

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
December 15, 2020
Remote meeting**

On December 15, 2020, the Zoning Board held a remote meeting. It was called to order by Chairman Olivieri at 7:00. LakeCam was recording, and it was streaming on Facebook Live.

Members present:

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

Also present:

Atty. Amy Kwesell, Town Counsel; Michael and Maureen Martowska, applicants; Bill and Mary Tribou, Jess Leary, Marie Scarpelli, Kevin Huerth, abutters; Kyle Devenish, Outback Engineering, Madelyn Maksy, applicant; Liam Conway, Bob Messier, Jamie Bissonnette, Zenith Consulting Engineers (ZCE); Skip and Michelle Bird and David Quinn, abutters

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.

Martowska hearing, continued - 2 Edgewater Drive

Mr. Olivieri opened the continued Martowska hearing at 7:03. Mr. Youngquist recused himself from the hearing. Mr. Olivieri advised that as Mr. Noble was not present, the remaining Board members would all participate if there was a vote on the petition tonight. He stated at the last meeting there had been concerns in regards to engineering, water runoff, and the placement of the garage. He saw their engineer was present and asked him to proceed.

Mr. Kyle Devenish from Outback Engineering was present for the Martowskas. He advised that he had been asked to come in and discuss the drainage. Mr. Devenish then shared the plan on his screen. He advised they are proposing to capture the roof runoff from the garage which will then be piped directly to an underground infiltration chamber field. These are plastic arc chambers which are embedded in stone. They are sized to

completely store a three-and-a-half-inch storm. They are proposing sloping from the front steps down towards the front yard to address the driveway area. The edge of the proposed garage on the south side will be super elevated to direct water into the front yard into a nyloplast yard drain, a small plastic grate that will capture the runoff and direct it into those chambers.

Mr. Devenish noted these chambers were all sized to capture and hold completely within the system three and a half inches in a 24-hour storm. This will also capture a large portion of the front yard. There is a small ridge on the site that breaks the flow to the north and south so by super elevating the proposed driveway, it will create a barrier that will direct the runoff towards that yard drain. He stated along the north property line, the proposed pavilion and patio would be self-contained by the topography heading down toward the pond rather than to the north property line.

Mr. Carmichael asked if the percentage of impervious area had been calculated. Mr. Devenish replied that it had been checked and all structures, parking, and paved areas are included in that percentage. Mr. Olivieri noted the percentage had changed since the original submission. Could he clarify as to what had happened to those numbers. Mr. Devenish said he believed there had been a typo on the previous plan but the 7,590 square feet has been double checked and is the correct area.

Ms. Cline asked for a clarification regarding the rain runoff calculations. Mr. Devenish stated it was three and a half inches in a 24-hour period which will be completely contained in the chambers. That does not account for the actual infiltration that will happen so it can actually handle more than that. He wanted to make sure it could fill up to the top of the chambers with the three and a half inches in 24 hours. Mr. Devenish explained they use the term mitigate meaning they cannot make this condition worse for runoff or the neighbors. The intent and general practice is to deal with the proposed conditions and not make the situation worse.

Mr. Olivieri said to clarify what he was saying was the changes they're going to make to the property is the runoff they are going to mitigate. They are not going to take care of the existing water issues. Mr. Devenish said that was correct. However, some of the front yard runoff will now be captured by the nyloplast yard drain. Mr. Olivieri asked Mr. and Mrs. Martowska if they wanted to add anything. He knew that the concern was the location of the garage. Did they have any other options or give any consideration to moving it away from the property line?

Mr. Martowska thought the proposed location was the best for the neighborhood and himself. He wants to minimize the blocking of the view from his neighbors and, although they may not agree, the appearance from the Tribous' property. If they rather have it 20 feet from the sideline, he will have to live with it and that would be the outcome. He thought he should get it; that it was better for the neighborhood; it was more consistent with the character of the neighborhood; but he was prepared to go with whatever the Board is willing to do for him.

Ms. Tribou said that Outback said the driveway would be super elevated. Mr. Devenish clarified that typically when they say super elevated they just mean sloping from one side to the other. It doesn't mean to actually bring up the elevation. It would stay at a general elevation of the land there is now. It would just be sloped one way to make sure that none of that runoff is heading toward the south abutter. They will hold the high point on the south side of the driveway, and it would slope down to the nyloplast yard drain. Mr. Olivieri asked if the super elevated he was referring to is designed to make sure there is no additional runoff, and if it actually is going to correct a little bit of the existing issue. Mr. Devenish replied it was definitely to make sure there is no additional runoff but by creating and holding that high point on the south side of the driveway, it will prevent that front yard area from coming down that way as well. It will all be captured in that yard drain.

Mr. Tribou asked what exactly made up the impervious area. Mr. Devenish replied it is the paved driveway, any roof area, the terraces, the pavilion, the patios, and retaining walls. It is anything that water would hit and not go into the ground or go onto the ground that is included in that percentage. Mr. Tribou asked if the area in front of the garage going out to the street is included. Mr. Devenish was unsure but noted it was gravel so he did not think so. Mr. Olivieri asked if gravel was considered impervious or pervious. Mr. Devenish replied it was kind of in between. It is more pervious than pavement because it allows runoff to go into it rather than running along it and going somewhere else. Mr. Olivieri said in that case it is not included in the calculations for impervious. Mr. Devenish said that was correct.

Mr. Tribou asked how that gravel area was pitched. Was it towards their property? Mr. Devenish said it appears that is generally pitched towards Edgewater Drive. It is directing it more to Edgewater rather than more to the south. Mr. Devenish said that gravel will allow water to run into it and not sit on top like a paved driveway. Ms. Tribou asked if there was supposed to be a setback on the property line on the proposed patio. What would a normal setback be without a Special Permit or Variance. Mr. Olivieri said it would fall into the same guidelines as any structure. Mrs. Tribou said that the Martowskas have a large lot and there was no reason to put that right next to their property.

Mr. Devenish shared the screen so the Board could see what Mrs. Tribou was referencing. Mr. Olivieri thought that based on the fact those would be on Long Pond, Concomm would be more responsible for that. Mr. Olivieri said it was in the setback but one of the reasons for that is so fire apparatus and people have access to the property. He asked Atty. Kwesell if that assumption was correct. She replied the application is only for the proposed pavilion and garage. Mr. Olivieri said they are included on the plan but were not included on the petition. He asked Mr. & Mrs. Martowska to clarify.

Mr. Martowska replied when he went to the Building Inspector, he asked about the structure, stairway, things like that, and the retaining wall going to the five-foot setback. He tried to fill out the paperwork as it was explained to him. If you notice, he doesn't even mention that retaining wall going into the setback but the pavilion and garage in the

final notice. Those were on the plans since day one. He said he would amend the petition to include those patios if that was required. He noted that Conservation had seen these plans and had no issue with the patio and it had since been reduced for the impervious coverage.

Mr. Olivieri asked Atty. Kwesell if this would be an issue. She replied there's a reason why Mr. Darling said they don't need a Special Permit. It might be because they are not an accessory building in a setback. It's a non-conforming lot and a non-conforming structure so that would be an extension of the non-conforming structure, whereas the pavilion and garage are accessory buildings and they fall under the special requirement for an accessory building that can be within the side setbacks. Mr. Olivieri said that these are patios and although the impervious comes into play, he didn't think the setbacks were a significant concern.

Mr. Olivieri asked if there were any additional questions. There were none. He reviewed that the petition they have is for a Special Permit for a gazebo and garage, both of which are in the setbacks. He asked if anyone was in favor of any of the request. Ms. Cline said that she was not inclined to approve the setback on the garage but she was okay with the gazebo and the pavilion. In regards to the garage, she was inclined to stick to the bylaw.

Ms. Cline then made the motion, they accept the current plans for the gazebo and the pavilion but they do not grant the relief for the setback on the proposed garage. Mr. Olivieri asked Atty. Kwesell if that motion was acceptable. She replied that it did work. Mr. Campeau seconded the motion.

Mr. Olivieri then noted before he called the vote if this did not pass, and it requires a super majority, the Martowskas could not come back to the Board for relief for two years unless there was a substantial change to the plan. He stated that he would then like to give the Martowskas the opportunity to withdraw, without prejudice, if they preferred. However, it would have to be the entire application. Mr. Martowska said they would not withdraw.

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

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

The hearing closed at 7:39.

Maksy hearing, continued – 149 Bedford Street

Mr. Olivieri opened the continued Maksy hearing at 7:40. Mr. Jamie Bissonnette from Zenith Consulting Engineers was present. He then shared his screen to display the revised Site Plan. Mr. Bissonnette reviewed they were in front of the Board for a Special

Permit to raze and construct a dwelling within the setbacks and also for a sign that is larger than the Town's bylaw allows. Several of the concerns raised at the last meeting had also been raised by the Lakeville Planning Board.

Mr. Bissonnette explained he felt they had addressed those items, and they had received approval of their Site Plan last week from the Planning Board. He would now like to go over the things they had changed and then answer any questions. Mr. Bissonnette said it seemed like a big concern was regarding the proposed sign. Originally, it had been proposed in the driveway area but there had been numerous concerns about its proximity to the intersection. After taking another look at the site, they have relocated the sign from 58 feet to the intersection to approximately 184 feet. That is an approximate 130 foot move down Bedford Street.

Mr. Bissonnette said another concern was the building itself and its proximity to the intersection and the setbacks. They are dealing with a site that has 40-foot setbacks on all sides. They presently have 1.6 feet from the corner to the property line and at the last meeting, their building was 15.1 feet. Since then, they have reconfigured the length and width of the building and slid the building a little bit further back which provides 19.3 feet and the proposed 18.7 foot setback was increased to 25.2 feet. Mr. Bissonnette advised to be able to make these changes, they had to make some changes to the site. They went from a full foundation to a slab style foundation. That allowed them to get from 20 feet from the foundation to the septic system to 10 feet to meet the minimum setback to the septic system as proposed. This also caused them to change their ADA access ramps.

Mr. Bissonnette said one other thing he would like to bring up is that the Planning Board, as part of their approval, asked them to place more trees for screening. They had been asked to bring those trees all the way down to the drainage ditch which was part of the conditional approval. He asked if there were any questions. Mr. Olivieri asked if he had clarification from Mass DOT in regards to the setback for the sign. Mr. Bissonnette said that he had reached out to Ms. Nicole Barthelme who is at District 5 in Taunton and is the permits engineer that they do a lot of work with. He did not get a response back from her so he did not have a definitive answer on the permitting component of this with Mass Dot. He could tell them the Mass Dot portion for signs and approvals does take place with an additional public hearing that happens in Boston but that had been pre-Covid. The regulations that fall under Mass Dot's approval for billboards and signs is pretty strict but he didn't have an answer from them regarding this. He believed that a sign that fell under local guidance would not trigger a Mass Dot permit, but he will get the answer from them for the Board.

Mr. Olivieri asked Atty. Kwesell if she could provide any comments in regards to the bylaw and how it pertains to signage and if she had any insight as to whether Mass DOT would be involved in this. Atty. Kwesell replied she wasn't sure if the intent of the sign is the same but from their last meeting, the intent was to have third party businesses being advertised on the sign. If that is the case, this would then be considered an off-premise sign, a bill board which is its own use. Therefore, they have an issue with the fact they

have a property with two uses. The second issue is they need a Special Permit and if there is an off-premise sign, the bylaw has a separate section on that. It says that not advertising the premises on which located or the argument thereof, but it also says it must advertise a business commodity or service available in Lakeville. It cannot exceed 12 square feet and it must be found to be appropriate for the location. She was not sure that this sign meets any of those requirements, so they now are looking at a Variance which wasn't applied for. They would need a Variance for the sign and then perhaps also for more than one principle structure, because it is a structure. It is problematic and if the sign was just advertising the business on the property site, it would be different. As it is functioning as a billboard, it's a different use.

Mr. Carmichael asked if they could proceed with this. Atty. Kwesell replied they really couldn't change the fact that the Board is now looking at a Variance if they wanted to go forward with the sign. She is not sure if the applicant was proposing the same type of sign, where this was a marketing company, and they would offer this sign to their clients. She did not know if this company was going to limit their clients only to Lakeville. They are looking at businesses outside of Lakeville which takes it outside of the Special Permit requirements and brings it into a Variance. They couldn't hear that tonight because it wasn't advertised for that.

Mr. Olivieri asked for a clarification of the sign. Mr. Bissonnette advised he believed the intention is to have the office building itself be used as the headquarters for the advertising company, along with possibly a real estate office or some other kind of an office. He believed Ms. Maksy had spoken with Mr. Darling and had discussed the exact use. Ms. Maksy replied that was true, and she had spoken to him when she had the concept of starting this business. She has applied to the State for an LLC and it is called Exposure Marketing Group LLC. The premise of the business is to have members have ownership within the physical space and advertising at 149 Bedford Street. They will be able to offer businesses a conference room, secretarial staff, etc. Tonight, is the first time she has heard about this particular extension of the bylaw. She has read it and talked to Mr. Darling several times. Her intent is to advertise to whomever wants to become part of a co-op and to offer small businesses the opportunity to have a nice location for their clients. Part of that is offering them the chance to put their logo and the opportunities their business presents to the public. She did not feel as though it was a billboard. She will also run her business from this location and advertise her properties.

Mr. Bissonnette said it appeared to him that an out of town business might be covered with the co-op by having rental or ownership inside of the building. Mr. Olivieri said he would assume that if it's rental space, you don't need to own the premise that you occupy it but it does become your premise. Atty. Kwesell said she didn't think there was a lease so they're not necessarily renting. Mr. Olivieri asked what if there were leases in place that showed they were occupants. She replied that could be difficult for Mr. Darling to try to enforce. The business itself is not what she is commenting on, it's the sign because of what the bylaw says in regards to an off-premise sign. She reiterated the bylaw says the sign must advertise a business, commodity, or service available in Lakeville. If it doesn't, she did not think the Board could do anything without a Variance request.

Ms. Maksy said she will meet the intent of the bylaw. She explained to him the concept of this business is to help other businesses wherever they are located, but they are going to have ownership, a rental agreement, lease, or whatever the Board wanted to name the contract between the possible advertiser and the business. They will have access to the building. Mr. Bissonnette added that Ms. Maksy would also be donating time to the Town for elections, special meetings, etc. He stated if the Zoning Board of Appeals can grant the Special Permit for the increase in size, he feels that Ms. Maksy can fully comply with the use of the sign to be issued a permit. If Mr. Darling feels she is non-compliant, he will shut her down. Mr. Bissonnette noted that if she reduced the sign by nine square feet, she would then just be in front of Mr. Darling dealing with this exact same thing.

Mr. Olivieri asked if Board members had any additional questions. Mr. Carmichael asked Mr. Bissonnette if any thought had been given to rotating the axis of the building to get further away from the road. Mr. Bissonnette replied they had looked at a number of different scenarios but the issues had been the septic system, the building itself, and the access which had forced them into the configuration they have in order to get the maximum separation. For their septic, they are 10.7 feet off of their leaching field and are pinned at 101 feet off of the abutter's well. They are 50 and 25 feet from the drainage areas. It is a tight situation. Mr. Carmichael commended Mr. Bissonnette for the work that had been put into the site. He had no problem with the building but he did have issue with the sign. The other members had no issue with the building.

Mr. Olivieri then asked for questions regarding the sign. Mr. Carmichael said he had many concerns with the sign especially how it was advertised as had been discussed earlier. He did not think it met the general purpose of the bylaw in several areas. Ms. Cline agreed with Mr. Carmichael. Mr. Sheedy thought it was a good project but agreed the sign is the issue. Now that it is moved from close proximity to the building, it almost becomes a stand-alone type of advertisement structure and less about the building. He noted the street address is responsible for the additional requested nine square feet. Why was it a necessity to increase the sign if the original advertising sign meets the criteria for the bylaw.

Mr. Bissonnette replied it was a preference and not a necessity. He noted that they were going to withdraw the application for the Special Permit on the sign and ask to proceed with the Special Permit for the building. Atty. Kwesell said it was on the same application so the entire application would have to be withdrawn. She would suggest they withdraw the application. If they plan on bringing the sign back in the same sort of configuration, they would be prohibited from doing so. Mr. Olivieri asked Ms. Maksy if she was looking to potentially bring the sign back. If that was the case, she may be better off continuing if she was going to try to refine it or work on it more to see if it is more palatable to the Board. If she was going to get rid of the sign completely, then she would have to start from scratch with just an application. He was not sure what the intent of the sign was going forward.

Ms. Maksy asked what it was the Board would like. Do they want it to be nine square feet smaller? Mr. Olivieri said if it was, she would not need to come to the Board and it would go right to Mr. Darling, unless there was some other aspect of the sign that required the Board's approval. Atty. Kwesell said there are aspects of this sign that are prohibited under 6.6.2. such as the flashing and illumination. Mr. Carmichael felt that the sign did not meet any of the general intentions or purpose under the bylaw. It was a flashing, animated light with moving beacons.

Mr. Bissonnette replied they did not feel it met the definition of flashing beacon or anything that falls under what is prohibited. It was going to be an image that is static on the screen but has the ability to change. It's like a billboard or like a sign that does have lighting on it like most signs in Town. It would change every eight to ten seconds. It wouldn't have any flashing lights or be overly bright. He noted as the sun goes down, the dimness on the light of the sign goes down as well. Mr. Carmichael did not think eight to ten seconds was enough time. Mr. Bissonnette said they were open to discussing a time frame if there was something that would satisfy the Board.

Mr. Bissonnette asked if the Police Chief or Fire Chief had submitted updated comments on the sign. Mr. Olivieri replied the Police Chief had not. Mr. Carmichael then read the most recent response from the Fire Chief. He stated that the Fire Department had no position or jurisdiction on the proposed sign. He did suggest that care be taken to provide reasonable sight lines onto Bedford Street.

Mr. Sheedy said he had the following three concerns regarding the sign: If it was in fact a pseudo billboard; because of the sign's distance from the building it doesn't seem to tie into the business; and the additional size of the sign. He still hadn't heard the necessity for that increase. Ms. Maksy wanted to clarify if she withdrew the whole application without prejudice she could then get new plans, or she could leave the building exactly as it is, a residential building, and just rehab it. Was that correct? Atty. Kwesell said because the residential use is a non-conforming use she would have to look further into it. Mr. Olivieri said he thought the point was they have a blight in that property, which is deep in the setbacks and has been an eyesore for a long time. She could not correct that and then do something else with it by right. He thought the Board was in favor of that but it was just the sign that was the hold back issue.

Mr. Olivieri asked Ms. Maksy if she would like the Board to vote on the petition now; if she would like to continue to work more on the sign by getting comments from the Building Commissioner as far as how he interprets enforcement and content; or if she would like to withdraw without prejudice. Ms. Maksy said she would like them to vote on the building and put conditions on the sign. Mr. Olivieri asked Atty. Kwesell if the Board could vote approval for the building and deny the sign. Atty. Kwesell replied they could do that. She added if Ms. Maksy wanted to come back with a different sign that needs different relief, she would still have that option. She just could not come back unless there was a substantial difference. Ms. Maksy said that she did not want to come back.

Mr. Olivieri said he would then entertain a motion. Ms. Cline said that she would move they grant the Special Permit to raze the existing structure and construct the new building as submitted with the latest revised plans, but they deny the permit to allow the sign that is 41.25 square feet. Mr. Carmichael seconded the motion.

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

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

The hearing closed at 8:31.

Documents distributed for the hearing:
Revised Site Plan 12/3/20

Next meeting

Mr. Olivieri advised the next meeting is scheduled for Tuesday, January 19, 2021, at 7:00 p.m.

Adjourn

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

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

Meeting adjourned at 8:33.