

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
July 19, 2018**

Members present:

Donald Foster, Chair; David Curtis, Vice-Chair; John Olivieri, Jr., Clerk; Jim Gouveia, Member; Chris Carmichael, Associate Member, and Daniel Gillis, Associate Member

Members absent:

Janice Swanson, Vice-Clerk; and Joseph Urbanski, Associate Member

Regular Meeting:

Mr. Foster opened the regular meeting at 7:05 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. LakeCAM was making a video recording. He asked if anyone present was making a recording. There was no response.

Nemasket River Landing, LLC hearing, continued – 27 & 31 Commercial Drive:

Mr. Foster opened the continued Nemasket River Landing, LLC hearing at 7:05. He then read into the record the July 18, 2018, correspondence from Atty. O'Shaughnessy requesting a continuance.

Mr. Curtis made the motion, seconded by Mr. Carmichael, to continue the Nemasket River Landing, LLC, hearing until August 16, 2018. The time would be 7:00.

The vote was **unanimous for**.

The hearing closed at 7:06.

Riverside Lakeville, LLC hearing, continued – 29, 32-36 Riverside Drive

Mr. Foster opened the continued Riverside Lakeville, LLC hearing at 7:06. He advised he had a similar July 18, 2018, letter from Atty. O'Shaughnessy requesting a continuance which he then read into the record.

Mr. Curtis made the motion, seconded by Mr. Gouveia, to continue the Riverside Lakeville, LLC hearing until August 16, 2018. The time would be 7:00.

The vote was **unanimous for**.

The hearing closed at 7:07.

Tragiannopoulos hearing, continued – 160 Bedford Street:

Mr. Foster opened the continued Tragiannopoulos hearing at 7:07. He advised this is the application for a petition to allow a parcel of land that is zoned business to have a new house built on it as well as a business. Mr. Foster stated the hearing was continued so he could consult with Town Counsel. They talked about a number of issues that might apply as the general feeling is they would like to do this because it would be a huge improvement to the property.

Mr. Foster then asked them to look at the Zoning Bylaw Section 5.0, intensity regulations. He advised it states that no structure hereafter erected, altered, or placed in any district shall be located on a lot having less than the minimum requirements...no more than one principal structure shall be built upon any lot. Mr. Foster noted that the proposal is to use the property for two distinct things and build two buildings, a home and a business. He stated that their bylaws didn't permit this, and they don't have the authority to make a decision on this.

Mr. Foster said that he did talk to Town Counsel about the possibility of an accessory building but it has to be used as something that would support the primary structure, in this case the home. A business garage would not be an accessory structure. Mr. Foster said that something else they looked at was a home occupation. Their requirement is no more than 25% of the area of the home or an accessory building can be used for the home occupation. You also cannot build something specifically for the home occupation.

Mr. Foster felt that legally they could not grant this. Mr. Tragiannopoulos said he would like to ask for a continuance so that he could have an attorney take a look at this before it is denied or withdrawn. Mr. Foster stated that he could as he knew his engineer had already sent a letter to the Board requesting they withdraw. It is possible that he could find an attorney that could argue more persuasively with them but in his opinion the bylaw was very specific.

Mr. Olivieri made the motion, seconded by Mr. Curtis, to continue the Tragiannopoulos hearing until August 16, 2018. The time would be 7:00.

The vote was **unanimous for**.

The hearing closed at 7:21.

Cameron hearing – 2 Second Avenue

Mr. Foster opened the Cameron hearing at 7:21 and read the legal ad into the record. Mr. Cameron was present. He advised that a tree had come down in the wind storm and crushed the house. The house is not livable. Mr. Foster clarified that the plan was to rebuild and add a second floor. Mr. Cameron replied that the plan was to open up the first floor and then add a second floor. Mr. Foster asked if he was changing the footprint. Mr. Cameron said that he was not.

Mr. Foster said that the fear always is that the two existing bedrooms would be moved upstairs and then there would be four bedrooms. Mr. Cameron noted that the first floor would be wide open with an existing bathroom and kitchen. Mr. Foster asked if there would be a bathroom upstairs. Mr. Cameron said that was correct as well as a laundry area. The deck is already there and just needs to be repaired. Mr. Cameron advised that they would be eliminating the front entry way. He approached the Board and indicated on the plan what the proposed project was.

Mr. Foster asked Board members if they had any questions. Mr. Foster then asked if anyone present would like to speak for or against the petition. No one spoke. Mr. Carmichael asked how many bedrooms the septic system would support. Mr. Cameron replied it was a two-bedroom system. Mr. Foster then read the July 12, 2018, letter from the Board of Health into the record. They advised their records indicate the dwelling is a two-bedroom, and there is to be no increase in flow. If the septic components are to be moved or changed during construction, a Title V inspection may be needed.

Mr. Olivieri then made the motion, seconded by Mr. Curtis, to approve the petition for a Special Permit as submitted with the following condition:

1. The home will remain a two-bedroom dwelling.

The vote was **unanimous for**.

The hearing closed at 7:26.

Card hearing – Barstow Street/Montgomery Street – M018-B001-L002B:

Mr. Foster opened the Card hearing at 7:27 and read the legal ad into the record. Mr. Foster said it appeared from the application that the only thing being requested was a new description of the lot. Was he correct that nothing was changing except complying with the new requirement that the frontage be measured at the setback instead of the street? Mr. Card replied he was making no changes, but he could not comply with the 175' frontage at the setback. Mr. Foster asked if the lot was pre-existing. Mr. Card said it was subdivided in 1982.

Mr. Foster noted again that no changes were being made. He asked if anyone present would like to speak for or against the petition or had any questions regarding it. Mr. Marshall advised he has been very concerned regarding the water flow that comes off at that end of the street as well as other parts of Barstow. The Town has made two attempts to correct or help the water flow. Mr. Foster said that water is always a concern but that would be the purview of the Planning Board. Mr. Foster asked if he understood what was being done. Mr. Card was not making one physical change to the lot, but just redefining it. Mr. Marshall said he did understand that and was here tonight to educate himself.

Mr. Glen Sharland of 24 Barstow Street advised that they were new to the neighborhood, and he was aware of the water issue. He asked if they were redefining the way the lot is configured. Mr. Foster replied when these two lots were created back in 1982, the frontage was measured from the street. The bylaw was redefined to change that measurement to be at the setback and the front setback is 40 feet. It no longer meets the new definition of frontage because of the shape of the lot. Mr. Foster noted that Mr. Card was not changing the lot, the lot lines, or the character of the lot. He is trying to get a Variance so legally he conforms to what we say is okay. Mr. Sharland said he thought the intention was to build on the lots, as they had been sold. Mr. Foster replied that he might. Mr. Sharland said they bought their property because of the privacy of the lot, and they had been under the impression that lot was not a buildable lot.

Ms. Melissa Root also of 24 Barstow stated that their concern was that reducing that frontage would allow a house to be built on that property. Mr. Foster clarified that he could not build unless he came before the Zoning Board to receive a Variance that states his lot is acceptable with the reduced frontage which is what he is asking for. He stated again that the lot was not changing but in 1982 when the lot was designed, it was according to the old bylaw that no longer applies.

Mr. Bob Dunn of 18 Montgomery Street stated that he abutted Lot F. His concern is if the Zoning Board grants Variances on both these lots, there would be two houses. They could literally be in someone's back yard because of the irregular shape of the lots. He was concerned with the frontage on Lot F as his property retains water from late winter to spring. If the lot has wetlands in the front or depending where the septic system can be located, it is going to push the house to the narrowest part of the lot. Mr. Foster noted that one lot is 77,600 square feet and the other lot is 73,700 square feet so they are good size lots.

Mr. Foster asked what Board members thought. Mr. Curtis stated water issues aside; he saw no reason why they couldn't grant this. Mr. Foster replied he was reluctant to hinge a decision on concerns of water as they do not get involved in control or management of drainage. Mr. Carmichael asked when the new setback came into effect. Mr. Card replied that he had not been aware of it until he had talked to the Building Inspector recently. He thought that the bylaws had changed in 1985 or 1986. Mr. Carmichael asked if he had the lots before then. Mr. Card said he believed since 1983. Mr. Foster noted that these were then pre-existing, non-conforming lots.

Mr. Marshall then asked if they could not bring their water concerns to this Board. Where should they go? Mr. Foster said he thought it was the Planning Board but he could also check with Nate Darling, the Building Inspector. Mr. Foster asked if anyone else would like to speak. No one spoke. He stated that the decision before them was if the advantage outweighs any disadvantage. The disadvantages he hears are the neighbors are concerned about privacy, drainage, and potential runoff. They could not determine that as the lots are not built on right now.

Mr. Carmichael noted that if the lots were built on and they needed a Variance for a setback, they would need to return to this Board. The abutters would then have to be notified again. Ms. Root said it is her understanding that the lots were under contract. Mr. Foster said Lot F is 692 feet on one side and Lot E is approximately 570 feet. These are long lots and a future builder or owner might be able to build in a location that will have less impact on runoff to a neighbor's lot, or build with less impact to privacy.

Mr. Foster then read the definition of Variance into the record. He felt that both of the lots qualified as they both were long and skinny. In this case, the issue was shape not the size or topography. They can consider a Variance because of the shape of the lot and the disadvantage the shape has imposed on the owner. The resident from 22 Barstow Street asked if he came before the Board again to build a house, would current rules apply or would it be the rules from 1983. Mr. Foster replied it would be under the current bylaws.

It was asked if the Variance was granted would the lots be considered as new and not existing. Mr. Foster clarified that they would not be new lots but existing lots that by today's measurement would have a substandard frontage but would otherwise be buildable. Mr. Foster said unless there was more discussion, he was going to ask for a motion to either deny or grant. If they deny, they need a reason.

Mr. Curtis then made the motion, seconded by Mr. Gouveia, to approve the petition for Lot E-1. The **vote was unanimous for.**

The hearing closed at 7:46.

Card hearing – Barstow/Montgomery Street – M018-B001-L002C:

Mr. Foster opened the second Card hearing at 7:47 and read the legal ad into the record. Mr. Foster noted that this was precisely the same situation. He asked if anyone would like to comment. Mr. Robert Downey stated that his property directly abuts this lot. He has two wells on that side of the property, one of which is a dug well which is within 50 feet of the property line where it is most narrow. He is concerned about the siting of a potential home and/or septic system. Mr. Foster advised that the septic system and the siting of it would be the purview of the Board of Health.

Mr. Foster asked if there was anything further. No one spoke.

Mr. Curtis then made the motion, seconded by Mr. Gillis, to approve the petition for Lot F. The **vote** was **unanimous for**.

The hearing closed at 7:50.

Nashawaty hearing – 8 Beechtree Drive:

Mr. Foster opened the Nashawaty hearing at 7:50 and read the legal ad into the record. He read the July 12, 2018, letter from the Board of Health. It stated the required setback to the septic tank was met and there would be no increase in flow. Mr. Foster noted that it does state in the application that the footprint is being increased. Mr. Nashawaty replied he would be putting the access for the second story stairs where the shed is so he is just squaring the house off. The plans were then consulted but Mr. Nashawaty pointed out that there should have been additional plans submitted with the application.

Mr. Foster then asked Mr. Nashawaty to comment on something indicated on the plan. Mr. Nashawaty said that he did not know what that was and did not do it. He had never seen those drawings. Mr. Foster asked if this was his petition. He said that it was but maybe Mr. Darling had added those drawings? He had submitted a complete set of drawings. Ms. Murray said maybe just an original had been submitted with the Clerk's copy. Mr. Nashawaty said no that he had submitted 17 copies. Ms. Murray advised whatever had been submitted had been distributed. Mr. Foster did not feel they should go any further until they had the proper and correct package in front of them.

Ms. Carolyn Richard of 12 Beechtree then asked if it was correct that the footprint was not being increased. Mr. Foster replied that he was increasing it. Mr. Nashawaty added that it was not increasing the non-conformity as he was following the exact same sidelines that he presently had. He was just squaring off the foundation and he was removing the shed.

Mr. Olivieri then made a motion that they continue the Nashawaty hearing until August 16, 2018. The time would be 7:00. Mr. Curtis seconded the motion. The **vote** was **unanimous for**.

The hearing closed at 7:58.

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

Mr. Foster opened the continued The Residences at LeBaron Hills, LLC, hearing at 8:00. Atty. Robert Mather was present. He advised since their last meeting, the Town Engineer, Mr. Nick Lanney, had signed off on the plans. There had been a few revisions that needed to be made and that has been done. In addition, as they would recall, the Board of Selectmen had some issues and since that time they have met with the

Selectmen. He believed they should have a letter from them. Atty. Mather stated they have satisfied them as to the issues they had brought up.

Atty. Mather noted they had also talked about the need to modify the mitigation measures that were in the original Permit. As the Town no longer wants the original mitigation which was to install sidewalks, Mr. Itani appears to be willing to put a monetary value on that for something the Town could use. They did not discuss what that would be but Town Counsel had made a suggestion that they revoke that mitigation measure and state that the applicant and the Town of Lakeville, through the Board of Selectmen, will enter into a mutually agreeable host community agreement for the purpose of modifying the original agreed upon mitigation. They would like to ask that the Board modify that provision as it was part of the Comprehensive Permit.

Atty. Kwesell stated the one thing missing in that suggestion is the cost has to be comparable. It must be noted that any negotiated amount shall not be less than the estimated cost of the original mitigation. The Board agreed this would be up to the Selectmen. Atty. Mather added while they were discussing modifying the Comprehensive Permit, they did have some discussion at the last two meetings in regards to modifying the hours of operation and that is something they would like to do. He spoke to Mr. Darling regarding the Town's hours of operation and found that the Board of Health does have regulations concerning noise. There is one section that he could see that applies to this which he then read into the record. There was a prohibition of devices used in construction from the hours of 7:00 p.m. to 6:00 a.m. every day of the year. Mr. Foster said he liked the idea of adopting the existing Board of Health regulations, however, he didn't think they should open up Sundays or holidays for working.

After discussion, Mr. Foster asked Mr. Itani what he thought would be fair. He replied it would be fair if they could adhere to the same standard that applied to everyone else in Town. Why have they been singled out to have more restrictive hours? Most of the contractors are working to about 5:00 p.m. Mr. Olivieri commented that he was surprised when this issue came up, and it was found they had these more restrictive hours of operation. He has never heard of a situation in Town where restrictions have been put on operating outside of the normal regulations. He did not think it was fair to any contractor.

Mr. Foster noted that personally he did understand what they were faced with but on the other hand he did object to the idea that lawn workmen could start making noise at 5 a.m. on a Sunday which would be covered under a different Board of Health noise regulation. Mr. Itani said they would be happy to restrict the hours from 7 a.m. to 7 p.m. as far as the construction, so they would not be encroaching on homeowners. Reasonable hours were then discussed. Mr. Foster suggested 7 a.m. to 7 p.m. and Sundays 8 a.m. to 1 p.m. Atty. Kwesell added that the Planning Board had issued two 40R permits and the Town bylaws had been used for hours. They could put in the hours that Mr. Foster suggested, or they could put in the hours of operation will be at the Building Inspector's discretion. This would allow them to work later if necessary and if it was also approved by Mr. Darling. This was acceptable to Mr. Itani. Mr. Foster indicated that this did give Mr. Darling

some authority and because the other two projects had the same guidelines, it seemed like this would be the fair and reasonable thing to do. Mr. Foster asked if this change needed a motion.

Atty. Kwesell replied they have to make a motion to declare the two proposed changes in the July 18th letter insubstantial. In that motion, they should be declared insubstantial and it should be stated they will be incorporated into the modification that was before the Board. Mr. Foster said they had the following two things in front of them: the hours of operation and the sidewalk mitigation. These are slight adjustments to the existing Comprehensive Permit and the determination needs to be made if they are substantial or insubstantial.

Mr. Olivieri made the motion, seconded by Mr. Curtis, that the Board finds the proposed adjustments insubstantial. The **vote** was **unanimous for**.

Mr. Foster asked Atty. Kwesell if they had to vote now to accept them. She replied they would become part of the Decision they would vote on at their next meeting.

Atty. Mather said there was one more thing they would want to go into the Decision and that would be the issue of whether or not it was necessary to check for Indian artifacts. This is called a Cultural Resource Survey. They have contacted Public Archeology Laboratory (PAL) and they plan to do that. He suggested a condition be placed in the decision that would read as follows: "No construction will commence until such time that the applicant shall have a Cultural Resource Survey done by the Public Archeology Laboratory Inc. on the two parcels of land containing approximately four acres that are being added to the Comprehensive Permit to determine that this project does not impact any significant cultural resources. In the event that the survey shows that the project will impact significant cultural resources, then the applicant shall proceed with the Commonwealth of Massachusetts with any further studies or filings that may be required before construction commences."

Mr. Foster recommended that be amended to "construction only in those four acres." Atty. Kwesell said they could change that. Atty. Mather said they have already engaged PAL to do the survey but they did not anticipate them finding anything. He expected it would not take more than three or four weeks to complete. Atty. Kwesell said there is one more thing which is the water flow for the bedrooms. As the project has been modified, she requested they provide what water flow had originally been proposed and what they had now. They need to make sure they do not need an increase in their water allocation. She noted that if they did need that she would like to make that an insubstantial change. Atty. Mather said he did not think they were close but they would provide that number.

Atty. Kwesell said that she would work on the draft, and if there wasn't a problem with the bedrooms, it should be a fairly quick item.

Mr. Curtis then made the motion, seconded by Mr. Olivieri, to continue The Residences at LeBaron Hills, LLC, hearing until August 16, 2018. The time would be 7:00. The **vote** was **unanimous for**.

The hearing closed at 8:29.

Mr. Olivieri made the motion, seconded by Mr. Gouveia, to approve the Minutes from the March 15, 2018, meeting. The **vote** was **unanimous for**.

Mr. Foster adjourned the meeting at 8:34.