

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
October 18, 2018**

Members present:

Donald Foster, Chair; David Curtis, Vice-Chair; John Olivieri, Jr., Clerk; Chris Carmichael, Associate Member; Joseph Urbanski, Associate Member

Members absent:

Janice Swanson, Vice-Clerk; and Daniel Gillis, Associate Member

Regular Meeting:

Mr. Foster opened the regular meeting at 7:00 p.m.

Roll called.

Mr. Foster stated that in accordance with the Open Meeting Law he was announcing that he and the secretary were making an audio recording of the meeting. LakeCAM was making a video recording. He asked if anyone present was making a recording. There was no response.

Mr. Curtis made a motion, seconded by Mr. Urbanski, to approve the Minutes from the April 19, 2018, meeting.

VOTE: Mr. Curtis, Mr. Carmichael, Mr. Urbanski, Mr. Foster – **AYE**
Mr. Olivieri – **ABSTAIN**

Mr. Carmichael made a motion, seconded by Mr. Urbanski, to approve the Minutes from the August 16, 2018, meeting.

VOTE: Mr. Curtis, Mr. Carmichael, Mr. Urbanski, Mr. Foster – **AYE**
Mr. Olivieri – **ABSTAIN**

English hearing – 6 Katie's Way, Request for a Variance from Section 7.4

Mr. Foster opened the English hearing at 7:07 and read the legal ad into the record. Ms. English was present. Mr. Foster noted that a Variance had been requested but the section cited was for a Special Permit. Mr. Foster noted that this was a very large lot at 76,748 square feet and that Ms. English wanted to place the shed two feet from the property line.

Why does she need it to be so close? She replied that she only had a certain amount of feet from the driveway to the property line. She wants to keep her tractor and her snow blower in the shed so that would be the best spot. Mr. Foster said with a lot this big and with so much open space, it makes it difficult for the Board to say that would be okay. The setback is 20 feet and she is requesting 2 feet. Mr. Foster asked what why the shed couldn't go on the rear setback where it appeared the setback would be at least 15 feet. Ms. English replied that it would be less than 40 feet from the rear. She also noted that there was a dog pen there with poured concrete so it is not movable.

Mr. Foster then read the October 9, 2018, letter from the Board of Health into the record. They had no issue with the petition. The Planning Board letter of October 1, 2018, indicated the Board had no comment. Mr. Foster asked what Board members thought. Mr. Olivieri questioned the location of the poured concrete. Mr. Foster said he understood that she wanted the shed with a snow blower near the driveway but this is just a foot and a half from the property line on a property that is quite large. Ms. English replied the problem is she does not have a lot in front or in back. The setup is not ideal.

Mr. Curtis said he was also thinking to locate the shed up by the driveway close to the house but that must be a very large dog pen. Mr. Foster said he would move the shed closer to the house and driveway. This would probably satisfy the bylaw or at least intrude less and be less non-conforming than what was requested. Mr. Urbanski asked what the distance was from the shed to the driveway. Ms. English said it was about four feet. Mr. Urbanski said that he agreed with Mr. Foster and Mr. Curtis.

Mr. Foster stated that a few ideas had been mentioned as to where the shed could be moved. They could continue the hearing until next month which would give Ms. English the opportunity to revisit the plan, take some measurements, and see if there was a better location for the shed than what had been proposed. Other options were then discussed.

Mr. Zachary Elgart of 4 Katie's Way advised that he lived in the adjacent property. His house is set back quite a distance from any other structure, and he would not be able to see the shed. He had no problem with the petition. Mr. Foster advised that Ms. English might want to locate the shed next to the dog pen. He noted that in the bylaw if there was something existing that intruded into the setback that would define a new setback for that property line. Ms. English said there were a lot of trees that would have to come down then. Mr. Foster said he felt there were alternatives for the shed that would either meet the bylaw or be less intrusive.

Mr. Olivieri asked if she would be willing to go with ten feet for a setback. There is plenty of access to the property from that side. Mr. Carmichael said that for him it would be fire separation distance. Since there is no other structure within 30 feet, he would have no problem with the location of the shed as requested. He noted the neighbor has no opposition and there are no adjacent buildings. Mr. Olivieri said that he would not want this to create or define a new setback. Mr. Carmichael said that could be written in the decision as a condition. Mr. Foster asked Ms. English if she was offering to move the shed closer to the driveway. Mr. Olivieri said that ten feet had been mentioned. Ms.

English said that she could move it four feet closer to the edge of the driveway. That would make it approximately six feet from the setback. Mr. Curtis and Mr. Urbanski were okay with that change.

Mr. Carmichael then made the motion, seconded by Mr. Olivieri, to approve the petition for a Variance for a shed to be located no closer than five and a half feet from the setback with the following condition:

1. The granting of this Variance will not define a new side setback.

The vote was **unanimous for**.

Ms. English was given information that explained the timing of the filings, the appeal period, etc.

The hearing closed at 7:29.

Documents distributed for the hearing:

Petition packet

Legal ad

Planning Board correspondence of October 1, 2018

Board of Health correspondence of October 9, 2018

Marshall hearing—18 Bridge Street, Request for a Special Permit under Section 7.4.6

Mr. Foster opened the Marshall hearing at 7:30 and read the legal ad into the record. The October 15, 2018, letter from the Planning Board stated they had no comment. The Conservation Commission advised in its October 2, 2018, letter that they had no issue with the petition. Mr. Foster noted that this petition was also requesting to place a shed in the setback. Mr. Marshall advised that it would be ten feet from the side and ten feet from the rear.

Mr. Foster asked why the shed could not be moved in and away from the setbacks. Mr. Marshall replied that as he did not have a very large lot, it would be in the middle of his backyard. Mr. Carmichael asked if there were any existing structures on the adjacent properties close to it. Mr. Marshall replied that he really only had one neighbor on the side who was also his back neighbor. He said that the neighbor did not have a problem with it but could not be here tonight.

Mr. Foster asked if anyone present would like to speak for or against the petition. No one spoke. Mr. Foster stated that the property at 20 Bridge Street had a thin pan handle of land that runs behind Mr. Marshall's property. He noted that the area of the panhandle cannot be counted in the area of his lot per the bylaw. Mr. Carmichael asked how close the house on Sunset Drive was to the corner of his lot. Mr. Marshall replied he was not sure of the exact measurement but it was quite a distance away. Board members took

into account the distance of the panhandle which could not be developed and estimated it to be at least 20 feet away.

Mr. Olivieri then made the motion, seconded by Mr. Carmichael, to approve the petition for a Special Permit for a shed to be located within the side and rear setback with the following condition:

1. The granting of this Special Permit will not define a new side setback.

The vote was **unanimous for**.

Mr. Marshall was given information that explained the timing of the filings, the appeal period, etc.

The hearing closed at 7:37.

Documents distributed for the hearing:

- Petition packet
- Legal ad
- Planning Board correspondence of October 15, 2018
- Board of Health correspondence of October 11, 2018
- Conservation Commission correspondence of October 2, 2018

McDonald hearing – 5 Ledge Street, Request for a Special Permit under Section 6.1.3 and 7.4

Mr. Foster opened the McDonald hearing at 7:38 and read the legal ad into the record. He advised that the October 15, 2018, letter from the Planning Board stated that they had no comment. The October 2, 2018, letter from the Conservation Commission advised that they had no issue with the petition. Mr. Foster noted that the October 15, 2018, letter from the Board of Health said that the applicant was not proposing to increase flow to the existing three-bedroom septic system. If the septic components are to be moved during the construction a Title V inspection may be needed.

Mr. Foster asked if there were three bedrooms in the home. Mr. McDonald replied that there were only two but it was listed as a three bedroom with one bath. It is an oversized septic system. Mr. Foster asked if they would be moving the bedrooms upstairs. Mr. McDonald replied they were not but the space would be a music room and an office for Mrs. McDonald.

Mr. Carmichael asked if they were changing the footprint at all. Mr. McDonald said they were not. Mr. Carmichael asked if they met the height limitations of the bylaw. Mr. McDonald replied they did, and the Building Inspector had gone over that with them. Mr. Foster stated that they were also adding a deck. Mr. McDonald noted that it was being placed over the existing carport. Mr. Foster asked the size of the property. It was found to be 50' x 100'. Mr. Foster estimated it to be 4,500 square feet because the

property was on an angle. He said the side setback appeared to be five feet on the eastern side and less than that on the western side.

Mr. Foster asked if anyone present would like to speak for or against the petition. No one spoke.

Mr. Olivieri then made the motion, seconded by Mr. Urbanski, to approve the petition for a Special Permit. The **vote** was **unanimous for**.

Mr. McDonald was given information that explained the timing of the filings, the appeal period, etc.

The hearing closed at 7:45.

Documents distributed for the hearing:

- Petition packet

- Legal ad

- Planning Board correspondence of October 15, 2018

- Board of Health correspondence of October 11, 2018

- Conservation Commission correspondence of October 2, 2018

Moquin/Sigman hearing – 12 Priscilla Drive, Request for a Special Permit under Section 7.4

Mr. Foster opened the Moquin/Sigman hearing at 7:45 and read the legal ad into the record. Mr. Moquin, who was the builder for the project, was present. Mr. & Mrs. Sigman were also present.

Mr. Foster asked if there was currently a garage on the property. Mr. Moquin replied there was a small shed near the house. Mr. Foster noted that the petition states Priscilla Drive but the plan shows Priscilla Road cutting through the middle of the property. Was this a real street or a paper road? Mr. Moquin replied that it was a dirt road and it was a right of way. Mr. Moquin stated that is why he is asking for the setback relief because it does go through the property.

Mr. Foster asked how far the proposed garage was from Priscilla Drive. He noted the plan submitted was substandard. It did not indicate any of the information that they needed. He said they really should continue until next month to get a better drawing. Mr. Moquin then approached the Board and consulted the plan. Mr. Foster asked him to indicate setbacks on the plan submitted. Mr. Moquin said that to apply for relief was suggested by the Building Department because of the right to pass, technically it was like a street which requires 40 feet for the setback. They are not close to any of the property lines.

Mr. Sigman asked for clarification of the definition of a right of way through their property as a street. If they find it is not a street then they don't need a setback of any

kind, and he could place the garage next to the right of way. Mr. Foster then read the October 15, 2018, letter from the Board of Health into the record. A septic pipe leading to the leaching field must be properly located before any construction starts.

Mr. Carmichael asked what the room on the second floor would be used for. Mr. Sigman replied it would be for storage. They were on a slab and presently had no storage. Mr. Foster noted that store rooms sometimes turn into bedrooms. Mr. Sigman advised that they had a four-bedroom house and they were not looking to add to that.

Mr. Foster asked if anyone present would like to speak for or against the petition. The resident from 22 Nelson Shore Road advised that she had received notice of the hearing but was unsure why. Mr. Foster said that an abutter's property doesn't have to abut the property of the petition but could be within 300 feet from the location of it.

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

1. The storage room above the garage is not to become habitable space.

The vote was **unanimous for**.

Mr. Sigman was given information that explained the timing of the filings, the appeal period, etc.

The hearing closed at 8:00.

Documents distributed for the hearing:

Petition packet

Legal ad

Planning Board correspondence of October 15, 2018

Board of Health correspondence of October 15, 2018

Conservation Commission correspondence of October 2, 2018

Appointment with Attorney Rick Mann and Alexander Mazin regarding Special Permit for 475 Kenneth Welch Drive

Mr. Foster advised they would be having a discussion regarding the Mazin Special Permit which had already been granted. Mr. Mazin and Atty. Mann were present. Mr. Foster stated his position was they were not going to make any decision or change anything tonight. The Permit was issued, and there was only a problem with it when it was discovered it should have been requested in the Trichome name. He felt they could not go back and change the paperwork because it had been advertised like that to the public. They could, however, advertise and post for another hearing next month in the correct name.

Atty. Mann replied that he was here tonight on an informal basis to explain his position, which they could choose to reject. He stated that a Decision had been rendered after a hearing on August 16th and the Decision was issued in the name of the applicant. There are a couple of problems with how that happened. However, they are not casting blame at anyone but trying to resolve this technical problem as quickly as they can. The problem is the Permit was issued in the name of the applicant which had been defined so that is understandable.

Atty. Mann continued the Decision referenced a number of other approvals as well as the Host Community Agreement which were all in the name of Trichome Health Corp of which Alexander Mazin is the president. In the Decision, there are a number of conditions and those conditions required the applicant to do certain things most of which have already been done such as to enter into certain agreements and get licenses. These are all in the name of Trichome, so this is the problem and why they are trying to get help. They have filed and are prepared to go forward to the November meeting if the Board does not feel comfortable doing this but they are now up against the following two issues:

1. They will not be able to get in the ground before the winter.
2. They have a deadline with their Purchase and Sale agreement of mid-November.

Although this is not the Board's problem, it is a problem for his client. The question becomes, as a legal issue, whether the Board has an inherent right to make a change when there is an inadvertent error. In this particular case, they are not suggesting it is the Board's error only there is an inadvertent error in the way the Permit was issued. He also noted that he did not think it was the intent of the Board not to have this Permit run with the land but there is nothing in this Special Permit to indicate that.

He would suggest that they amend and correct the name as it was not Alexander Mazin who was the recipient of the agreements and licenses but his entity. As far as the legal aspects of this in his communication with the Board's legal counsel, she has acknowledged in her response that under the case law of Massachusetts the ZBA does have the inherent authority to correct inadvertent, unintentional matters in the Decision. However, there cannot be a substantive change in the decision; there cannot be any further or different relief obtained; and it has to be based on full inadvertence.

Atty. Mann stated this is an example of something totally unintentional. He is not asking the Board to do anything they are uncomfortable with, but he did believe the case law is right on point with this situation. There is no change in the substance of this Decision. They also want to make it specific so that it would be very clear that this Special Permit does not run with the land. Right now, that is not the case and he believed that they intended it not to run with the land.

Mr. Foster felt the right approach was to ask Town Counsel to help them confirm that any such actions they would take would be legal and proper. Atty. Mann agreed and said that

was why he tried to, in advance, get Town Counsel to weigh in on this matter which she did in an email. She left it to the Board to make the determination as to whether this was a result of inadvertence and not a substantive change.

Mr. Foster said that it was a mistake but not the Board's mistake. He thought that since they knew there would be no change except for the name on the Permit that it would not be a substantive change. As this is all new though, he wanted to make sure that if they did make the change as requested, they are not opening themselves up to an appeal. Atty. Mann agreed. He added there is a condition in the Special Permit Decision that says any modification to the existing building will require a new or amended Special Permit. He noted that in August when their presentation was made, there was an expansion that got approved. He believed that was a mistake, and it should have specified no expansion other than the one that was presented at the hearing.

Mr. Foster asked that Atty. Mann cover that with Town Counsel. He wanted it very clear between the attorneys what the wording should be. Mr. Foster said, in his opinion, the issue of the wrong name on the paperwork is not substantial. It is an insubstantial mistake, but there can be appeals on things that are brand new and competitive which is why they should do this carefully and slowly with Counsel.

Mr. Foster then asked Board members if they thought they should go back to Town Counsel and ask for help to correct this error. Mr. Carmichael thought that Atty. Kwesell had answered that question in her email of October 16, 2018, which he read into the record. It stated the following: "In my opinion, to forego the notice requirements of G.L. c. 40A, s. 11, the Board will need to determine if the change above in italics is:

- an inadvertent or clerical error
- not a substantive amendment which changes the result of an original decision, or
- grants relief different from that originally granted."

Mr. Carmichael felt that it did not do any of those things and, therefore, qualified. If the original intent of the Board was to issue a Special Permit then he would not have a problem moving forward with the name change as long as Counsel has given them the okay to do so.

Atty. Mann then distributed the corrective amendment that they proposed. It was a draft revision of what had previously been sent to the Board. He advised he had made some changes based on Town Counsel's comment. As you recall, she said that she wanted to make it specific to the Trichome Health Corp. with Alexander Mazin as the President. A new provision has been added that specifies the applicant in the Decision as Trichome Health Corp. of which Alexander Mazin is President. Any sale of the property to a party other than the applicant shall require a new Special Permit.

Mr. Olivieri asked what their time frame was, and how this would work out. Mr. Foster suggested this latest revision be sent to Town Counsel. He will talk with Counsel tomorrow and find out what is the best and quickest way to handle and close this issue.

Atty. Mann noted that if he thought this was appealable, he would not be doing this. The only reason he is suggesting it is because it is so clear, it would not be appealable. This is a situation that these cases were intended to deal with, and the whole point is to say you do not have to have a Public Hearing, and there is no appeal from it.

Mr. Foster said there are two issues they are solving here. The first is the name issue, and the second is the clarification of some language and the correction of a mistake on the Decision concerning additions to the building. Mr. Olivieri asked if they could vote this now as inconsequential and give Mr. Foster the authority instead of having to come back to the entire Board.

Mr. Olivieri made a motion, seconded by Mr. Carmichael, to give Chairman Foster the authority to sign on behalf of the Board and that the changes are inadvertent, not substantive, and do not grant relief different from that originally granted.

VOTE: Mr. Curtis, Mr. Carmichael, Mr. Olivieri Mr. Urbanski – **AYE**
Mr. Foster – **ABSTAIN**

Mr. Foster adjourned the meeting at 8:20.