

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
December 20, 2018**

Members present:

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

Regular Meeting:

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

Roll called.

Mr. Foster stated 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 November 18, 2018, meeting.

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

Arruda hearing – 13 Cottage Lane

Mr. Foster opened the Arruda hearing at 7:06 and read the legal ad into the record. Ms. Arruda was present. She advised that she had just bought this property. She would like to build a garage but noted that if she went 40 feet from the road and all the way over, she would obstruct her neighbor's view. That was why she was asking if she could go 30 feet from the road.

Mr. Foster said there were two issues that he could see. The first is that she is 14.4 feet from one property line. The second is she would go from 46% lot coverage to 52% coverage, which was significant. How much freedom did she have to move the location of the garage? Ms. Arruda replied that she could move the location of the garage without requiring a Special Permit but she would then block the view of the neighbor that lives

behind her, which she would prefer not to do if she did not have to. Mr. Foster asked what Board Members thought.

Mr. Carmichael said that was being very considerate of the neighbor. Mr. Foster agreed but said it was not usually one of their considerations. Ms. Swanson asked where the garage could be moved where a Special Permit would not be required. Ms. Arruda displayed on the plan where that area was. Mr. Olivieri had no problem with the petition. Mr. Curtis noted that it appeared that Ms. Arruda would need to move the garage due to its proximity to the leaching field but other than that, he saw no problem with it.

Mr. Foster asked if it could be moved over so that the side of the garage would be the same distance from the property line as the house which was 15.9 feet. Ms. Arruda advised that she had been in contact with Mr. Bernardo from the Board of Health. He had informed her that the garage had to be shifted over because of the location of the septic tanks. The garage needs to be at least 5 feet from the tanks instead of the proposed 2.6 feet. Mr. Foster said that 14.4 feet was now going to be about 17 feet. Mr. Foster asked what the construct was between the proposed garage and the dwelling. Ms. Arruda replied it would be a covered walkway.

Mr. Foster asked who would like to speak for or against the petition. Mr. Les Dakin of 15 Cottage Lane then spoke. He advised that he and his wife were okay with the proposed garage with one proviso. They have a concern about water runoff from the garage because the roof will slope toward their property. He stated this project will displace a minimum of 540 square feet of vegetation to be replaced with a concrete footprint. Water that had been absorbed by the ground will have to go somewhere.

Mr. Dakin said they do have an existing water issue now and are concerned if there is not some type of remediation or mitigation involved in this project; it would just exacerbate the problem. Mr. Foster asked if he had trouble now with water runoff from the roof of the house. M. Dakin replied they did not. Mr. Foster wanted clarification that Mr. Dakin did not now have runoff from the roof of the neighbor's house onto this property. Mr. Dakin said he did not. Mr. Foster said but he thought there was a chance that runoff from the garage roof might run into his property. Mr. Dakin said that was correct.

Mr. Foster asked what was in the plans to address this. Ms. Arruda's son who was doing the work advised that after the house is remodeled and the garage is built all the downspouts will go into storm chambers in the ground. Each one will have its own well and the house will have four of them. They can have that drawn up on the site plan so they know they are going to do that. They do not plan on having any runoff from the garage or the existing building.

Mr. Dakin said that he would have to see the engineered plans as he assumed the Board would. He requested that reasonable conditions and modifications be inserted into the permanent record as an Order of Conditions. Mr. Carmichael asked if the builder could provide a swale in between the properties when he was doing the excavation and work with the Building Commissioner. He said that would not be a problem. Mr. Carmichael

asked Mr. Dakin if they drew up a set of plans and worked with the Building Commissioner would he be acceptable with that. Mr. Dakin said he would have his own engineer review the plan to see if it was satisfactory. Mr. Carmichael thought between the Health Department and the Building Commissioner he had some experts on his side, and they could work with him.

Mr. Foster asked Mr. Darling, the Building Commissioner, what he would do to certify that the applicant has addressed the potential runoff problem adequately. Mr. Darling replied that if the Board issued a Special Permit and wanted drainage looked at, he would be looking for stamped engineered plans with the submittal. He would not review it with a third party or a peer review. Mr. Foster said the concern raised was not unreasonable. Plans would be drawn up based on good judgment, and Mr. Darling would have to be comfortable that those plans met Mr. Dakin's needs. One way he can do that is if Mr. Dakin has an engineer look at the plans. Mr. Dakin replied he would like to reserve that right.

Mr. Chamberlain asked if a filing with the Conservation Commission would be required. Mr. Foster then read the comments from Town Boards into the record. The December 11, 2018, memo from the Conservation Commission indicated the proposed garage was located more than 100 feet from any wetland resource area. The December 17, 2018, memo from the Planning Board stated they had no comment regarding the petition. The December 20, 2018, letter from the Board of Health stated the proposed garage would be 2.6 feet from the septic tank. The applicant had agreed to move or shift the garage an additional 2.5-3 feet and then request a Variance from the Board of Health.

It was then discussed how to proceed with a condition that would address Mr. Dakin's concerns. It was agreed that the petitioner would submit plans stamped and signed by an engineer that address the issue of concern or the runoff on to the abutting property. Mr. Carmichael noted it was illegal to divert water to someone else's property so Mr. Dakin has recourse as well. He thought between the engineer stamp, the swale, and the drywells they had accomplished the goal of addressing the concern.

Mr. Dakin stated his understanding was if the worst case scenario surfaces and water, despite the best efforts of the engineer and his stamp, flows onto his property it would be considered a civil matter. That would entail him spending a lot of money to go to Court which he did not want to do as there had been a spirit of cooperation with Ms. Arruda. He continued that he felt compelled, however, to protect his interest in a worst case scenario. Mr. Carmichael noted that as he read the contour map between the property lines, everything runs perpendicular to Mr. Dakin's property, and it looks like everything slopes down to the water. It had been stated earlier that he was currently not having a problem with water runoff. They do have an Enforcement Officer that will enforce that.

Mr. Olivieri noted that if they moved the garage within the setbacks, as they were able to, they could proceed by right. Mr. Darling confirmed that was accurate. At this point, Mr. Olivieri said he had enough faith that they have agreed to make concessions and be a good neighbor. He understood that Mr. Dakin wanted to be assured but they could not

guarantee if something would happen beyond what the engineer stamped. Then the engineer would be held accountable.

Mr. Olivieri made a motion, seconded by Mr. Gillis, to approve the petition with the following condition:

1. Plans stamped by an engineer will be approved by the Building Commissioner and will show that there will be no additional run-off to the property located at 15 Cottage Lane.

The vote was **unanimous for**.

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

The hearing closed at 7:34.

Documents distributed for the hearing:

- Petition packet
- Legal ad
- Board of Health correspondence of December 20, 2018
- Planning Board correspondence of December 17, 2018
- Conservation Commission correspondence of December 11, 2018

First Colony Development Co., Inc. hearing – 57 Long Point Road

Mr. Foster opened the First Colony Development Co., Inc. hearing at 7:35 and read the legal ad into the record. Atty. William Pezzoni, Mr. Jon Delli Priscoli, Principal of First Colony Development, and Mr. Brent Mangel, Architect of the Project, were all present. Atty. Pezzoni advised Island Terrace had been at this location since the 1950s. At the time it was originally approved, there was no zoning. Once zoning came into play, Island Terrace was a non-conforming use at that site. Over the course of history and with the implementation of different bylaws, it would be allowed today with a Special Permit, as would be elderly housing.

Atty. Pezzoni continued the property is unique because of its location on a peninsula, the beautiful views, and its isolation. The proposed project would attract a market sector that would want smaller units. They first came before the Zoning Board last summer. They believed and spoke to Town Counsel concerning the fact the bylaw does not have a section that speaks to homes for the elderly or a 55+ age restricted program. There is no definition for it or a nursing home. There is a definition for home for the elderly.

Atty. Pezzoni said historically what has happened is what used to be nursing homes with a medical component has changed to not having that component, and having more high end facilities. Over the past thirty years, nursing homes have become akin to homes for the elderly. It is the first step before you get into needing medical care. In fact, under

Title V they qualify housing for the elderly and their definition for it is facilities restricted by use for adults who are 55 years of age. The State, as well as the Federal Government, has looked at over 55 housing projects as housing for the elderly. The Town has a bylaw that says you can get a Special Permit for housing for the elderly. In his submittal, he did raise the fact that they could look at it as a prior non-conforming use to the facility that used to be there but they would prefer not to do that but rather request the Special Permit for housing for the elderly which would be allowed under one of the group sections in the bylaw.

That is something they would want the Board to rule on, if they qualify under that. Once they get over that, it comes down to what is best suited for the site. He has heard there is concern why this isn't a 40B. First, this site is a very sensitive area. There is a facility built there with an existing sewer system that has been upgraded over the last several years and cost several million dollars. It is in the ground and approved by DEP. It has an approximate 13,000 gallon capacity. With a 40B, you might get 40-50 units in there at best with that capacity. Under elderly housing, the calculation is 150 gallons per unit so they designed the project to comply with that capacity. They do not want to overburden the site but in order for the sewerage treatment plant to function properly there has to be a certain amount of gallons used every day. The original permit issued had to have a use of at least 700 gallons per day in order to keep it functioning correctly. This is what is driving the number of units.

Atty. Pezzoni advised they also did not want to go in and take down large trees that would make the property look stark. They tried to consolidate the units to avoid that which is why they have an updated plan in front of them. This plan which keeps more of the view is more multi-family units and larger buildings for a total of 84 units. They know there are sensitive areas all around the site, and they will have to work with the local Conservation Commission and the State. He noted that when the nursing home closed down, its Permit was pulled back. It was unlikely they could get that reinstated. They did look at other nursing home for uses but there was no interest as they wanted more capacity.

Atty. Pezzoni stated at the last Selectmen's meeting the issue of traffic had been brought up. He noted that when this facility was operating, there were 77 residents and 110 employees. There were at least 30 visitors per day as well as ambulances, chair cars, medical calls, and deliveries. These trips far exceeded what would be generated by an elderly facility with 80 units. The Federal Standard for this type of use would be around 250 trips a day, as opposed to the close to 300 trips a day that were generated when the Tolles' were there.

Regarding taxes, if this was a 40B you could expect additional students and would receive approximately \$150,000 in tax revenue. These units, with a \$500,000 price point, would bring in about \$500,000 in revenue for the Town. He advised that a 40B requiring 25% of the units to be affordable wasn't viable in this location. He was also unsure if there would be enough capacity for the septic system. Atty. Pezzoni said he understood they would be coming back but he briefly explained why they would comply with the

Special Permit criteria. They would be in harmony with what is in the area. It would not be a greater imposition in services to the community, and it would be a complement to what is in the area. It would also create a housing sector they did not have in the community at that price point and at that size. Atty. Pezzoni said he would like to take a moment to share the preliminary drawings. The site still needs to be engineered but if the community is not looking at this with an open mind that it is the right kind of use for the site, they can't spend hundreds of thousands of dollars of engineering at this stage. He understood that any Permit issued would be contingent on complying with the Conservation Commission, State, Site Plan Review, and all other town regulations.

Mr. Foster noted that as they knew, they would be engaging a Peer Review Consulting Engineer to look over the plans. If they did not have engineered plans yet, it was going to be hard to do a review. He thought they would have to ask him to do a conceptual review of the conceptual plan. Part of their concern would be the extremely sensitive nature of this area.

Mr. Delli Priscoli, the developer, was present. He advised that Kevin Kline who had done all the engineering for the prior development and supervised the \$5 million that was invested by the Tolles' for both the septic and water system worked with all the Boards in Town and walked this through the process. When you look at this today, where this project is being built is all in a disturbed area currently. It is paved or has been developed prior. His point was Mr. Kline had worked closely with Mr. Mangel, the architect, to make sure that the entire infrastructure that is in the ground will conform, work with, and not be disturbed by the project.

Mr. Delli Priscoli said that in regards to the Provident Bank, he does have an agreement with them. He is trying to help the Tolles' and see what he can do with the Provident Bank but they cannot move forward without a use for the property. His interest is to bring a high quality project and development to the Town and provide a need that is unfulfilled. That is the current status; he is the owner by agreement but the technical owner is the Provident Bank. He is making sure that the Tolles' are taken care of, and he wanted them to know that.

Mr. Foster said the engineer they have engaged will have to review everything that is available because they don't yet have engineered plans of the full development. Mr. Delli Priscoli felt they were somewhere in between full engineered and conceptual plans because there was a tremendous amount of engineering that was done prior. He then turned the floor over to the architect, Mr. Brent Mangel, of Mangel Architects.

Mr. Mangel advised one of their specialties is multi-family housing in suburban or rural areas or sensitive areas making their approach to the project different from what others might have done. He explained the reason the plan looks the way it does is they are protecting septic fields, underground water tanks, and other utilities. He noted the point to make about the Site Plan is that it conforms to setbacks from Conservation, property lines, and underground utilities. If you think of this as a "fit plan" then 84 units fit in this configuration, but it is conceptual and they think there are improvements to be made.

Mr. Mangel said they looked at different architectural styles that might speak to what Lakeville is like, its history, and what type of buildings might have been built here years ago. They ended up with a proposed first step of shingle style homes, which were homes for country sides and lakesides, which they felt was appropriate vernacular. Mr. Mangel then displayed and briefly explained the plan. They should note there is a lot of green area on the site and that is to minimize lot coverage and impervious coverage. For that reason they put the bulk of the parking under the multi-buildings. There are 24-26 spaces under each of the four larger buildings which took a lot of the pavement off the site. They are showing 24' driving lanes but hope to minimize that to 22' when they get into the Site Plan Review with the Planning Board to further minimize the impervious surface. There has been a real effort to maintain the green space.

Mr. Mangel then displayed and explained the different type buildings and their features. He stated this was not to say "we've already designed this; we're done and we hope you like it." This is to say we want to set a standard for the quality of what we expect to be on this site. The design and style can change, but they are determined to make the quality of the buildings worthy of what the site is. After Mr. Mangel explained the floor plans of the units and their commitment to sustainability in construction, Mr. Delli Priscoli communicated the story of the previous owners, the Tolles', and how this project had evolved. He noted that he had already submitted a check for the Peer Review Engineer as they did not want to place any burden on the Town. It was his desire to work with the Town to give them a good product and a project there was consensus on.

Mr. Foster asked how open he would be to modifying the plan to reduce some of the nonconformities and waivers they were asking for. He noticed they wanted to go up to 45 feet in height, but he hadn't seen a waiver request for that. Atty. Pezzoni responded when they first submitted their proposal it consisted of smaller duplex units. When they were trying to shrink down the floor area ratio to leave more green space, they had to go up. Mr. Delli Priscoli noted that a lot of what exists on the site is 45 feet. He said he is always willing to work in a collegial way. Mr. Foster said that he would also ask their engineer to be particularly focused on the lower flow requirement of the septic system. Mr. Delli Priscoli said that in regards to the density of the project, there are numbers that work when you do the economic model and numbers that do not work. He thought this was a chance to do something wonderful there, but he is always open to listening to anything they have to say.

Atty. Pezzoni said they understand when they get into the details of the engineering, they are going to have to come down from the 84; and they are going to have to change it a bit but what that number is, they are not sure at this point. Mr. Mangel said in regards to the height of the buildings, it is a mathematical tradeoff between the coverage of the site and the height of the buildings. They are happy to work through that issue and he discussed an option that would reduce the requirement of the mechanical ventilation and reduce the height of the building. They also discussed reducing the amount of parking spaces which would reduce the impervious coverage.

Selectmen Aaron Burke then spoke. He felt that although this was an interesting project, he was concerned that the applicant has not taken into consideration aspects of the Special Permit and Variance. In the presentation, he heard nothing relative to how the applicant meets the burden of reaching an approval for a Variance. First, it has to be determined there is a hardship and a hardship cannot occur unless the applicant owns the parcel. He would ask that the Board discuss and move that forward for the sake of voting tonight to deny the Variance for the application.

Town Counsel, Amy Kwesell was present. She advised she would agree with Selectman Burke that the conditions for a Variance are soils, shape, or topography of the actual property with the second prong being there has to be a hardship. She has not heard yet tonight if the applicant cannot meet either the first prong or the second prong, which is the hardship. Atty. Pezzoni responded they have the property under agreement and by statute that is enough to come forward as if it was your property. He advised they have a property that is constrained on every side by wetlands and water shed. It has an existing septic that is in the ground that they can't change or maneuver so they have to use that system. The hardship is they are constrained into that small area, and the project has to conform to the system in place which is the hardship. He could elaborate further but didn't know that they were going to get into that this evening.

Mr. Foster replied his reason for asking Selectmen Burke to articulate his point of view was because it may stop the proceedings, and he did not want to waste a lot of time if when they get to the end of this it is realized that the Zoning Board was not the right agency to address this. He wants to find out, at this point, if this belongs in front of the Zoning Board. That is why he wants to make sure that Atty. Kwesell helps them understand legally whether they should even be considering this. Atty. Pezzoni said he believed as far as the Special Permit is concerned they meet all the criteria. The use is not noxious, harmful or hazardous, is socially and economically desirable.

Mr. Foster stated that they are still looking at the Variance. Atty. Pezzoni said if the Board did not give them the coverage, they would have to find a way to shrink it down. They think in order to do the project properly and to get over the fact they have the hardship of the existing system and the shape and topography of the site, they have enough to move forward. Mr. Foster clarified that right now the only Variance they are requesting is for lot coverage. Mr. Carmichael asked about building height. Atty. Pezzoni said they had not been sure, but if they had to they could go back and request that as well.

Selectman Burke said he would like to point out you cannot buy a hardship, and what is the hardship? Mr. Foster then read the definition of Variance into the record. Selectman Burke said he did not understand how the applicant had explained how he had met the burden required for a Variance. Atty. Pezzoni responded they were not buying a hardship rather the property was the hardship, and the Variance they were looking for was only for lot coverage. It is how the soil conditions, the topography, the wetlands, etc. impact this project. It drives everything in and gives them less area to spread everything out. They are not looking for a Variance to build the project just the lot coverage which is driven by

the wetlands, the septic system which is the soil conditions, and the topography of the site. It meets all three conditions. They are not buying the hardship; it is there with the property as it exists today. Mr. Foster thought the point Selectman Burke was arguing was the hardship is driven by the footprint of the buildings they want to put in. Selectman Burke said it was a self-imposed hardship. Variances should not be liberally granted but are held to a very high legal standard.

Mr. Foster replied that Selectman Burke was only focusing on one part of the bylaw as it is written. The other part of the bylaw states "where desirable relief may be granted without substantial detriment to the public good and without substantial derogation from the intent or purpose of this By-Law." Mr. Foster said that gave them some flexibility to grant Variances. Selectman Burke said the intent of the bylaw is that a residential dwelling has a 70,000 square foot lot with 175 feet of frontage. This was a huge leap from that standard.

Ms. Swanson asked what he thought would go well in that area. She noted that by right a 40B could go in there and that would be just as dense. Selectman Burke said his concern was not what goes there as much as the application and the integrity of their Zoning By-law. He wants to make sure the Zoning Bylaws are applied properly for the sake of the circumstances for the particular applicant. He did not even necessarily think this was a bad idea, and that was not the point. His issue is if you're asking for a Variance it should be crystal clear what analysis the Board followed to reach that conclusion; and he had not even talked about the Special Permit yet.

Ms. Swanson said that she would like to clarify this with Atty. Kwesell. Mr. Foster agreed that they should before they continued. Atty. Kwesell advised that to grant a Variance under 40A, §10, and under their By-law Section 8.2.2, there are three prongs or parts and those parts are associated and all have to be proved. The first is shapes, soils, or topography that is unusual or not comparable to the surrounding properties and for that reason there is a hardship; then based on that doing this project will not be substantially more detrimental. Ms. Swanson said could it be interpreted that the property is unusually shaped because it is like an island? Atty. Kwesell replied it would be up to the Board to interpret that. Ms. Swanson said she did not see any land mass that looks like that right around there. Would that meet one of the criteria so they would then proceed to the hardship? She understood that financial could also be considered a hardship. Atty. Kwesell said that was correct but this is a very unusual situation, which is why she doesn't have any case law to compare it to. She was not quite sure if the septic system actually equates to soil, shape, or topography because it was there, but not a natural feature, and how it fits into that first prong.

Atty. Pezzoni said he felt they were melding together the Variance and Special Permit. The Special Permit is for the project and the Variance is for the coverage. They are here to see if the project can go there, and if they would like it go there on a Special Permit. Mr. Foster said that he would like to find out if the process they are going through is legitimate. Atty. Kwesell advised she thought the reason the Variance had been brought up first was to determine if the project could go forward without a Variance. If the

project cannot go forward without this lot coverage Variance, then they did not have to get into the Special Permit. If this project can be reduced to fit the lot coverage, then you could get into whether a Special Permit is applicable or not. Atty. Pezzoni said they knew that this was going to go for more than one meeting. He usually prepares a memo which would detail how they hit every one of those prongs and how they comply with all the Special Permit requirements. He could articulate them now but he thought they would prefer having that information in the form of a memo. Mr. Foster said that was correct, and he would want to have that information written.

Mr. Poillucci said he did not feel there was a hardship as they did not own the property yet. A hardship is not being unable to do what you want if you buy a property. Atty. Pezzoni said there is case law if you have it under agreement you have standing to bring it forward. Atty. Kwesell said there is but, they would have to see the agreement. Mr. Delli Priscoli said the property is not under agreement at risk; it is not contingent of anything. They were willing to move forward the agreement for Town Counsel's review. Mr. Foster wanted to clarify where they stood. They cannot grant a Variance but if the project is reconfigured so the need for a Variance is eliminated, then they can move forward. Atty. Kwesell replied as far as she knew the Board had not yet considered the Variance but there are prongs and requirements that must be met. Mr. Foster said he was trying to get a sense of which way to proceed tonight. Atty. Kwesell asked for argument's sake if they could step into the shoes of the owner. Is the hardship because of what they want to build and is it a hardship based on what's there; or is the hardship due to soils, shapes, or topography.

Selectman John Powderly then spoke. He said earlier it was stated the concern was not of what goes there but the legality of what goes there. He would not speak to that aspect as that was why Town Counsel was present. He wanted to explain what some of the alternatives at the site were. The first was a drug rehab center. Middleboro has High Point and receives \$60,000 for a Police Dispatch. The property could also remain blighted, and then nothing happens. The only other thing he believed it could become is a 40B. He compared this Site with the one at the Train Station and recited the following statistics:

	Train Station-40B	This site
Lot size	5.2 acres	8.2 acres
Units	100	80
Police Calls	150	unknown
Medical Calls		150-estimate
Additional students	40	0
Student cost	\$559,000	\$0

Selectman Powderly said these figures were the typical amount from a 40B and were just estimated comparison costs. Mr. Foster said the Zoning Board did not make decisions based on the value to the Town but rather the use of the property. Selectman Powderly agreed but he just wanted the drawbacks to a 40B brought out, and also wanted the project to be looked at from a taxpayer's point of view.

Mr. Poillucci noted that Selectman Powderly was correct, and he is comparing it to the apartments. They are limited by the numbers of gallons, and they will get a reduction because the amount is reduced when it is 55+. If this wasn't age restricted, they might be able to do 35 to 40 units. He felt that was why they were going with this project and this same project could be done as a 40B as a 55+. He also questioned the status of a bank that would loan funds and then foreclose within a year.

Mr. Delli Priscoli responded that he really took exception to "what he was thinking." He came to the Board and showed them the proposed development and everybody thought it was a good idea. They are trying to find a way to make it work. It is under agreement with no contingencies with Provident Bank which is located in Amesbury, Mass. To suggest there was a private lender was totally inappropriate. They have brought this forward and feel that they do meet the burden for the three prongs. They feel the public should be heard and the evidence taken. He also felt they were entitled to a fair and just hearing.

Mr. Sylvester Zienkiewicz said a Special Permit for 84 units would be the largest ever written in Town. They do have Open Space Zoning, and he felt this would be covered within it. This could be taken to Spring Town Meeting where everyone could vote on this rather than having five people make this large of a decision. Mr. Foster said there may be another way but tonight they were faced with the issue of a petition before them and how to handle that petition. Mr. Delli Priscoli replied that they were not going to wait until Town Meeting.

Ms. Carol Tolles then spoke. She explained she was one of three former family owners of the Island Terrace property. She noted that the Provident Bank in Amesbury was, unfortunately for them, a very real bank. There is no question that there was any private money in this at all. They struggled for over a decade to build this septic project which was no small feat. This project, of anything that was ever brought to them as former owners, is by far the most beautiful use for this property. It is working within everything that is already built. She then began to tell her story of what the bank had done and of all the steps they had taken to secure funding again.

Mr. Foster said, although it was interesting background, they needed to bring the focus back to the issue of a Variance. He said they have a maximum coverage of 25% in the bylaw and they were proposing 32% according to the engineer's latest calculations. Mr. Foster then read the Variance bylaw again. He asked if it had to be all three; soil conditions, shape, and topography. Atty. Kwesell replied she would have to check the statutes but she did not think it had to but rather all three different prongs had to be met.

Mr. Foster asked if they met the following criteria: relating to soil conditions, shape, or topography of the land. Mr. Carmichael believed that they did. Mr. Urbanski agreed. Mr. Foster said the shape, because it was three-sided and in the back were the cranberry bogs and wetlands. Mr. Foster asked what the hardship was. Atty. Pezzoni said there was an existing and permitted system in the ground. In order to utilize it, you have to

have a certain amount of gallons. If they can't build the right number of units to run that system, you would have to start from scratch which would be a financial hardship of \$3 million. Mr. Carmichael asked what minimum number of units would meet that flow and make that system work. Atty. Pezzoni replied he was not an engineer, but agreed to come back with those numbers. Mr. Olivieri said he would not be in favor of granting a Variance until those numbers could be reviewed.

Mr. Foster suggested continuing until January as they seemed to be hung up on the question of the Variance. Atty. Pezzoni replied that was fine as they had expected to continue. He would only ask if there were any other comments from the audience or Board. They could then put together a response for the next meeting. Mr. Foster noted that one thing they would want was a careful review of the traffic, as well as a review of the entrance and exit on the roadway, particularly in relationship to safety vehicles.

Mr. Foster then asked who present would like to speak to this petition so that the applicant would have a sense of issues that may come up, and they can address them at a later meeting. Atty. Kwesell said that noted on the existing conditions plan is a Special Permit that was granted in 2014. She asked if that Permit had been exercised. When she looked it up at the Registry of Deeds, she found that it was to rehab and add a structure.

Atty. Pezzoni replied what happened was they got the system in first, and they couldn't get the money for the addition when they went back to the bank. Atty. Kwesell said that it also appears that the access is an easement coming off Long Point Road. Atty. Pezzoni said in that they were the dominant. She asked if there would be any overburdening of the easement by the new use as it also appeared that easement might go through a property owned by the Town. Atty. Pezzoni did not know as he had not yet done a full title search.

Atty. Kwesell suggested continuing the hearing until February which would give the engineer sufficient time to review the plan and provide feedback to the Board. The petitioners noted that did not work for them as time was of the essence. Ms. Joan Pierce of the Massachusetts Department of Fish and Game then spoke. She said the plans for the proposed project do not show how you get there from Long Point Road. It is over an easement that does go over private property. There is also a Conservation Restriction co-held by the Department of Conservation and Recreation (DCR) and the Town of Lakeville. Her question would be how that easement relates to the Town's Zoning Bylaws.

Selectman Powderly advised Atty. Kwesell that he did have the contact information for the DCR. Mr. Delli Priscoli noted that the proposed traffic would be less going forward than what had been used previously. Atty. Pezzoni said their proposed traffic would be 250 trips compared to the earlier 350 trips with seven to ten trips at peak. Mr. Foster estimated that to be one trip every three minutes, which was not much. Selectman Burke noted the Board will also have to consider the height restriction Variance. He did have several legal issues he wanted to bring up specific to the Special Permit, but he would hold that off until the next meeting.

Mr. Foster then suggested this would be a good point to stop. Mr. Carmichael requested an impact statement from Police, Fire, and Highway. Mr. Foster then read the following memos and letter into the record:

- December 10, 2018, memo from the Planning Board
- December 11, 2018, memo from the Conservation Commission
- December 20, 2018, memo from the Board of Health
- December 20, 2018, letter from the Department of Environmental Protection

Atty. Kwesell suggested the petitioner submit a rebuttal letter to the DEP correspondence for the next meeting.

After discussion to determine a date that all parties were available, Mr. Olivieri made a motion, seconded by Mr. Curtis, to continue the First Colony Development Co., Inc. hearing until January 31, 2019, at 7:00 p.m. The vote was **unanimous for**.

The hearing closed at 9:25.

Documents distributed for the hearing:

- Petition packet dated November 15, 2018
- Petition packet dated December 14, 2018
- Legal ad
- Planning Board correspondence of December 10, 2018
- Conservation Commission correspondence of December 11, 2018
- Board of Health correspondence of December 20, 2018
- Department of Environmental Protection correspondence of December 20, 2018

Informal meeting with Dave Fredette regarding a conceptual plan for 23 Twin Oaks Road

Mr. Fredette was present. He explained he represented Ms. Paula Houle who wanted to build a carport at her dwelling. He was looking for some guidance. He knew they had to go before the Zoning Board, the Board of Health, and the Conservation Commission. He didn't want his client to spend money on detailed plans if they didn't have a chance to get this project through. Mr. Darling had suggested a conceptual sketch.

Mr. Fredette advised if you looked at the plan view, the existing dwelling and existing septic system are already there. The stone wall that you see underneath the carport footprint also exists. Ms. Houle would like to make use of the existing driveway that is within the stone wall and put the carport in that area. In order to do that and do it as presentable as possible, he has shown a structure that has four posts that will support a roof structure. The side wall on the east side has one doorway. The sides utilize wood slats for ventilation.

Mr. Fredette stated they would note the structure would be almost up against the street line, but they were told by the Board of Health they have to try to maintain as much as

possible the five foot setback from the leaching field. What is causing this to be so close to the street line is the southwest post. He has it set back about a foot from the street line in order to be two and a half feet from the leaching field. If he didn't have to set that post there, he could probably adjust the whole structure eastward.

Mr. Foster asked if you could build over the septic tank if you have a gravel floor, so it can be dug up for service. Mr. Fredette replied yes, and he noted there would be no concrete going in. Ms. Houle has been parking over this area for the last twenty years. Mr. Foster said the issues that strike him right away are it is a small lot; they would be less than a foot off the road; and the distance off the side property line would be eight and a half feet. One of the practical concerns raised is the possible interference with emergency vehicle access.

Ms. Houle said there is another road on the other side. Mr. Foster asked if there was a homeowner on the side of the proposed carport. Ms. Houle replied it was an empty lot. Her other neighbor did not have an objection. Mr. Carmichael asked if the carport could be shortened. Mr. Fredette said that would be a determination of the Board of Health as to how close they could get to that leaching field.

Ms. Houle advised Twin Oaks was a private road. Mr. Foster said if it was a private road, he was unsure if they needed to be concerned about the setback from the front. The only users they would be concerned about would be Fire, Police, and ambulance. Mr. Foster did not think there was a problem with this but they would have to see what the Board of Health would allow. Mr. Fredette thanked the Board for their time. He will return when he can submit the application.

Mr. Foster adjourned the meeting at 9:51.