

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
June 18, 2019**

Members present:

Donald Foster, Chair; David Curtis, Vice-Chair; Janice Swanson, Vice-Clerk; Chris Carmichael, Associate Member; Joseph Urbanski, Associate Member

Members absent:

John Olivieri, Jr., Clerk, and Daniel Gillis, Associate Member

Regular Meeting:

Mr. Foster opened the regular meeting at 7:00 p.m. He then stated he was required, in accordance with the Open Meeting Law, to announce 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.

Approval of Meeting Minutes

Mr. Curtis made a motion, seconded by Mr. Urbanski, to approve the Minutes from the May 16, 2019, meeting.

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

Meet with the Zoning By-Law Review Advisory Committee (ZBRAC)

Mr. Darling, member of ZBRAC, was present. He was here to discuss the seasonal bylaw. He stated they wanted to discuss this bylaw and ask the Zoning Board if they felt there was a benefit to having it. Did they think it was a useful tool as they issue Special Permits, or would they consider removing it and handing it over the Board of Health?

Mr. Foster replied their role is only when someone requests to convert a dwelling from a seasonal status to a year round status. According to the bylaw as written now, it does require Board of Health approval and it does need to meet septic system requirements. He stated if part of the responsibility is going to remain with the Zoning Board, he thought they should add clarity and detail to the definition so they know what a summer

residence is and what a seasonal residence is. The bylaw implies they are the same, but they could be different. Perhaps there should be some structural and engineering requirements around what both the Board of Health and the Zoning Board would have to look for to consider approval of a request. They don't really have that so, in his opinion, they would have to either embellish and enhance their definitions and requirements or turn it over completely to the Board of Health.

Mr. Poillucci noted that it has become an issue because the shore community is getting year round water. There are hundreds of houses that were always considered seasonal but by their definition did not have year round water. With that water, they can put a septic system anywhere they want. A process has been started where if residents have the water turned on, there will be funds available to borrow so they can upgrade or replace their septic system. Any deed restriction the Board of Health put on was based on the fact either the resident didn't have year round water or they didn't have a septic system but the Zoning Board has also put these restrictions on over the years and they could not take those off. That is why they are here tonight. They are trying to figure out what the process will be for those people.

Mr. Foster replied that he could not recall putting on seasonal restrictions. Mr. Darling said in the instance where the Board of Health has sent a memo regarding a certain petition with a seasonal restriction, the Zoning Board has mirrored that condition. They need a mechanism to take that off or to rescind the seasonal deed restriction on the Special Permit. Mr. Foster felt if a dwelling met certain requirements, such as environmental, engineering, safety, heating, etc., they could then remove the restriction.

Mr. Poillucci responded he and Mr. Iafrate had spent a lot of time trying to figure this out. They cannot send an inspector back out to see what is inside the house and in the walls. This has become a big issue that has never been resolved. They finally took this approach because there are 300-400 houses that will be coming on line so what can they do? It used to be easy because if a house didn't have year round water, it was seasonal. Now they have a mechanism, and they can upgrade their septic systems. That is all the Board of Health can look at. It cannot say that the house is not built properly. Mr. Poillucci advised they have set up a system that any restrictions they have put on can be taken off; but how do they handle restrictions that have been put on by others?

Mr. Poillucci explained the Board of Health has taken the position if you have year round water and you put a new septic system in, you have a year round home. They don't have any control of the condition of the house because the bylaw doesn't say anything except about water and septic. Mr. Foster replied he thought the bylaws needed to be enhanced or completely changed so that it all belongs to the Board of Health. Mr. Poillucci noted that the Board of Health has no authority over the Building codes.

Mr. Foster thought they should inquire as to what other Towns have done and how other waterfront communities have faced these issues. Mr. Darling said this is why they wanted to meet with ZBA tonight and start this process. They need to see what other Towns have for bylaws. It was his understanding that usually the only time a Town

would create a seasonal restriction would be when it was in conjunction with a Seasonal Overlay District and if there is a shorefront community. Typically, it would not be throughout the entire Town.

The existence in the Town of a seasonal list that had been previously compiled was also discussed. Mr. Derek Maksy of 1 Cedar Berry Lane thought residents had been asked if they used their homes in the winter, and that is how the property got tied to a seasonal list. However, that list never went to Town Meeting, got signed, or anything like that so it has no authority. The other part he wanted to mention was the ZBA has also conditioned the number of bedrooms allowed so that is something that might also need to be addressed.

Mr. Foster stated they had a lot of work to do. It may be advisable to start from scratch and redefine this properly. He did feel it was important to separate seasonal from summer. There should also be two parallel definitions with perhaps some difference in the regulations. Ms. Swanson felt this did not belong with the Zoning Board. When a restriction is put on by the Board of Health, a resident can return and have it taken off with no cost associated with that action. When a restriction is put on by the Zoning Board, there is a cost involved as another application has to be filed in order for the restriction to be removed.

Mr. Carmichael asked if the intention was to remove the word seasonal. Mr. Darling replied there are a couple of things they can do. Presently, seasonal is defined by a substandard septic. Mr. Carmichael questioned why they did not return to the Building and Sanitary Code and leave it there. Mr. Darling replied that is what Town Counsel recommended. He stated what the purview of the Board of Health was and noted that there was a minimum standard for human habitation that can be enforced through Building and Board of Health. They need to determine how to take off these seasonal deed restrictions from the Zoning Board of Appeals that are within a Special Permit.

Mr. Carmichael asked if a Zoning bylaw amendment was being proposed for the upcoming Town Meeting. Mr. Foster said it sounded like the proposed change would be to remove this bylaw. Mr. Darling said with a provision by Special Permit to remove any condition that was placed by the ZBA on a previous Special Permit. However, he felt that it was important that he do the research and look at other Towns to see if they have a seasonal bylaw. He also thought it was imperative that the Board of Health look at this and see what they can do.

Mr. Foster asked that Town Counsel be asked if a property owner comes to the Zoning Board to remove a restriction, is that treated the same way as a regular Special Permit or can they simply vote to do that without advertising and abutter notification. Mr. Darling replied that he would ask but felt that it would be a modification to a Special Permit which would require a public hearing and notification. Mr. Foster would like to simplify the process and keep it as inexpensive as possible. Mr. Darling said it has been discussed having language in the bylaw to terminate any pre-existing condition relative to seasonal but they have not gotten a legal opinion yet. For example, within the bylaw it might state

conditions placed for seasonal use in the past are now extinguished or modified through Special Permit.

Mr. Darling advised this is one the first discussions regarding this. They will be holding public hearings, as well as, speaking with the Planning Board. They will also do a couple of draft copies and will be back here to present to the Zoning Board for input. Mr. Curtis asked if residents would be required to hook up to the water. Mr. Poillucci replied they would not. He noted that there are residents who only use their homes for a couple of months in the summer. In that instance, why would they force them to get on year round water and install septic systems?

Mr. Foster said that if the Zoning Board is going to retain any authority over a conversion the bylaw should say that it must pass an inspection. Mr. Carmichael did not agree but felt that is something that would happen when a permit is pulled or in the case of the sale of the property. Ms. Swanson noted that you could probably find violations in most everyone's property for code now. She did not think they should have those kinds of regulations over these seasonal homes. Mr. Poillucci noted that it is because there will be an increase in flow, the Board of Health has the right to require an upgrade to the septic system but that is not something they can do around Town arbitrarily.

Mr. Foster asked if there was anything further. Mr. Darling replied they will work on what has been discussed tonight. They will then either request to be placed on the agenda again or invite the Zoning Board to one of their meetings.

Maksy/Simpson hearing – 89 Crooked Lane and 1 Cedar Berry Lane

Mr. Foster opened the Maksy/Simpson petition at 7:35 and read the legal ad into the record. He then read correspondence from the various Town Boards. The May 31, 2019, letter from the Board of Health stated they had no issue with the petition at this time. The Planning Board stated in its June 5, 2019, memo they had no comments regarding the petition. The June 12, 2019, memo from the Conservation Commission indicated there were wetlands observed on both properties, but since no activities were proposed, they had no jurisdiction on this particular matter.

Mr. Maksy and Ms. Simpson were both present. Mr. Maksy explained what they had in front of them was actually a plan that had been endorsed by the Planning Board for the lot lines. This plan has been recorded at the Plymouth County Registry of Deeds so the lines are established but because Lot 1 is an undersized lot, they need to make sure they do not make it any more non-conforming. He advised that Parcel A is 1,756 square feet and Parcel B is 7,159 square feet. He advised these are the two parcels that are being swapped. Ms. Simpson will receive Parcel B from him to increase her lot size, and he will receive Parcel A from Ms. Simpson which will increase his frontage.

Mr. Carmichael asked if this would give Ms. Simpson the required square footage. Mr. Maksy replied that it would not but this would increase it. Mr. Foster noted that it was

now less non-conforming. Mr. Carmichael asked what the intention was with Lot 3. Mr. Maksy replied he did not have any plans right now, but possibly in the future. Mr. Carmichael said the future plan would then be to subdivide Lot 2 and Lot 3 and make two lots. Mr. Maksy replied they already were subdivided subject to this approval.

Mr. Foster could not see a thing wrong with this proposal. It makes Lot 1 less non-conforming. He asked Board members what they thought. Mr. Urbanski was in agreement as was Ms. Swanson. Mr. Foster asked if anyone present would like to speak for or against. No one spoke.

Mr. Curtis then made a motion, seconded by Mr. Urbanski, to approve the request of the exchange of properties as it improves the conformance of Lot 1 and does not impact the conformance of Lot 2. The **vote was unanimous for.**

The hearing closed at 7:48.

Documents distributed for the hearing:

Petition packet

Legal ad

Board of Health correspondence of May 31, 2019

Conservation Commission correspondence of June 12, 2019

Planning Board correspondence of June 6, 2019.

Peterson hearing – 400 Bedford Street

Mr. Foster opened the Peterson hearing at 7:48 and read the legal ad into the record. Mr. & Mrs. Peterson were present. Mr. Foster then read the correspondence from various Town Boards into the record. The May 31, 2019, letter from the Board of Health stated they had no issue with the petition at this time. The Planning Board requested, in its June 5, 2019, memo, the Zoning Board take into consideration the site distances along Bedford Street. There should be sufficient sight distance so the safety or operations of the roadway or intersection are not adversely affected. The June 12, 2019, memo from the Conservation Commission stated there were no wetlands in the area so they had no jurisdiction.

Mr. Foster asked Mr. Peterson to describe the project. Mr. Peterson replied the fence would go from the corner of their lot and 90 feet down to where their back driveway starts. On the other side of the driveway would be the 16 foot section. The reason for the height is to prevent viewing of the pool that had been installed and from their deck off of the house. Mr. Foster said that one issue that comes to mind is safety and with a 10 foot high fence comes a lot wind loading on it. What provisions are they taking to make sure it is safe? Mr. Peterson replied where the fence is going to be there were natural structures in front of it. He then described how it would be built.

He would have to work with Mr. Darling regarding what is needed structurally, and he is also working with the fencing company located down the street. Mr. Carmichael suggested slanting the slats to allow wind to come through. There are different ways to do this. Mr. Foster asked Mr. Peterson if the Board was to consider granting a Permit for this would he object to a restriction that would permit this for him only. Mr. Peterson said that was not a problem. He explained that they just need that extra height because of the pool.

Mr. Michael Martowska of 2 Edgewater Drive then spoke. He stated that he had found the plans a bit misleading. He asked if the 10 feet was from the pavement. Mr. Peterson replied it was 10 feet from his property line. Mr. Martowska asked what would happen if Nelson Shore Road had to be widened. He questioned the concept of privacy with the height of the proposed fence. Ms. Peterson then explained why they were requesting that height.

Mr. Foster then asked how far onto the property the fence would be placed. Mr. Peterson replied 10 feet. Mr. Foster said they have to make sure that the fence is not only on their property but there is enough room so that they could comfortably walk down and have legal access between the fence and the property line for maintenance, cleaning, painting, etc. Mr. Urbanski thought they should have someone come in and do a survey on that one line. Mr. Carmichael agreed. Mr. Foster said that one of the requirements could well be having a surveyor identify that property line. Mr. Peterson said that had been done at one time but it was noted that presently there were no markers in the ground.

Mr. Martowska stated that according to his research, the posts in the ground should be one third to one half the post height which would be approximately 3.5 to 5 feet deep, but the plan showed only 2 feet. Mr. Foster said they did not regulate that but would leave it up to the contractor to do it properly. Mr. Peterson said that he was going to do it himself. Mr. Foster said, in that case, they would require that Mr. Peterson have formally prepared plans approved by the Building Inspector. Mr. Foster said he did not want to do the engineering here but he did want to make sure it is done and approved. The Zoning Board is responsible to ensure that the plan meets "sound engineering" but they do not have to define that. That is the responsibility of the Building Inspector.

Mr. Foster asked if there was anything further. He said there was one thing he hadn't heard which was how Mr. Peterson would ensure proper site view at the end of Nelson Shore Road where it meets Bedford Street. Mr. Peterson replied there is ample room where the fence is going to be at the end of his driveway to see in both directions for both cars and pedestrians. Mr. Foster asked how much space or width is needed on the property between the defined property line and the fence for access and maintenance. Mr. Peterson replied 10 feet.

Mr. Carmichael then made the motion, seconded by Mr. Curtis, to approve the petition with the following conditions:

1. The lot line and where the ten foot line is located will be confirmed with a surveyor before any construction may begin.
2. Site lines must be as considered by the Highway Department so there are no obstructions for anyone entering/exiting from Nelson Shore Road on to Bedford Street.
3. The construction and maintenance of the fence shall be enforced through the Building Commissioner.
4. The fence is to be removed or reduced to seven feet at the sale of the property. The new property owner may also choose to apply for a new Special Permit.

The vote was **unanimous for**.

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

The hearing closed at 8:10.

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Planning Board correspondence of June 6, 2019

Mr. Foster adjourned the meeting at 8:10.