

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
October 1, 2020
Remote meeting**

On October 1, 2020, the Zoning Board held a remote meeting. It was called to order by Chairman Olivieri at 7:18. LakeCam was recording, and it was streaming on Facebook Live. There was no response when Mr. Olivieri asked if anyone was recording.

Members present:

John Olivieri, Jr., Chair; Jeffrey Youngquist; Vice-Chair, Nora Cline, Clerk; Gerry Noble, Vice-Clerk; Chris Carmichael, Member; Christopher Sheedy, Associate

Also present:

Chris Campeau, appointed Associate but not yet sworn in, Atty. Amy Kwesell, Atty. Peter Saulino, Francis and Noreen Morrissey, Sue Furtado, Nick Iafrate, Elaine Johnson, Lisa and Shawn Cusson, Anthony Zucco, Gerry Desrosiers, Kevin Fuller, Kevin Healey, Michael and Maureen Martowska, Mary and Bill Tribou, Jess Leary, Kevin Huerth, Marie Scarpelli, Christopher Maher, Colleen Cummings

Agenda item #1

Mr. Olivieri read this item into the record. It was an explanation of the Governor's Order Suspending Certain Provisions of the Open Meeting Law related to the 2020 novel Coronavirus outbreak emergency which was why the Board was meeting remotely.

Buginga hearing, continued – 33 Shore Avenue

Mr. Olivieri opened the continued Bugginga hearing at 7:20 and read the legal ad into the record. He then read the correspondence from the various Town Boards into the record. The August 12, 2020, letter from the Board of Health stated as long as the shed was recently built and did not have a bedroom or any plumbing, they had no objection to the structure. The August 17, 2020, memo from the Conservation Commission advised the entire lot, including the shed, is within the 100-foot buffer zone. The Commission approved the Notice of Intent and an Order of Conditions was issued. The August 17, 2020, memo from the Planning Board indicated they had no comment regarding the petition.

Mr. Youngquist advised that he would have to recuse himself from this hearing. Mr. Olivieri then asked Mr. Sheedy to participate in the hearing. Mr. Olivieri asked who

would like to speak for this petition. Atty. Peter Saulino was present. He advised he maintained an office at 550 Locust Street in Fall River, and represented the applicant in the petition before the Board. The petition seeks an after-the-fact Special Permit. The reason for this request is because the property was put up for sale, and it was discovered the shed is not in conformance with the bylaw. As a consequence, they are here before the Board to ask for an after-the-fact Special Permit on the grounds the shed exists currently and there is no detriment to the neighborhood in a variety of respects.

Atty. Saulino advised under 6.3.2 an accessory building like this could be approved and maintained in this location within the setback provided a Special Permit is granted by this Board. He also noted Section 7.4 lays out the elements through which this Board can find for a Special Permit. Atty. Saulino then read that section into the record. He advised he would submit this was more of an error than an attempt to do something under the cover of night. This property went before the Conservation Commission and the Town on a Notice of Intent and the subject structure is shown on the plan.

Atty. Saulino stated the request should be granted because the proposal is not noxious. It is consistent with the residential seasonal use on the pond currently. There is really no other place to locate it on the site to make it conforming. In his opinion, given the pre-existing nature of this lot and the fact that the building is already there without issue, it should be allowed and the request is not more detrimental than what is there.

Mr. Olivieri asked if Board members had any questions. Mr. Carmichael asked how long the shed had been there. Atty. Saulino was unsure but estimated less than ten years. Mr. Noble asked if it had been confirmed that there was no plumbing to the existing shed. Mr. Frank Morrissey, the new owner, replied the inside of the shed was just two by fours. There is no plumbing or electrical and the shed will be used for storage. Mr. Olivieri asked if there was any intention to install plumbing. Mr. Morrissey responded there was not. He advised they might want to condition that there would be no plumbing allowed. Mr. Carmichael said he felt they could not do that but could say the shed would not be allowed to be habitable in their Decision.

Mr. Olivieri asked if anyone from the public would like to comment. No one spoke.

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

1. The shed will not be habitable.

Roll Call Vote: Mr. Noble-Aye, Ms. Cline-Aye, Mr. Carmichael-Aye, Mr. Sheedy-Aye, Mr. Olivieri – Aye

Ms. Murray explained the timing of the filings, the appeal period, etc.

The hearing closed at 7:30.

Documents distributed for the hearing:

Petition packet

Legal ad

Board of Health Correspondence August 12, 2020

Conservation Commission correspondence of August 17, 2020

Planning Board correspondence of August 17, 2020

Iafrate/Johnson hearing, continued – Bettys Neck Road-M065-B004-L025

Mr. Carmichael recused himself from this petition. Mr. Olivieri opened the continued Iafrate/Johnson hearing at 7:30 and read the legal ad into the record. He also read the correspondence from the various Town Boards. The August 12, 2020, letter from the Board of Health advised that although the lot is in a sensitive area, it would be possible to install a septic system in the lower right corner of it. The August 17, 2020, memo from the Conservation Commission stated they had no objection to the project at this location. The Planning Board memo of August 17, 2020, had no comment on the petition.

Next was a letter from Shawn and Lisa Cusson who were abutters to the property. They raised several questions and concerns they wanted to be addressed. After reading the letter into the record, Mr. Olivieri asked Mr. Iafrate to explain what he wanted to do and possibly respond to some of the questions that had been brought up. Mr. Iafrate said some of the information that he had been able to gather on this lot was there was a previous house that burnt down in 1980. It was a three-bedroom house with a two-car garage that was built in approximately 1946. It was a single level home. The way the lot sits right now it has 225 feet of frontage, and it is just under 48,000 square feet. What he is looking to do is build a single-family home on spec. They want to construct a three-bedroom, two and a half baths, with a two-car garage that would have approximately 2,300 square feet.

Mr. Olivieri asked what the distance was between the septic and the Cusson's well. Mr. Iafrate replied they hadn't gotten that far. They have done a perc test but they have not designed the septic fully and placed it on the lot yet. They would work hand in hand with the Board of Health for the placement of the system if the Special Permit is granted. He noted there are certain setbacks from wells that have to be met, and they will have to abide by.

Mr. Olivieri asked how much of the land he planned on clearing and would he be open to creating some type of buffer zone. Mr. Iafrate replied he was 100% open to leaving a buffer. He advised they haven't placed the septic system, the well, or even the exact location of the house. He would be more than willing to work with those abutters and keep them informed and leave a buffer there. Mr. Olivieri asked if Board members had any questions.

Ms. Cline asked if it was correct that they did not have a plan site indicating where everything would be located on the lot. Mr. Olivieri replied that was correct. Mr.

Youngquist asked if the lot existed prior to subdivision control law. Mr. Iafrate said that Lakeville adopted their Zoning By-law in 1959, and it wasn't until 1973 the minimum lot size and frontage came into play.

Mr. Noble asked if the house would be in the location as shown on the plan submitted. Mr. Iafrate responded that was put onto the plan but would not be the actual location. They still have to locate a septic system in accordance with the Board of Health and also the well. The dotted lines on the plan were the minimum setback requirements and the house would go somewhere within those. He expected he would try to keep it closer to Bettys Neck for the reason of the abutter and to keep some privacy. It would be in the upper portion of that dotted square. He estimated it would be between 40 to 50 feet off the road. Mr. Noble asked if he knew the location of the prior structure. Mr. Iafrate said he did not. They did find the abandoned septic system.

Mr. Noble asked Mr. Olivieri if it was possible to request Mr. Iafrate to provide more detailed drawings in regards to the proposed dwelling, septic, and well. Mr. Olivieri said they could request whatever they wanted, however, the septic and well distances were under the purview of the Board of Health. As far as the design of the house, that is also not their purview. They can ask for more but it has to be for the right reasons. Mr. Noble said that if Mr. Iafrate was looking to put a porch and a patio in, it would be a continuance of the non-conformity.

Mr. Olivieri said the reason Mr. Iafrate was here was because of the size of the lot. If he was within the setback, they would have to include that in the Special Permit or he would have to come back and get an additional permit. Atty. Kwesell replied Mr. Olivieri was correct. Generally, she would say the Board would want to know exactly where everything is going to be. In this instance, they are dealing with a bylaw section that allows a house that has been demolished by fire or something like that to be reconstructed either in the same footprint where it was, or within the current setbacks. As they don't know where the house was prior, it has to be constructed within current setbacks.

Mr. Olivieri then asked if there were any abutters present that would like to comment. Mr. Anthony Zucco of 14 Bettys Neck stated the only problem that he had was that it is a non-conforming lot. It is his understanding that if a house is destroyed for any reason and it is not rebuilt within two years, it loses its grandfathered rights. Could they provide clarification? Atty. Kwesell responded Section 6.1.1 states exactly what the abutter said. If there has been abandonment over two years, the non-conforming structure meaning on the non-conforming lot shall lose its protected status, and any future use has to conform with the bylaw. That would be impossible on an undersized lot. The bylaw goes on to say provided, however, that by the issuance of a Special Permit, the Zoning Board of Appeals may reestablish the protected non-conforming status of such use, building, or structure. Atty. Kwesell explained that by applying for a Special Permit the two years essentially goes away. She said that when you have the situation where there is the unintentional destruction of a pre-existing, non-conforming structure, you are allowed to rebuild it within the footprint or if you don't know the footprint it has to be built within the current setbacks.

Mr. Gerry Desrosiers of 3 Bettys Neck Road was concerned that the property was 30% less than the current minimum lot size as well as the fact, there is no existing plan with regard to septic and well location. He thought this would detract from neighborhood property values. Mr. Olivieri said that it has been discussed that the plan will have to meet all current setbacks and guidelines. The septic system will have to meet all Board of Health requirements. Mr. Olivieri said that the Board will have to determine if they think this project will be more detrimental to the neighborhood.

Mr. Olivieri said he would like to return to the buffer issue. He knew there was not yet a set of specific plans but did Mr. Iafrate have any idea of what distance that buffer might be? Mr. Iafrate replied he thought a 60-foot buffer would give him only about 11 feet of yard. He would be more than willing to go about 35 to 40 feet but 60 feet might be extreme. Mr. Olivieri asked Board members what they thought about that as a requirement.

Mr. Noble thought it was reasonable. Mr. Sheedy agreed. Ms. Cline said it was reasonable but her concern was not knowing all the dynamics involved with the land and if it was going to be achievable. Mr. Iafrate advised the Board he did not own this property but was in the process of potentially purchasing it. For him to get to the point of having the septic designed and approved, the well location, and to have a full site plan ready for permitting is a huge financial burden without owning the property. They had wanted to find out if they could acquire a Special Permit before they began investing into those types of costs.

Mr. Olivieri said that was understandable. He noted the Board seemed to be amenable to potentially granting the Special Permit, although he did not want to get ahead of himself, but with some type of condition to make sure there is some type of buffer. To Mr. Iafrate's point, he did not know where the Board of Health is going to allow him to place the septic and well. He advised that process would be public and open as well. If there is a condition on this Special Permit regarding a buffer setback it would be contingent on the approved placement of the systems by the Board of Health. Mr. Iafrate agreed that it was difficult to iron out an exact setback that they could work with until those locations are determined and approved. Mr. Noble thought the provisions made were reasonable.

Mr. Zucco said the property aggressively slopes up to a hill. His septic system and leaching field are at the top of that hill. They had to be placed there because of the Tamett Brook. He did not know how much of that hill will have to be excavated for the placement of the house. That hill over time may erode and affect the leach field above it. This was a concern to him. Mr. Olivieri understood the concern but he was not sure it was their purview to condition something along those lines.

Mr. Youngquist then made the motion to approve the request to construct a single-family home. Mr. Noble wanted to second the motion but wanted to add the provision that Mr. Iafrate maintain a buffer zone of up to 35 feet or the most that will be possible after the approved placement of the septic system and well by the Board of Health. Mr.

Youngquist then revised his motion to include the provision. Mr. Noble seconded the motion.

Roll Call Vote: Mr. Noble-Aye, Mr. Youngquist-Aye, Ms. Cline-Aye, Mr. Sheedy-Aye, Mr. Olivieri – Aye

Ms. Murray explained the timing of the filings, the appeal period, etc.

The hearing closed at 8:08.

Documents distributed for the hearing:

Petition packet

Legal ad

Board of Health Correspondence August 12, 2020

Conservation Commission correspondence of August 17, 2020

Planning Board correspondence of August 17, 2020

Shawn & Lisa Cusson correspondence of August 15, 2020

Fuller hearing, continued – 32 Fuller Shores Road

Mr. Olivieri opened the continued Fuller hearing at 8:09 and read the legal ad into the record. He then read the correspondence from the various Town Boards. The August 10, 2020, letter from the Board of Health indicated that the sketch shown appears to have already been built. The addition is supposed to be for storage but under Title V it would be categorized as a bedroom. Therefore, the applicant is required to upgrade the existing septic system prior to getting approval for an addition that includes a bedroom and any ZBA approval should be pending Board of Health approval. The August 17, 2020, memo from the Conservation Commission advised the entire project is within 100' buffer zone and will require a Request for Determination of Applicability (RDA). Erosion controls will be required as part of the RDA. The August 17, 2020, memo from the Planning Board made no comment regarding the petition.

Mr. Olivieri then asked the petitioner or a representative to advise the Board regarding the proposed project. Mr. Fuller was present. He stated they were working on the septic system. He was putting a dormer on the cottage which turned into a "mess" and they ended up adding a 20' x 11' room which they want to call a bedroom. They are now going to use the existing small bedroom as storage. Mr. Olivieri asked Mr. Fuller if he was aware that he now needed Board of Health approval. Mr. Fuller responded that Foresight Engineering was working on that for him. Mr. Olivieri then asked where were they in regards to the Conservation Commission. Mr. Kevin Healy, relative of the petitioner said that should be sometime next week, and Darrin from ForeSight Engineering was working on both of those issues.

Mr. Olivieri asked members if they had any questions. Mr. Carmichael asked Mr. Fuller if he had started construction without a permit. Mr. Fuller said he had not but had pulled

a permit for a roof and a shed dormer. When he got into construction, he found a lot of rot and then immediately called the Building Inspector down and was told he would need a Special Permit. Mr. Olivieri said that he thought that what was being done based on the information they had in front of them did not appear to be any more detrimental to the neighborhood. If he had come to the Zoning Board with Board of Health and Conservation approval, this would have been a simple one to approve.

Mr. Olivieri said that prior to him being the Chair, he did not have an issue approving petitions subject to another Board's approval. However, this still has to go through those two Boards and it appears that it hasn't gone anywhere yet. He would ask for Town Counsel's recommendation. Atty. Kwesell replied because this is an after the fact petition, it has to be conditional. If he does not get Conservation and Board of Health approval, it would have to be removed because there is no Special Permit. Mr. Olivieri asked if members thought this fit the criteria and it was not more detrimental to the neighborhood. Ms. Cline said she did not think it was more detrimental but she did have some environmental concerns so she was okay with the conditions. Mr. Carmichael thought Board of Health should limit the number of bedrooms based on the size of the septic system.

Ms. Cline then made the motion, seconded by Mr. Youngquist, to approve the petition subject to the following condition:

1. The applicant must receive approval from both the Board of Health and the Conservation Commission.

Roll Call Vote: Mr. Noble-Aye, Mr. Youngquist-Aye, Ms. Cline-Aye, Mr. Carmichael-Aye, Mr. Olivieri – Aye

Ms. Murray explained the timing of the filings, the appeal period, etc.

The hearing closed at 8:21.

Documents distributed for the hearing:

Petition packet

Legal ad

Board of Health Correspondence August 10, 2020

Conservation Commission correspondence of August 17, 2020

Planning Board correspondence of August 17, 2020

Martowska hearing, continued - 2 Edgewater Drive

Mr. Olivieri opened the continued Martowska hearing at 8:22 and read the legal ad into the record. He also read the correspondence from the various Town Boards. The September 8, 2020, letter from the Board of Health recommended a Title V inspection be done since the system was built in 1977. However, as there is no requirement for

inspections for accessory structures if there is no plumbing in either of the structures, the Board of Health would have no objection to what is proposed. The September 15, 2020, memo from the Planning Board recommended that any lot coverage over the allowed 25% be permeable.

Mr. Youngquist recused himself from this petition. Mr. Olivieri said that Mr. Sheedy would then participate. Mr. Olivieri then asked Atty. Kwesell if she would give the Board a synopsis of this petition as there was quite a bit involved with it. Atty. Kwesell advised here they have a 30,000 square foot lot with a dwelling on it. There is a proposed pavilion which will be approximately 5.1 feet from the side lot line while the 44' x 28.5' proposed garage is 10 feet from the other side lot line. These both qualify as accessory structures and the petitioners are here because no accessory structure is allowed in the setbacks without a Special Permit. The lot is also at the maximum 25% impervious lot coverage.

Atty. Kwesell stated there has been litigation between this property owner and the abutter which resulted in a Settlement Agreement which was provided by the abutter. The Settlement Agreement provides in paragraph 3 that the garage can only be a certain size and every time the garage size increases it has to be further from the lot line. It also states that no matter what it can be no larger than 28' x 24'. However, there is an amendment to the Agreement that states if no Variance is required for the garage then that paragraph is not applicable. In this instance a Variance is not required, a Special Permit is required. Atty. Kwesell said that this is one of those instances when you have to look at the entire lot. The lot appears to be large enough to meet setbacks with at least the garage.

Mr. Olivieri then asked Mr. & Mrs. Martowska or their representative to speak to this petition. Mr. Martowska stated the petition was a multi-faceted request. This will improve the property and includes the following items: paving the driveways, adding terracing down to the steep slope from the house to the lake, adding patio areas, stairways for safety, and the pavilion. He will focus on the garage first. He did first look at putting the garage within the setback requirements, and he could do that. He thought it benefitted his neighbors with the current proposed placement. If he could, he would move the garage closer to the street. but he was limited because of the location of his well. The neighbor to the south, their house is closer to the water and less than 20 feet from the south property line. If the request is not approved, he would be forced to put the garage 40 feet from the street and 20 feet in which would make it more visible to the neighbor's entry way into their house. Across from the property line was their garage which he believed was in the setbacks. He had turned the garage so the neighbor would see the width of it rather than the length which he thought would be less offensive. A lot of the property line side of the garage would be parallel or overlooking their garage but his garage would be longer.

Mr. Olivieri then asked if Board members would like to comment on the garage or if they wanted to hear the entire presentation. Ms. Cline said she did have several concerns regarding the garage. The first was with the 10 feet setback. She also noted on that side

it appears there are two propane tanks; that was a concern. She also said that in constructing the garage there seems to be a lot of vegetation that will have to be removed. Will the erosion and soil removal be addressed by the Conservation Commission?

Mr. Martowska responded that Conservation was already involved. A lot of that vegetation has already been removed. He noted that an error had been discovered on the engineer's drawing. Although it shows the coverage at 24.9% with 7,893 square feet. Those two numbers don't match. He said the original plan was at 28% coverage but he worked with Outback Engineering to reduce that to 25% by narrowing the driveway and changing other things around to reduce the amount of covered area. As far as the propane tanks, the intent for one of the pads is his tank and the other pad is for an exterior generator.

Mr. Carmichael stated when reading through the paperwork the agreement from 2009 limits the size of the structure with a maximum size of 24' x 28'. Now the proposal is 40' x 28'. Was that correct as there were no measurements on the Site Plan. Mr. Martowska replied the attorney had already discussed that point and indicated that because he did not need to get a Variance that limitation no longer applied. This petition requests a Special Permit. Mr. Martowska said there are different requirements for a Variance and Special Permit. Once he didn't need a Variance, he could go back to what the Town would allow him to do, in this case a Special Permit. If he hadn't asked for the reduced setbacks, he could place that garage in a different location within the setbacks without the need for the Special Permit but by right. Mr. Carmichael said but the Special Permit is asking for it to be closer to the lot line. Mr. Martowska said that was correct. Mr. Carmichael said he felt that was the same thing that the agreement of 2009 was trying to restrict him from doing. That was his feeling.

Mr. Olivieri then said if there were no further questions from the Board he would like the Martowskas to finish their presentation. Mr. Martowska continued because they have had some issues with heavy winds off the lake causing damage, they had thought a pavilion would be preferable to an umbrella. There had been a one car garage/shed on the property line which he had torn down when he built the house so it is not in their recent records. He is asking for a 5-foot setback for the pavilion which he would like defined as 5 feet to the center of the column. He stated their neighbors on the north side have a boat house, and the upper part of it is used as a deck. That deck portion is 5 to 6 feet away from his property line. He said they had no problem with what he was doing.

Mr. Martowska said regarding the walkway going down to the lake, it has sidewalls to help protect the stairway. At its closest point, he would want that sidewall to be five feet from the property line. However, due to the angling of the property lines, it does get wider as you get down closer to the lake. He is trying to make better use of his property as well as minimize some of the run-off. Ms. Martowska added that they feel this is in general harmony of the bylaw. They don't feel its noxious but rather an improvement and enhances the neighborhood. It is also consistent with current use and character of surrounding neighbors.

Mr. Olivieri then asked for any Board member questions. Mr. Noble asked for a clarification regarding the impervious coverage. Mr. Martowska replied that he hoped the 24.9% coverage was correct, but there was an obvious error. He is waiting for an answer from Outback Engineering. Mr. Sheedy asked if they would be willing to use different materials that allow water to percolate down into the ground. Mr. Martowska said that was something that had been discussed and addressed.

Mr. Olivieri then said if there were no additional questions from the Board, he would open it up to the public. Mr. and Mrs. Tribou of 4 Edgewater Drive were present. Mrs. Tribou stated that they had quite a few concerns about the whole proposal. They are dealing with a large garage, patio, and other paved areas on a lot that is severely elevated in relationship to their property, and it will also affect additional lower lying properties as they will hear from various neighbors. It is a non-conforming lot that is peculiar in its shape. They are most concerned with the run-off and soil erosion due to the elevation and the additional impervious coverings which still has not been resolved as far as the correct percentage. Mrs. Tribou said the elevation is extreme in relationship to the property and neighborhood. They are constantly dealing with storm run-off. She felt it would be different if it was a flat neighborhood but its not. She said granting this Special Permit would cause great detriment to other neighbors.

Mrs. Tribou then began to discuss the size of the garage. She noted it was larger than the Martowskas' foundation size. It is larger than any garage in the neighborhood. Most of the garages coming in from Nelson Shore Road are 24' x 24' with their garage being 24' x 26'. The property across the street is 24' x 24', and the property next to them on 33 Nelson Shore Drive is 24' x 33'. The garage is out of scale with the neighborhood and diminishes their property. It does not keep with the character of the neighborhood or any other garage in the neighborhood.

Mr. Olivieri asked Mrs. Tribou to comment on the legal document that had been submitted. Mr. Tribou replied that it had been agreed that the garage would be 24' x 24' if it was 20 feet from their property and 5 feet from the boundary line. For every foot inside that 5 feet, so if it was 6 feet, it could increase to 24' x 25' but the maximum size it could be was 24' x 28' if they required a Variance. If no Variance was required then that was not applicable, but he disagreed and felt they are asking for a Variance. Mr. Olivieri said the confusion may be that you can apply for a Special Permit or Variance but from a technicality standpoint, they decided to apply for a Special Permit which null and voids that agreement.

Mr. Carmichael thought this did not pass the straight face test just because they were applying for a Special Permit. He still saw this as a Variance and the agreement should still be kept at 28' x 24'. That was his feeling. Mr. Tribou added that it was also mentioned in the Settlement Agreement that it would be one-story and it would be a two-car garage. They are also concerned with the idea of the propane tank generator. He asked if that space could be permitted for livable space after the fact?

Mr. Olivieri then asked Town Counsel how bound were they as the ZBA to follow that agreement if various members of the Board felt maybe it wasn't the exact intent, and there was confusion over the words Special Permit or Variance. Technically, the agreement says as long as it's not a Variance, how much should that weigh in on their part? Atty. Kwesell replied the document was submitted and is part of the record so it can be considered. She thought it goes to the detriment of the neighborhood or not. There is confusion over the word Variance, and they are varying the setbacks but there is a section in the bylaw that allows them to do that by Special Permit. The Board needs to look at this and decide is this more detrimental to the neighborhood? Could they make these 20 feet? This is relief from the requirements of the Zoning By-law, and are they entitled to that relief particularly for the garage, that needs to be said. She noted it is a private agreement and if this Board did anything in violation or opposition to that agreement it is a private matter, and it has nothing to do with this Board. However, it was submitted so it can be considered but shouldn't be the deciding factor. Mr. Olivieri said they were not then obligated to act on it. Atty. Kwesell said they were not and if they do issue something out of line with it, it was a private matter.

Mrs. Tribou said regarding the size and character of the garage, she would urge each Board member to look at that. She went through the entire neighborhood and other than a horse barn, there is nothing that comes close to this size in the neighborhood with the average being 24' x 24'. She said they are doing some lovely things over there, but it needs to be in keeping with the neighborhood and shouldn't hurt the neighbors in regards to soil erosion, the runoff and all the problems they have, and then adding to the impervious area. Mrs. Tribou said they do have a concern with the turnaround location being in an area where there is a severe decline toward the water and their property. This is not only in regards to the water but also snow removal.

Mrs. Tribou said that Ms. Cline had also brought up a good point regarding the placement of the propane tanks. She said that in Section 7.4.1.2 the advantages of the proposed use are supposed to outweigh any detrimental effects on the neighborhood and the environment, and they do not. There is a reasonable alternative. She also noted that the lot should have been prepared and graded in a manner where it was not a detriment to the drainage of them and others. Mr. Olivieri thanked Mrs. Tribou for her comments and asked for additional public comment.

Ms. Jess Leary of 6 Edgewater Drive then spoke. She was two houses south of the Martowskas and one of the lowest points on the lake. Her concern is drainage and water runoff as it all comes down to her and then to the Huerths. She also did not believe it was in character with the neighborhood, but reiterated her main concern was the drainage. Mr. Huerth of 8 Edgewater Drive asked if there was some type of reclaim system for the roof of this proposed building? Every new construction in this neighborhood has had to put in multiple galley systems to take that rainwater. Is there one on this plan? Mr. Martowska responded, at this point, there was no reclaim system on the roof. Mr. Huerth said that was crazy with the size of the roof. If this is going to be a two-story building aesthetically, it will overpower everything else. Secondly, if that roof rainwater is not going back into the existing soil and percing back to the lake, it's coming down the hill

and washing it out. He has to regrade that hill on a regular basis which is not an easy process. There are now three neighbors that have some major problems with this, at the least it should have some kind of rain reclaim system. It also should be sized to go with the neighborhood. A two-story 40-foot building is not, but a 24' x 24' is what sounds to him was the spirit of the agreement. Mr. Huerth asked if an impact study could be done to see how much water was going to go down that hill from a roof that size. Mr. Olivieri said that he couldn't answer that but there are reasons they have coverage requirements in Town.

Mr. Olivieri asked Board members if they had anything additional to add. Mr. Sheedy said he thought the concerns of the neighbors should carry significant weight. Those concerns were the water runoff, the size of the structure, and not in keeping with the character of the neighborhood. His feeling was this project was not what the agreement intended. It does not feel like the intent was being honored. Mr. Carmichael agreed with Mr. Sheedy. He stated the run-off and size of the structure were problems. He did not see this moving forward. Ms. Cline agreed. She found it to be detrimental not only to the value, but the environment. She felt there are alternatives that should be explored.

Mr. Olivieri then stated to the Martowskas that at this juncture, they could take a vote but he was not sure if that outcome would be favorable. He did tend to agree that the spirit of the agreement was not being met. He would like to have the clarification of the impervious coverage. There are three abutters who have expressed the concern of the water runoff which is tied to that coverage issue. He would call a vote but he would recommend continuing the hearing in order to sit down with Outback and revisit the plan to make it more palatable to the by-law and the comments that have been raised by the Board members.

Mr. Martowska responded if he was to move that garage 40 feet from the street and 20 feet from the side line, the size of the garage would be approved by the Building Commissioner. That had been made clear to him. He only needs this permit to bring it closer to the property line. He thought the option of moving it to comply with the setbacks was worse for the neighbor. Mr. Olivieri said to clarify the argument he is making is he is going to make this better for his neighbors by this placement, but three neighbors do not agree. Mr. Martowska felt the only detriment the Board should be addressing is the fact of being closer to the property line. Is that positioning going to be detrimental? The size of the garage should be off the table from the standpoint, he can and will build that size garage because he doesn't need to go to the Board for it.

Mr. Martowska also did not agree with the comments that had been made about the agreement. He then stated that if he got approved he would not be surprised if the neighbor appealed it. If he gets denied, he will appeal it. He believed from a legal standpoint, as the attorney had made clear, there is a difference between a Special Permit and a Variance and from a technicality standpoint they can argue that later. He did not feel the Board should get involved in that. Regarding the water runoff, statements had been made that were not true. The downspouts from his house go underground and down to the lake, and that was approved by the Conservation Commission. He also relocated

the turn around so he can run that toward his front yard or down to the lake but not the Tribou's property. He is willing to do something to help mitigate some of the runoff by collecting it into a dry well to help it percolate better as opposed to it running down the street.

Mr. Olivieri said at this time he could ask for a motion to vote on the petition, or he could ask for a motion to continue. If they continue, he would suggest providing all the backup and engineering data to show where the runoff is and to show the impact on the surrounding area as opposed to the anecdotal evidence they had heard. He could also point out the properties that have four-car garages as opposed to two-car garages to determine what the percentage is and what the character is. To Mr. Martowska's point, the Zoning Board Members do have the ability to go view this property. What was his preference in the motion?

Mr. Martowska said that he would ask for a motion to continue but what did the Board expect with that continuance? Mr. Olivieri asked Mr. Martowska if he felt he could provide any requested materials by their next scheduled meeting date which was October 15th. Mr. Martowska said that he would have to confirm with Outback but he hoped that could be achieved.

Mr. Carmichael then made the motion, seconded by Mr. Noble, to continue the Martowska hearing until October 15, 2020, at 7:00 p.m.

Roll Call Vote: Mr. Noble-Aye, Ms. Cline-Aye, Mr. Carmichael-Aye, Mr. Sheedy-Aye, Mr. Olivieri – Aye

The following are what Board members asked to be provided to them for their next meeting:

- Engineering plans that show exactly what the water impact is and the correct impervious coverage percentage.
- The proposed water reclamation system.
- A reduction of size to the garage if it stays in the proposed location, and the roof drainage system.

Ms. Leary said she was not available on that date. Mr. Olivieri replied that she could submit any additional information to Ms. Murray, and it would get read into the record. He also suggested Mrs. Tribou could do the same thing.

The hearing closed at 9:27

Documents distributed for the hearing:

Petition packet

Legal ad

Board of Health Correspondence of September 8, 2020

Planning Board correspondence of September 15, 2020
Settlement agreement between Maureen and Michael Martowska and Mary and William Tribou
Amended Site Plan from September 17, 2020

Maher hearing, continued – 8 Lincoln Street

Mr. Olivieri opened the continued Maher hearing at 9:28 and read the legal ad into the record. He also read the correspondence from the various Town Boards. The September 8, 2020, letter from the Board of Health stated they had no objection to the proposed porch addition. The September 15, 2020, memo from the Planning Board had no comment on the petition. Mr. Olivieri then asked Mr. Maher what he wanted to do.

Mr. Maher replied he would like to add a six-foot farmers porch on to the front of the house. Mr. Olivieri noted it appeared the only reason he had to come before them was because of the front setback. Everything else was complying. Mr. Maher said that was correct. Mr. Olivieri then asked if Board members had any comments or questions.

Mr. Carmichael said this was an architectural feature, and it would increase property value to the neighborhood. He thought it was a good idea. There were no other comments. Mr. Olivieri stated that he also did not believe it was a detriment. It was something that would not bother anyone, add to the value of the house, and there would be some shrubbery as well. He asked if there were any abutters present who would like to speak to this. No one spoke. Mr. Olivieri said he would entertain a motion if there were no further comments.

Ms. Cline made the motion, seconded by Mr. Carmichael, to grant the request for a Special Permit as submitted.

Roll Call Vote: Mr. Noble-Aye, Mr. Youngquist-Aye, Ms. Cline-Aye, Mr. Carmichael-Aye, Mr. Olivieri – Aye

Ms. Murray explained the timing of the filings, the appeal period, etc.

The hearing closed at 9:34.

Old Business

Ms. Murray said she had a question for Atty. Kwesell. At the August Zoning meeting, the Board voted for a modification to the LeBaron Comprehensive Permit. Today Attorney Mather tried to drop that off at the Town Clerk's office and have her sign off on it, but it had never been submitted. She was not quite sure how that should be handled. Atty. Kwesell clarified the Decision had not been turned into the Town Clerk. Ms. Murray replied Mr. Foster had signed it before he resigned, and Atty. Mather had it but

did not submit it. Atty. Kwesell said the Town Clerk could not sign off on it until it has been submitted and it has been 20 days. Atty. Mather could try to get a constructive approval but that would take longer than the 20 days. The fastest thing would be to file it and wait the 20 days. She would call Atty. Mather in the morning and let him know.

Ms. Cline made a motion, seconded by Mr. Carmichael, to adjourn the meeting.

Roll Call Vote: Mr. Noble-Aye, Mr. Youngquist-Aye, Ms. Cline-Aye,
Mr. Carmichael-Aye, Mr. Olivieri – Aye

Meeting adjourned at 9:44.