is an appeal under 40A, Section 8 and Section 15. Procedurally, there is an issue because there is nothing being appealed because there was nothing in writing from the Building Commissioner. Under 40A, Section 7, you can request the Building Commissioner undergo zoning enforcement. The Building Commissioner has 14 days to respond. However, there is clear case law that the 14 days is directory, not mandatory, so the Building Commissioner, technically does not have to respond. She noted that in this case, there wasn't a lot of evidence, so the Building Commissioner did not issue a written response, but the applicant had appealed to the ZBA. In those cases, the applicant has the burden of proof. The applicant is claiming the business at 434 Bedford Street is an unpermitted, illegal, commercial business in a residential zone. Therefore, it is his burden of proof to show this Board that it is unpermitted. It is not pre-existing, non-conforming use, and either it has been in existence since 1959 or at a later time when the Zoning Bylaw changed making that commercial use unpermitted.

Atty. Kwesell said that 40A, Section 6 states that a Building Commissioner cannot enforce a pre-existing, non-conforming use if the use is being undertaken with an original building permit. In that case, the Building Commissioner only has six years to seek enforcement and if in those six years, it was found out that the building with the building permit was issued in error. That was not the case here. This is a pre-existing, non-conforming use. In 2016, 40A, Section 7 was amended to provide that if an unpermitted structure has been in existence for 10 years, it becomes a lawful non-conforming structure, but that does not apply to uses. They are looking for the applicant to provide evidence that this is an unpermitted business.

Mr. Benatti then addressed the Board. He stated this is a tough thing to find out. There is no indication of it in the bylaw and it is asking a lot to have this kind of knowledge of all these things. He said it was not fair, and he didn't present a case to that effect. He was asking that he get a decision from the Building Inspector that he may or may not appeal. He noted that it has been one year.

Mr. Olivieri said that he understood Mr. Benatti's frustration but the Board has to comply with how they handle things based off of legal counsel and precedent set by the Courts. They have parameters they have to operate within. They can't just listen to what he has to say and make a decision. They don't have the right or ability to even do so. He reiterated that they don't make the rules or set the parameters, but they have to operate within them. Mr. Benetti is appealing a decision, in which no decision has been made.

Atty. Kwesell advised the applicant can appeal to the Court. The ZBA does not have the authority to tell the Zoning Enforcement Officer to issue something in writing. Mr. Olivieri suggested Mr. Benatti ask for a continuance. He could ask Counsel as far as where her decision came from and

how he can research that. He can then go down to the Building Commissioner's Office and ask Mr. Darling to give him a decision one way or the other.

Mr. Benatti said the Board had Counsel but he has nothing, and would now have to digest all this information. Mr. Olivieri summarized that what Town Counsel had said was if there was a decision to be appealed, that in order for him to have a ruling in his favor, he will have to prove that at some point in time, there was not a business operating there. Mr. Olivieri clarified that at the last meeting they did not discuss anything because they did not have a full Board. Atty. Kwesell added to be clear, every applicant that comes before the Board has the burden of proof. Mr. Benatti said that he was just asking this Board to move and apply the bylaws as they are written. Mr. Olivieri said their role at this point is, if there is a decision made by the Building Commissioner, and he wanted to appeal it, their role is strictly defined that they have to decide if they agree with that decision or not. As of now, they don't have anything to make a decision about.

Mr. Benatti left the room briefly. When he returned he said that he would like to continue. Mr. Noble made a motion, seconded by Mr. Sheedy, to continue the Benatti hearing until September 21, 2023 at 7:00 p.m. The **vote** was **unanimous for**.

The hearing closed at 7:25.

### **Meeting minutes**

Mr. Noble made a motion, seconded by Mr. Youngquist, to approve the meeting minutes from the July 20, 2023, meeting. The **vote** was **unanimous for**.

### **Next meeting**

The next meeting is scheduled for September 21, 2023, at 7:00 p.m. at the Lakeville Public Library.

### **Adjourn**

Mr. Youngquist made a motion, seconded by Mr. Sheedy, to adjourn the meeting. The **vote** was **unanimous for**.

Meeting adjourned at 7:26.