Zoning Board of Appeals Lakeville, Massachusetts Minutes of Meeting May 17, 2018

Members present:

Donald Foster, Chair; John Olivieri, Jr., Clerk; Jim Gouveia, Member; Daniel Gillis, Associate Member; Joseph Urbanski, Associate Member

Members absent:

David Curtis, Vice-Chair; Janice Swanson, Vice-Clerk; Chris Carmichael, Associate Member

Regular Meeting:

Mr. Foster opened the regular meeting at 7:00 p.m.

Roll called. Bills signed.

Mr. Foster stated that in accordance with the Open Meeting Law he was announcing that he and the secretary were making an audio recording of the meeting. He asked if anyone present was making a recording. There was no response. Mr. Foster advised that LakeCam was also making a video recording.

Mr. Olivieri made the motion, seconded by Mr. Gouveia, to approve the Minutes from the February 15, 2018, meeting.

VOTE: Mr. Olivieri, Mr. Gouveia, Mr. Urbanski, Mr. Foster – AYE Mr. Gillis – ABSTAIN

Mr. Olivieri made the motion, seconded by Mr. Gouveia, to approve the Minutes from the January 18, 2018, meeting. The **vote** was **unanimous for**.

McQueeney hearing - 22 Dunbar Road

Mr. Foster opened the McQueeney hearing at 7:04 and read the legal ad into the record. Mr. McQueeney was present. Mr. Foster said that he had looked at the plot plan and it appeared that he had a series of three properties. Mr. McQueeney replied that when they first purchased the property it was two parcels with one across Dunbar Road. In 2010, he had bought a lot at 20 Dunbar Road which had a cottage on it that he tore down. At that

time, he wanted the privacy and did not apply to rebuild. He thought that someday he would divide the lot and attach half of it to his property at 22 Dunbar and maybe someday the neighbors at 18 Dunbar would want the other half to extend their property. 20 Dunbar would then cease to exist. It has now come to that point, and the owners of 18 Dunbar approached him about purchasing half of that lot.

Mr. McQueeney advised that as they saw on the plan he had attached Parcel A into the same ownership as their home at 22 Dunbar so, therefore, from a Zoning viewpoint it is one property. Now he is in a position to put a gazebo on the property and he can only meet a ten foot setback from the new line between Parcel A and Parcel B. Mr. Foster asked if the intent was to sell Parcel B. Mr. McQueeney replied that it was. Parcel B would be a great addition to 18 Dunbar because they could then have space for proper parking and a septic system. He felt it would enhance both properties and make them less non-conforming.

Mr. Foster asked Mr. McQueeney what would prevent him from moving the gazebo ten feet from his deck. He replied there was a tree and additionally, the ground was sloped. This was a nice level spot. Mr. Foster asked how much closer to the house could the gazebo be moved. Mr. McQueeney replied he would have to take the tree down. On the other side of the tree, the ground was very sloped as he had mentioned. Mr. Foster noted that if the Board granted the Special Permit based on his ownership of the Parcel and then he tried to divide it someone may say that he is creating a non-conformity.

Mr. McQueeney said he understood that but he was looking at the larger picture. Mr. Foster said as of today he would not need a Special Permit. Mr. McQueeney explained Parcel A is part of 22 Dunbar and is owned by the McQueeney-Ashley Nominee Trust. He has recently transferred Parcel A into that Trust. The other property, Parcel B, is owned by the David A. McQueeney Nominee Trust, a different ownership. He was able to execute a Quitclaim Deed that transfers Parcel A to their property the McQueeney-Ashley Nominee Trust. The only thing that remains of 20 Dunbar, for practical purposes, is Parcel B.

Mr. Foster asked what Board members thought. Mr. Olivieri said that technically Mr. McQueeney is the abutter. He had no issue with the petition. Mr. Urbanski also had no objection.

Mr. Foster asked if anyone present would like to speak for or against the petition. Mr. William Affler said the concern with his property and other properties is of concrete dropping into the water table when the gazebo is put in. He felt there should be some type of safety or emergency plan. He was worried about possible effects to the water. Mr. McQueeney advised there was no foundation for the gazebo. There is just crushed stone under it. It is 18 feet above Long Pond and 28 feet back from Long Pond. Mr. Foster said that he did not have any problem with this.

Mr. Gillis then made the motion, seconded by Mr. Olivieri, to approve the petition as presented. The vote was unanimous for.

The timing of the filings, the appeal period, etc. were then explained.

The hearing closed at 7:22.

Poyant Signs Inc. hearing - 12 Main Street

Mr. Foster opened the Poyant Signs Inc. hearing at 7:22 and read the legal ad into the record. Ms. Stephanie Poyant Moran from Poyant Signs Inc. was present. She advised she was here on behalf of Southcoast Health. They have already installed one sign on the front of the building which is allowed by code. They are here to ask for two additional signs on each end of the building. This is to ensure that people coming to the Urgent Care Facility can clearly see from all directions as they approach that it is the correct location.

Ms. Poyant advised the signs were internally illuminated, white channel letters that say SouthCoast Urgent Care. They are the same color and a little smaller than the sign that is on the front of the building. They would go into the peaks on either side just as they are set in the peak in the front. Mr. Foster noted that the original vision for that building had been three businesses but SouthCoast Health occupied the entire building. Was that correct? Ms. Poyant replied it was but there were different service lines offered. Mr. Olivieri said he understood the point Mr. Foster was making. If there were three businesses, there would be three signs.

Ms. Poyant said there was a directional sign submitted on the Site Plan but she was unsure if they had received that drawing. She noted that it was not written in the agenda but asked that they look at the center directional, labeled ST2A.2 on the entrance at Riverside Drive. There is no left turn there so the issue with that directional is the code allows two square feet for the text but because there are two messages there is four square feet. The other two signs on the right and left of it have already been approved and installed. Mr. Olivieri noted that the application does request more signs than allowed and doesn't request a specific amount. Mr. Foster said he did not think there was anything to be concerned about with this as it was for the public good and health.

Mr. Foster then asked what the hours of operation were. Mr. Silverman, who worked for SouthCoast Health, replied Monday-Friday 8:00 a.m. to 8:00 p.m. and Saturday and Sunday from 9:00 a.m. to 5:00 p.m. Mr. Foster asked if the signs would be off when the business was closed. Ms. Poyant responded that generally they are set to go off one hour after the business closes, and they go on one hour before the business opens. Mr. Foster questioned if that would mislead a person who was having an emergency to believe they were open when they were not. He felt they should look at a tighter restriction regarding the hours the signs were on for safety reasons and light pollution reasons.

Mr. Silverman said he would have to find out the exact hours they were on, but he was not opposed to the suggestion of adjusting the hours of the signs. Mr. Foster said, in his opinion only, he felt the signs should be on only when the facility was open. Mr. Olivieri

was not opposed to having the lights turn off an hour after they closed. He would defer to SouthCoast Health on the issue. Mr. Foster then asked if anyone present would like to speak for or against the petition. Mr. Silverman stated that he was in favor of the Special Permit for the signs to create visibility and awareness of the facility in the community. Mr. Urbanski suggested an open sign. Ms. Poyant noted that this is the same sign package that is operating in their five other locations. She thought it was working and was unaware of any problems related to it.

Mr. Olivieri then made a motion, seconded by Mr. Urbanski, to approve the Special Permit for the signs according to the plan received. This does include the directional sign 2A.2. The vote was unanimous for.

The timing of the filings, the appeal period, etc. were then explained.

The hearing closed at 7:35.

Nature's Remedy of Mass., Inc. hearing, continued - 310 Kenneth Welch Drive

Mr. Foster opened the continued Nature's Remedy of Mass., Inc. hearing at 7:35. He then read the May 14, 2018, letter from Mr. Robert Carr into the record. He requested the hearing be continued as they were waiting for the Community Host Agreement to be approved by the Board of Selectmen.

Mr. Urbanski then made a motion, seconded Mr. Gouveia to continue the Natures Remedy of Mass., Inc. hearing until June 21, 2018, at 7:00 p.m. The vote was unanimous for.

The hearing closed at 7:36.

The Residences at LeBaron Hills, LLC hearing, continued - M26-B3-L10

Mr. Foster opened the continued The Residences at LeBaron Hills, LLC hearing at 7:36. He read the May 16, 2018, letter from Atty. Mather into the record. He requested a continuance of the hearing until next month as they continue to work with legal counsel, as well as Nick Lanney, to resolve some issues.

Mr. Urbanski then made a motion, seconded Mr. Gouveia to continue The Residences at LeBaron Hills, LLC hearing until June 21, 2018, at 7:00 p.m. The vote was unanimous for.

The hearing closed at 7:38.

Nemasket River Landing, LLC, continued - 27 & 31 Commercial Drive and Riverside Lakeville, LLC, continued - 29, 32-36 Riverside Drive

Mr. Foster opened the continued Nemasket River Landing, LLC hearing and the Riverside Lakeville, LLC hearing at 7:38. Mr. Foster stated that Mr. Lanney was not present but he did have a letter from him with his recommendations as well as a list of waivers to consider.

Atty. O'Shaughnessy advised he represented the applicants for the Comprehensive Permit application for Nemasket River Landing, LLC and Riverside Lakeville, LLC. As they recalled, it was two projects with a total of 110 units consisting of duplexes and townhouses. The last time they were here their "homework" had been to address the basin that had standing water in it. He stated that there has been some back and forth discussion between Mr. Lanney and Zenith, and Mr. Bissonnette will speak to this issue shortly. Atty. O'Shaughnessy stated that they are also in receipt of a May 14, 2018, letter from Mr. Lanney. Mr. Bissonnette has had discussions with Mr. Lanney with respect to these issues and will now update the Board.

Mr. Bissonnette said there was a concern with standing water in the existing Basin 3. Based on Mr. Lanney's latest letter, item #1, he feels that a refresh of the basin, approximately 7,500 square feet, which amounts to approximately 825 yards of sand, will refresh the infiltration component of the basin and should bring it back to where he wants it to be, and also included in this resolution is a four inch orifice that was never originally installed in the outlet. Mr. Lanney has indicated that if those items were addressed, he would be comfortable with that remedy and moving forward.

Mr. Olivieri asked if this is a Town accepted way, why the applicant is being held responsible for its repair. Mr. Poillucci replied that the basin is on the property they own but the Town took easement to it since the road got accepted. He is offering to repair it because he is out of time. However, this happened because of lack of maintenance and it will happen again if it is not properly maintained. He is willing to do this now but he did not think it was right as it seems like because they are the last ones in, they are the ones that got stuck with correcting the issue.

Atty. Kwesell noted that Mr. Poillucci said that his option was to create his own basin but she was unsure if he had enough room. Mr. Olivieri said the Town has approved the design and accepted and taken easement to it; and the Town has no responsibility? Atty. Kwesell replied the Town has to maintain it for what is there now but the proposal is for additional drainage to go into it. Mr. Poillucci does not have to use it but could leave it as is, not functioning, and put a basin someplace else that would function beautifully for his properties.

Mr. Olivieri asked if the last development in a subdivision caused a failure would it then be their responsibility. Atty. Kwesell said if it did not provide for that development in the original sub division then yes. Mr. Poillucci noted that these basins were designed for development. Atty. Kwesell said but not with the development that is on these lots. Mr.

Poillucci said for the record they are actually putting two acres less impervious than what the basins were designed for. Mr. Foster stated that Mr. Lanney had raised the issue and it has been addressed. Do they need to discuss this further or should they move to the next item. There was no further discussion.

Mr. Foster said regarding Item #2 relocating the driveway opening at the south end of Lot E to line up with the driveway opening for Lot D. Mr. Bissonnette advised that Mr. Lanney would like them to move these accesses to line up. He noted that if they were proposing a high traffic flow business like Wal-Mart then they could not agree more. However, they have eight units proposed coming out on the roadway, and they have multiple entrances and exits. They really don't feel that it is needed for any safety or practical reason. They are hoping the Board will look at it and be amenable to them staying with the layout they have. Mr. Foster asked how many homes were on the left hand wing. Mr. Bissonnette replied that on the back hand side there are four duplexes and a garage building for maintenance. Mr. Foster said that would be eight families and not that much traffic. Mr. Foster asked if there was any additional discussion. There was none.

Item #3 stated runoff from Lots A & B, including both paved and landscaped areas, is directed to a catch basin that discharges on to the rear of Lot C via overland flow. Mr. Bissonnette said that they have addressed that issue. The concern Mr. Lanney has is about having swale go across so they put in about 150 feet of pipe with a catch basin and are bringing it right down to the basin itself. Running into Item #4, Mr. Bissonnette continued that Mr. Lanney also has a concern about runoff from the back roof and grass area going down into what they have being a swale and around into the back. He thought the concern was Condominiums Associations have a higher likelihood of litigation in the future for issues caused by water. They have talked about language that Counsel would approve and then put it into the Condominium documents. It would address the fact the sites would be graded appropriately and in conformance with the designs.

Mr. Foster asked Mr. Bissonnette if he was addressing Item #3 or #4. Mr. Bissonnette felt that they kind of merged together. He could just deal with #3 if they wanted to check it off the list. Mr. Foster replied they could check it off the list but he wants to make sure, via their engineer, that there is not something they are missing. He would be more comfortable if he had a confirmation from Mr. Lanney concerning their proposed responses. Mr. Bissonnette said they are amenable with Item #3 but it is Item #4 that is unresolved. Mr. Foster said in order for the project to move forward, and just for the sake of argument, let them say they agree with Mr. Bissonnette. However, Mr. Bissonnette will agree to any recommended revisions from Mr. Lanney that made sense, at a later date. Mr. Foster felt that both sides of the argument were reasonable, and he trusted the engineers to come up with a reasonable solution. Board members agreed.

Mr. Bissonnette stated that Item #5 had been addressed. The last comment was the road had been regraded to less than slope. He explained that what they did was alter some grading and moved things around to lessen the slope from approximately 8% down to 7%. Mr. Foster said how they are leaving this is essentially accepting what Mr.

Bissonnette has said with the reservation that if Mr. Lanney comes back and does not agree, any issue will be resolved to his approval.

Atty. O'Shaughnessy thought the drainage was the largest issue at the last hearing. He understood their concern of wanting to defer to the Board's engineer. He advised he would like to update the Board of where they are in this whole process. They will be appearing before the Planning Board next Thursday to submit this project under 40R so they are not looking for the Board to vote on this project tonight. There is time for Mr. Lanney and Mr. Bissonnette to have further conversations and for the Board to be satisfied that their concerns were addressed.

Atty. O'Shaughnessy asked in the interest of moving this along would the Board be agreeable to entertaining conditions of approval. Atty. Kwesell could then start drafting a decision in case they get stumped under the 40R process. Mr. Foster noted that they still must talk about the waivers. Atty. Kwesell stated she thought they had discussed possibly a draft decision that could be acted upon the next meeting if the engineer is okay with everything. Mr. Foster thought everyone could agree on that.

Discussion then began on the waivers. Atty. O'Shaughnessy said what he would hope the Board would entertain, as they draft the decision, is granting a general waiver from all the applicable regulations of the Town of Lakeville to construct the project as proposed and approved by the Board. They do try to get a comprehensive list as they go through everything so it is understood what is being asked for. However, if they miss something as they go through the plan, they would have that general relief. Mr. Foster asked if there was risk in that. Atty. Kwesell replied that there is. She advised that the waivers have to be specific enough for the Board to know exactly what they are waiving. A waiver from setback is perfectly fine, but she would advise that the waiver not state a specific distance in case that had to be adjusted as this was the example Atty. O'Shaughnessy had given previously. She said that under 40B right now the applicant only needs to provide preliminary plans so there is a fine line between a general waiver and waivers that are too specific. In both instances, you could run into problems. Mr. Foster noted if they were to overlook a waiver that was needed to proceed with the project, the petitioner could return to them and the Board could find the change to be insubstantial and it would then be allowed. Atty. O'Shaughnessy said that it has been done before. Mr. Foster suggested that they work through the list.

Atty. O'Shaughnessy advised that these waivers were common to both projects. The first one was a waiver from the Earth Removal Bylaw. They are asking to waive this Permit which is normally granted through the Board of Selectmen and authorize all earth removal as may be necessary to construct the project. They are also asking for a waiver from the bond requirement and noted that the CO's could be held back on the last "x" amount of units to ensure that this gets done. Mr. Foster asked what had been the status of bonds on Mr. Poillucci's previous projects. Mr. Poillucci replied that what they have usually done is held back the last few homes till the end and then after the roads were done, they were released. When asked, Atty. Kwesell said she had no problem with not having a bond and most 40Bs do not hold them.

Atty. O'Shaughnessy said in Section 8 there is a restriction about removing earth within 400 feet of public or private ways. They need to do that in order to construct the houses. In Section 11 there are fees being charged for earth removal. Since this is an affordable housing project, they would ask that the Board not assess those for the earth that has to be moved on the site. Mr. Foster asked Ms. Garbitt if the Selectmen had an opinion regarding the earth removal fees. Ms. Garbitt replied she had been unaware that the ZBA could waive fees under the General By-Law. Mr. Foster then asked Atty. Kwesell to speak regarding the issue. She stated that it is a fee that can be waived unlike application fees. Mr. Poillucci noted that because of the materials left on the lot, he is actually paying to get rid of the soil and not making a profit on its removal. Ms. Garbitt did not think the Selectmen would have a problem with waiving the fee.

Atty. O'Shaughnessy said the next request was for Sanitary Sewage Disposal. Their design is Title V so he would ask the Board to waive any local regulations that are inconsistent with Title V. Mr. Bissonnette added that right now the Board of Health's policies are not available as the Board is in the process of modification. Mr. Poillucci said they do have the standard items but they have taken a lot of regulations off and there is not currently a complete set on the website. He noted that because he is on the Board of Health the plans will be independently reviewed by Presby as well as Mr. Lanney. Atty. Kwesell said this is another one that is too vague, and it is concerning that they just found out that they do not know what the Board of Health regulations were when this application was filed. They would need to know what is not consistent with Title V and what they are waiving. Mr. Foster asked why they would need to know that. Atty. Kwesell replied the Board is approving a project, and they need to know what they are waiving. If they don't then later on someone could ask why did they waive that and they would not know why. Are they waiving size, setbacks, etc.? Atty. O'Shaughnessy stated that he had no problem going back and identifying specific requests, and he could forward that information to the Board within the next week or two.

Regarding the down lighting bylaw, Atty. O'Shaughnessy said they would comply with those requirements. There is a specific provision the plan has to go to the Planning Board for approval so they are asking them to waive a separate filing. Atty. Kwesell said that was unnecessary as with a Comprehensive Permit, the Zoning Board sits as the Planning Board. There is no separate filing. She noted that the purpose of a Comprehensive Permit is so the Zoning Board sits as every other Board.

Atty. O'Shaughnessy then went through the General Bylaws and briefly stated the following waivers requested:

Section 1.2 – does not allow anything not in conformance with the bylaws.

They are asking to allow buildings to be erected in non-conformance with the By-laws.

Section 1.3 – establishes minimum zoning provisions.

They are asking to waive the minimum provisions of zoning.

Section 4.1 - This is the Industrial Zone and residential use is not allowed.

They are asking for a waiver from that.

Section 5.0 – No more than one principal structure on any lot.

These are asking for multiple buildings on one lot.

5.0 – The bylaw has defined setbacks.

Atty. O'Shaughnessy said although they comply with most of the setbacks, when they start getting into side setbacks, they could need relief. However, he did not get into any specificity here, and they are asking for relief from all the setbacks.

5.0 – The maximum height of buildings allowed is 35 feet.

Atty. O'Shaughnessy believed they were within 35 feet but they are asking for a waiver just in case the peak of a roof happens to be 36 or 37 feet above grade. Mr. Foster asked members if they would like to set a maximum height allowed. It was agreed that it would be set as the same maximum height that was allowed on Water Street.

Section 5.1.2 – A lot shall have an area which encompasses an upland circle with a minimum diameter of 160 feet.

They are asking for a waiver from that requirement.

Section 5.1.3 – Easements shall not be included in the required frontage or lot area.

They are asking for a waiver from that requirement.

Section 5.2.2.1 – Any portion of a lot that is within a wetland which will be used for drainage etc. shall not be included in lot coverage calculations.

They are asking for a waiver from that as it does not really affect the project as a whole because they have multiple buildings on one lot.

Section 5.2.5 – In an Industrial District adjacent to a Residential District there will be a buffer strip 100 feet wide or a buffer strip 50 feet wide with an acoustical wall.

Atty. O'Shaughnessy said they had two neighbors that he thought they were 80 to 90 feet from. There had been talk between the neighbors about installing a fence, so they would like a waiver. Atty. Kwesell questioned the buffer distance and said according to the plan it appears to show 20 feet not 80 or 90. Mr. Bissonnette responded that he thought the reference was from structure to structure. She clarified that it was then only 20 feet to the property line. Mr. Bissonnette replied that he believed that to be correct.

Section 6.5 – This requires two entrances and exits.

Atty. O'Shaughnessy said from the plan you can see there are three instances where they do not meet this requirement, and they are requesting relief from that provision.

Section 6.5.3.4 – This bylaw is related to the dimensions of parking spaces.

They are asking for a waiver to allow parking spaces to be less than 9' x 20'. Mr. Foster asked how much less than that. Mr. Bissonnette replied he did not believe they needed less than that except in the cases where they have ADA spaces that were 8' x 20'. He explained in cases where they have a mixture of 19 or 20 foot long spaces, they would keep it the shorter length. They have also provided van accessibility so there is an 8 foot strip next to ADA spaces so they are technically 16 feet wide. Mr.

Foster asked if a minimum should be specified. Mr. Bissonnette said anything 8' x 18' or larger should be more than sufficient for their needs. Mr. Foster also suggested that small parking spaces be marked for compact cars.

Section 6.7, 6.7.2, 6.7.3 – These are all related to Planning Board Site Plan Review.

Section 8.1 – This deals with enforcement of the By-Law by the Building Inspector. Atty. O'Shaughnessy advised the Comprehensive Permit is effectively the By-Law for this project so they are asking him to enforce the terms of the Comprehensive Permit.

Mr. Foster asked what additional items they needed to take care. Atty. Kwesell said she was hoping to get exactly what the applicant was looking for on 8.1 Enforcement. Atty. Kwesell discussed the General Bylaws and the first waiver "to waive a separate Earth Removal Permit from the Board of Selectmen and to authorize all earth removal as may be necessary to construct the project." She thought the second clause could be deleted. She did not think it was necessary, and they were still allowing the project to move forward with their decision. The same would apply to the outdoor lighting. Atty. O'Shaughnessy had no objections.

Atty. Kwesell said they do need more specificity regarding Title V and the local regulations. If they could get something from the engineer, they can come back in the next couple of weeks with a draft decision. If they also keep the hearing open, they can then go through each condition in the draft and the applicant can weigh in. Atty. O'Shaughnessy was agreeable to keeping the hearing open.

Mr. Poillucci noted that Mr. Bissonnette said from what he knows he did not think they needed any waivers. If they are not comfortable letting it just go to Title V could they give Mr. Lanney, the review engineer, the authority to waive any that may be necessary. They do not know right now as not all the septics are drawn, and some may not be drawn until next year. Mr. Foster said he thought they were going to comply with Title V across the board. Mr. Poillucci replied they were. It was only the local upgrades that section referred to. Mr. Bissonnette suggested they attach a copy of the current Lakeville Board of Health regulations at the time of the application's submittal so there would be a record of what is being requested for a waiver.

After further discussion, Mr. Foster noted that if they have to modify the Comprehensive Permit because of an oversight then they would have to determine if it was a substantial or insubstantial change. If it is insubstantial, they do not have to have a hearing. Atty. Kwesell said that was correct but by granting a waiver of everything, it would be broad enough that they would never have to come back, and the Board would not know what they were waiving. Atty. O'Shaughnessy said they would do some homework on the issue. Mr. Foster said that he liked Mr. Bissonnette's suggestion to get a copy of the regulations that were in place at the time the petition was filed. Mr. Bissonnette said that Mr. Poillucci 's concern is because the regulations of the Lakeville Board of Health are in such a mess right now, if there is something that is not in that packet that comes to them,

it might make him look bad going forward. Mr. Bissonnette said that he could put in a written request to the Health Agent asking him to pull together some regulations that are in place so they could give them to the Board. All were in agreement to that recommendation. Mr. Foster asked if there was any other action they needed to take tonight. Atty. Kwesell replied there was not. Mr. Foster asked if there was any public comment. No one spoke.

Mr. Olivieri then made the motion, seconded by Mr. Urbanski, to continue the Nemasket River Landing, LLC, hearing and the Riverside Lakeville, LLC hearing until June 21, 2018. The time would be 7:00.

The vote was unanimous for.

The hearing closed at 8:29.

Mr. Olivieri made a motion, seconded by Mr. Gouveia, to adjourn the meeting.

Meeting adjourned at 8:30.