

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
February 20, 2020**

Members present:

Donald Foster, Chair; David Curtis, Vice-Chair; John Olivieri, Jr., Clerk; Janice Swanson, Vice-Clerk; James Gouveia, Member; Gerry Noble, Associate Member; Joseph Urbanski, Associate Member

Members absent:

Chris Carmichael, Associate Member; 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.

Betts hearing – 74 Lakeside Avenue

Mr. Foster opened the Betts hearing at 7:00. He advised the original hearing for this had been held in 2017. It was appealed to the Court and the Court found a deficiency in one part of the petition so they were going to take a second look at it tonight. Mr. Foster then read the legal ad into the record. He thought, for clarity's sake, they should go over the history of the petition.

Ms. Betts advised there is an existing cottage at 74 Lakeside Avenue. They want to tear it down and rebuild a ranch style home within a 32' x 74' footprint which included a two-car garage. The property is approximately one acre, but it is long and narrow, with about 50 feet of frontage on the lake. They believed they needed a Special Permit along with a Variance but the Court found they only needed a Special Permit. Mr. Foster said that was an error that had not been caught. A Variance in Lakeville's by-law is to give you permission to do something that's based on some deficiency in the property like a ledge, valley, or outcropping that prevents building in a way that conforms to the by-law. He did not think that condition was precisely true, and the Court had agreed with the person that had appealed. He asked if anything had been done at the property yet.

Ms. Betts replied they had been unable to do anything. Mr. Foster asked if the plan had changed in anyway. Ms. Betts said it had not. Mr. Foster advised that he had a copy of the original Decision from 2017. He would read the findings from that for the benefit of the Board members. The Board's findings had been as follows:

- The property is zoned residential and has an existing dwelling on it.
- The property is non-conforming because the lot is under-sized and because the existing dwelling intrudes into the setbacks on both sides and at the shorefront.
- The existing dwelling has a fully enclosed deck that is within several feet of the shorefront.
- The proposed dwelling will have a slightly less intrusive setback on one property sideline and a setback on the other property sideline that is less intrusive than the existing concrete bulkhead wall.
- The proposed dwelling will be a single-story structure in order to preserve the best view from adjacent properties.
- The stated size of the building is in error because it inadvertently includes the footprint of the attached garage.
- The proposed project will retain the original deck in the same location but will remove all enclosures.
- The ZBA finds that a temporary garage structure and a basketball play area belonging to a neighbor span across the property line and intrude onto the petitioner's property and into the setback margin.
- The ZBA finds that the use is not noxious, harmful, or hazardous, is socially and economically desirable and will meet an existing need.
- The advantages of the proposed use outweigh any detrimental effects.
- The applicant has no reasonable alternative available to accomplish this purpose in a manner more compatible with the character of the immediate neighborhood.
- The proposal generally conforms to the principles of good engineering, sound planning, and correct land use.

Mr. Foster said he did not think they had to go back over all the details if nothing had changed since 2017. The Court did agree with the Board's findings but disagreed with the variance and they believe that a variance is not needed. He asked if there was anyone present who would like to comment or speak to this clarification.

Mr. Allan Smith of 76 Lakeside Avenue addressed the Board. He stated the Betts' had been using the property as Ms. Betts had indicated earlier. He noted the property does not have running water, and it does not have a water system. The septic system is from the 1950's so this is not a usable property despite the representation of its current use. It has been a seasonal home until its purchase by the Betts.

Mr. Smith would respectfully ask the Board to consider the zoning by-laws and their own disagreement with this application and their alignment on the Special Permit. The initial application for the Special Permit and Variance included plans that were not consistent with the Zoning by-laws and did not include basic information such as abutting neighbor's septic systems, wells, and things of that nature. He would also note the

request to modify is based on new information or a new request. The Superior Court heard this and provided their opinion on section 7.4 and the Betts' had the opportunity, at that time, to appeal that decision. It would appear inappropriate that this Board would hear a request today for a modification and also bring in a new code section for which they were going to approve a Special Permit. He would also like to remind the Board this is a sub-standard lot and is only 50 feet wide from beginning to end. The property is 460 square feet, and they are requesting not a modification which is what is consistent with a Special Permit, but they are requesting a razing of this building and a replacement with a building that is almost five times its size. That is not a modification. This is a new application or a new request for clarification. It is not appropriate for this Board to be hearing this request for modification nor if they subsequently approve it.

Mr. Foster said the use of modification in this case refers to a modification to the decision not to the plans, the house, or the property. Mr. Smith said his Counsel would suggest that is not appropriate. The Superior Court has provided an opinion under 7.4, and the Betts' are now requesting relief under section 6.1.3. Mr. Foster replied that was in addition to 7.4. He then read section 6.1.3 into the record. Mr. Smith said that was correct, but in 2017 they requested relief under 7.4 only. They can't do that, they have to reapply.

Mr. Foster said Mr. Smith pointed out the structure that is there now doesn't have proper septic, proper water, etc. The proposal is to build a house that would have all of that. Wouldn't that be better for the community and the environment? Mr. Smith replied that was not the question at hand here today but rather was it appropriate for this Committee to provide relief under a pre-existing application under a new code section of the zoning by-law for which relief was not requested under the original application. Mr. Foster replied they have a petition, and that is what they must act on. Mr. Smith then submitted a memorandum dated February 20, 2020, which Mr. Foster read into the record.

In response, Mr. Foster said he did not feel that anyone was telling them what relief was required. However, requesting relief in this project from 7.4 and 6.1.3 is proforma and is quite standard. That is normally done in many petitions they have considered over the last number of years. He was not clear exactly what the objection was. Mr. Smith said their objection is to the modification. The opportunity for modification requires a new application and asking the Board for clarity as opposed to asking for a decision is not correct.

Mr. Foster said it was not uncommon for petitions to be submitted to them that do not have the clearest of English language. It is their job to try to do what is best for as many people as possible. He thought in 2017 when they first considered this petition, they felt it was probably better that this property be modernized, improved, and made safer and more environmentally sound. He thought their actions are consistent with the intent and purpose of the by-law.

Mr. Foster then read 6.1.3 again. Mr. Smith said they are talking about a footprint that is five times larger and razing a building. Mr. Foster replied they had grappled with that

three years ago and at that time decided the change in use and structure was not more detrimental than what exists there now and the Court agreed with them. Mr. Smith noted that was on the Special Permit and not on the Variance. Mr. Foster replied the modified petition they received does not address a Variance. Mr. Smith said he was still objecting to this Board hearing a petition for a modification of an existing application. The Superior Court provided an opinion which was not appealed at that time. It was their contention it was not appropriate for the Board to be hearing a petition to modify the relief for that Special Permit. Mr. Foster responded the Betts had gone through the proper procedure and the Board was required to hear the petition. He noted that Mr. Smith's concern has been noted and will be in the record.

Mr. Olivieri said for clarification this is a new application. Although from a terminology standpoint the words modification and clarification were used, and it does reference the application from over two years ago, this is a new application. Mr. Foster agreed. He did not think they were changing anything which is why at the beginning he read aloud all of their findings from the original decision. He then read the December 18, 2019, letter from the Building Commissioner, to the Betts, into the record.

Ms. Swanson said this Board has entertained modifications on many projects. The applicant came in, asked for a modification, and if the Board felt it was warranted, they granted it. She felt this was unusual for them and they were only talking semantics here. Mr. Foster said it appeared tonight the word modification was being used to imply the details of a proposed project is the modification. However, the word modification tonight is a modification to the decision that was granted three years ago. Not in regards to the technical details of the proposed project, but with regard to the wording because they had inadvertently included a variance and the variance has been removed.

Mr. Foster asked if anyone else would like to speak to this petition. Mr. Smith then read the Brief to the Board that had been included on the application. He said that was not a new application but they were looking for specific relief from an opinion that has already been provided from the Superior Court. This does not allow them to come back to this Board. Mr. Foster clarified that the problem they are faced with is they had issued a decision that was based mostly on the request for a Special Permit but also addressed the request for a variance which was in error as the Judge found. Now, they are asking them to render a decision based solely on the constraints of a special permit with no regards to a variance. This is how he read this. Mr. Smith said he agrees but still contends that this project is not the type of project that would be subject to a special permit. Mr. Foster said the Board had found the project was no more detrimental than the existing situation, and this was affirmed by the Court.

Mr. Curtis was unsure why they were still discussing this as the Court had already affirmed the decision on the Special Permit and only annulled the decision regarding the variance. Mr. Foster then asked if anyone present would like to speak for or against the petition. No one spoke.

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

The hearing closed at 7:34.

Documents distributed for the hearing:

Petition packet

Legal ad

Allan B. and Julie L. Smith Correspondence of February 20, 2020

Chapin hearing – 4 Pilgrim Road

Mr. Foster opened the Chapin Hearing at 7:34 and read the legal ad into the record. Mr. Chapin advised he purchased the existing home which has a very flat roof and a lot of safety concerns. He has restructured the building which has required him to increase the peak of the roof. He would like to add to the existing square footage of the home by 286 feet.

Mr. Foster asked if he had any pictures of the existing house. A picture of the house was then distributed to Board members. Mr. Foster clarified that he was not changing the foot print but just going up a story. Mr. Chapin said that was correct. Mr. Foster asked what the lot size was. Mr. Chapin stated it was a little over 10,000 square feet.

Mr. Foster then read the comments from the various Town Boards into the record. The February 19, 2020, memo from the Conservation Commission noted there were no wetlands on the property and no further action was required. The February 7, 2020, Board of Health memo stated they had no issues with the petition moving forward. The Planning Board memo of February 18, 2020, had no comment regarding the petition.

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

Mr. Olivieri made a motion, seconded by Mr. Curtis, to approve the petition as presented. The **vote was unanimous for.**

The hearing closed at 7:39.

Documents distributed for the hearing:

Petition packet

Legal ad

Board of Health Correspondence February 7, 2020

Conservation Commission correspondence of February 19, 2020

Planning Board correspondence of February 18, 2020

Turner hearing (Old Field Estates) – 44 & 46 Rhode Island Road -

Mr. Foster opened the Turner hearing at 7:40 and read the legal ad into the record. Atty. Michael O'Shaughnessy was present for the applicant with respect to the request for a Comprehensive Permit. Mr. Robert Forbes from Zenith Consulting Engineers was also present. Atty. O'Shaughnessy said they are seeking approval to construct 16 dwellings in eight duplex buildings.

Atty. O'Shaughnessy said he would first like to cover three jurisdictional items. He noted they do have a profit limitation for this project. This is set by the subsidizing agency which they will enter into a regulatory agreement with. This agreement will be recorded at the Registry of Deeds and will be the document that governs the profit that can be made on the project. The second item is they need a Project Eligibility Letter. The December 6, 2019, letter from Mass Housing is included in their packets. The last item is they have to demonstrate control of the site. In their packets, they will find the deeds for the properties.

Atty. O'Shaughnessy said he would give a quick overview of the project. The site is about 2.8 acres. There is a small area of wetlands on the property. They will be meeting with Conservation next week for a determination. There will be 16 three-bedroom units and they will be approximately 1,700 square feet in size. These are duplex buildings that are laid out on a twenty-foot road. The road will never be accepted as a public way but will be maintained by the Condominium Association of which everyone will pay dues.

Mr. Forbes then displayed a plan of the project. He noted there had been some concerns regarding vernal pools on the site. He indicated on the plan that although there were some in the area, there were none on the site. These were also at least 1,000 feet away. Mr. Forbes had a rendering which showed the unit layout and the landscaping plan. He noted there is a small vegetated area on the edge of the property that exhibits some wetland vegetation so they are bringing that to Conservation for some clarification.

Mr. Forbes continued there are 62 parking spaces available which is 3.8 spaces per unit. In regards to the road, it is 20 feet wide and the width of the cul-de-sac turn around is 30 feet. The reason for that is they put a template on it to make sure that all the fire apparatus can easily get in, navigate through, and then get off the site. They are proposing that all units be served by on-site septic systems. Municipal water is available from Rhode Island Road, and a water main will be run right down the road. There is an existing hydrant just off the edge from where they are coming in and they are proposing another one inside.

Mr. Forbes then discussed the review letter from Nick Lanney. He advised they agreed with his comments, and had responded. He noted that although Mr. Lanney had requested there be a sidewalk from the cul-de-sac to the entrance, they are asking the Board to not require it as it would be a sidewalk that goes from nowhere to nowhere. In regards to drainage, they are collecting the run-off in catch basins and bringing them to infiltration basins. They are taking everything from a 50-year storm, which is a six-inch

rainfall in 24 hours, and infiltrating all that on-site to the two basins. In a 100-year storm, they will discharge from the basins to the overflow spillways but it is much less than what currently goes there.

Mr. Forbes then displayed the landscaping plan. He noted it called for 87 trees, 287 shrubs, and additional unit plantings for a total of 1,142 plantings. This is an average of 71 plantings per unit. Atty. O'Shaughnessy then displayed the renderings of the units in different colors. Four of these units will be affordable. They have not yet decided on the location of these units.

Mr. Foster noted that there are some kind of plans in the works for Route 79. They would want to make sure that these plans don't somehow conflict. He didn't know if those plans had a sidewalk, but if they did, the Board would probably want a sidewalk too. Mr. Foster said they had a very complete letter from Mr. Lanney outlining his observations and concerns. Did he have anything he would like to add to it? Mr. Lanney replied that was all he had. He was concerned about the steepness around the cul-de-sac and adding riprap to stabilize it. He also recommended a guardrail.

Mr. Foster then read the correspondence from other Town Boards into the record. The February 19, 2020, memo from the Conservation Commission stated they had received a Request for Determination of Applicability for this site. It noted there were no wetlands on the property and no further action was required. The February 20, 2020, memo from the Fire Department stated they had no objection to the road and/or cul-de-sac. The Chief noted that there did not appear to be a compliant hydrant identified on the plan. Mr. Forbes responded that was an error where that layer was turned off and the hydrant did not show up. There is an existing one, and there will be one more at the site. Mr. Foster asked that he follow up with the Fire Chief regarding that. The February 7, 2020, Board of Health memo stated they had no issues with the project in general but as of this time they do not have any proposed septic plans. The Planning Board memo of February 18, 2020, asked if any consideration had been given to submitting the project as a 40R and if there were any condo documents available. Atty. O'Shaughnessy replied they had not yet prepared any documents. If this project is approved, it would require that Town Counsel approve those documents. He would be happy to provide a draft to the Board.

Mr. Curtis asked about the fence on top of the retaining wall adjacent to Infiltration Basin one. Mr. Forbes replied this change has been made. Mr. Foster advised that Town Counsel had not been able to attend tonight but would be here next month and by then they should also have the revised plans. Mr. Foster asked if anyone present would like to speak on this proposed 40B development. A woman in attendance commented that one of the things she liked about Lakeville was the required size of the lots. Is this going to be the norm? Mr. Foster then described the Affordable Housing Law which he explained is mandated by the State.

Mr. Dick Scott of 9 Rush Pond Road asked what the timing of the project was. Atty. O'Shaughnessy replied it would depend on how long this process takes and they also still need final approval from Mass Housing. He estimated sometime in the fall to start

construction which would then take between 18 to 24 months. Mr. Scott asked what the selling price and affordable selling price would be. Atty. O'Shaughnessy was not sure but thought the marker value for units like these would be \$350,000 and up. He thought the affordable rate would be in the range of \$190,000 to \$192,000. Mr. Scott also asked if any consideration had been given to having these units age restricted. Atty. O'Shaughnessy said not at this time.

Mr. Scott asked if they knew the distance from the closest residence to the landfill. Atty. O'Shaughnessy replied DEP has this unpublished rule of a 100-foot buffer they like to follow. He displayed on the plan where that would extend to but noted within that buffer, there is no waste. If anything were to happen, it could be just some monitoring wells that would need to be installed. Mr. Foster would like that location confirmed by their next meeting. Atty. O'Shaughnessy said they would do that. Mr. Scott said the reason he asked was because under the current waste laws, a fence around that waste area is considered reasonable to keep trespassers out of that area.

Mr. Scott asked if they had any idea how far Rush Pond Road was from all of this. Mr. Forbes estimated with the scale that it was 1,500 feet. Mr. Scott continued that there is a fairly significant elevation drop between their property and Rush Pond Road. He wanted to make sure as they develop this, attention is paid to the grading along that back edge of their property. Mr. Forbes replied they had all the contours shown on the existing conditions plan and on the proposed plan. Mr. Scott then asked if the Planning Board, although not responsible for approval, still had the opportunity to review these plans. Mr. Forbes advised that an associate of his and Mr. Turner did meet with the Planning Board as a courtesy. Mr. Foster added that the plans the Zoning Board receives are also distributed to other Town Boards including Planning, Conservation, Health, etc. Some Boards are diligent and provide feedback and others do not. It depends on the nature of the project.

Mr. Scott said many people in the neighborhood have made comments to him regarding the number of units in the project. Within the limitation based on that elevation, the one thing that keeps coming up is the aesthetics. He was appealing that some of those trees go along that edge to help visually. Mr. Forbes said he wanted to make it clear that there is a building lot in between Mr. Turner's land and the people on Rush Pond Road. That is a wooded lot, and they have no control over it.

Mr. Scott said the last thing he wanted to mention was the residents on Rush Pond Road had gotten a letter about the possibility of gas coming in off Route 79. He wondered if that was an option for this project. Mr. Forbes said they were exploring that. Mr. Lanney then wanted to clarify that when he was doing his review, he looked at the Planning Board's rules and regulations for guidance in seeing how compliant the project is with them.

The resident from 43 Rhode Island Road was in attendance and asked for an explanation of this hearing being held next month. Did that mean that what had been covered tonight did not count? Mr. Foster said a 40B hearing would most likely be more than one month.

The general format would be they would have an introduction where the plan is presented, they ask questions, and then review the concerns the consulting engineer has raised. They then resolve those questions and issues. This resident then told the Board of his concerns about the Town reaching the 10% threshold concerning affordable housing. He also felt the height of the units was a concern. He noted this was a bad stretch of road. The telephone pole has been hit two times in three years from wrong way traffic. What will it be like with three more egresses as well as 62 more potential vehicles? He did not feel this would be safe. He would propose a lower height to the buildings and only one egress. There should also be a stop sign at Rush Pond Road to slow down the traffic. He read this process is supposed to be about compromise with the developer but he has not heard any compromise so far.

Mr. Foster responded they did not control traffic signs. He would recommend that a list be put together of the compromises he would like and be presented to the developer next month. The resident said he was trying to get involved, and yet he felt that he wasn't getting any communication from anyone in Town Hall. Atty. O'Shaughnessy said that if there was any neighbor that would like to meet with the developer and talk about their concerns, they are happy to listen and see if there is something they can do. If there is something they can do within reason, they are happy to do it. Mr. Urbanski asked if it would be reasonable to ask for a traffic study. Route 79 was horrendous with cars.

Mr. Forbes clarified the buildings were not 35 feet high. He was not sure where that number came from. Ms. Janet Scott from Rush Pond Road said that she would like contact information so they could meet with the developer. Atty. O'Shaughnessy said he could provide that after the meeting. Ms. Scott noted that over the years the neighbors to this property have attended many meetings as different plans were put forth. They do have concerns being close by and in regards to their septic and wells. Therefore, they want to make sure that everything is done properly and with proper distance.

Mr. Scott clarified it was said they should come to the meeting next month with a list of their questions. He would suggest those questions be sent to the Board as soon as they are put together. Mr. Foster replied that he wanted to make sure that everything they do conforms to the Open Meeting Law. Mr. Scott felt this meeting had been positive and they now had a way to communicate with the Board as well as the developer.

Mr. Olivieri then made a motion, seconded by Mr. Gouveia, to accept the request to continue the Turner hearing (Old Field Estates) to March 19, 2020. The time will be 7:00 p.m. The **vote** was **unanimous for**.

Documents distributed for the hearing:

Petition packet

Legal ad

Board of Health correspondence of February 7, 2020

Conservation Commission correspondence of February 19, 2020

Fire Department correspondence of February 20, 2020

HML Associates correspondence of February 14, 2020

Planning Board correspondence of February 18, 2020
Town Administrator correspondence of February 12, 2020
Zenith Consulting Engineers correspondence of February 19, 2020

Mr. Olivieri made a motion, seconded by Mr. Curtis, to approve the Minutes of Meeting from the November 21, 2019 meeting. The **vote** was **unanimous for**.

Mr. Foster adjourned the meeting at 8:46.