



TOWN OF DUXBURY  
BOARD OF APPEALS

DUXBURY BOARD OF APPEALS  
MEETING MINUTES  
January 11, 2024 @ 7:30 p.m.

TOWN CLERK  
2024 APR 26 AM 9:56  
DUXBURY, MASS.

**ATTENDANCE:** Wayne Dennison, Tanya Trevisan, Philip Thorn, and Borys Gojnycz  
**Other persons present at the hearing:** James Wasielewski, Director of Municipal Services & Lauren Haché, Principal Assistant

**CALL TO ORDER:** Chair Wayne Dennison called the meeting to order and reads the Governor's Preamble: Pursuant to Chapter 2 of the Acts of 2023, this meeting will be conducted in person and, as a courtesy, via remote means in accordance with applicable law. Please note that while an option for remote attendance and/or participation is being provided as a courtesy to the public and board members, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast, unless required by law. Additionally, the meeting will be broadcast live, in real time, via the Duxbury Government Access Channels – **Verizon 39 or Comcast 15**. Viewers can visit [www.pactv.org/duxbury](http://www.pactv.org/duxbury) for information about Duxbury programming including streaming on Duxbury You Tube, to watch replays and Video on Demand.

**AGENDA**

**ZBA Case #2023-20, McNerney, 12 Samoset Road:** *The Board voted 4-0 to approve the special permit*

**ZBA Case #2023-21, Bell Point LLC, 0 Tobey Garden St. APPEAL:** *The Board voted 4-0 to continue the public hearing to February 8, 2024*

**ZBA Case #2023-22, Bell Point LLC, 0 Tobey Garden St. VARIANCE:** *The Board voted 4-0 to continue the public hearing to February 8, 2024*

**ADMINISTRATIVE**

**A. ZBA Case #2023-09, The Winsor at Millbrook Village, 50 Railroad Avenue:** *The Board deliberated on draft decision and waiver requests*

**B. Approve Meeting Minutes**

*Tanya Trevisan moves to approve the meeting minutes from October 12, 2023. Wayne Dennison seconds*

*Wayne Dennison moves to approve the meeting minutes from October 26, 2026. Tanya Trevisan seconds*

*Philip Thorn moves to approve the meeting minutes from November 9, 2023. Tanya Trevisan seconds Wayne Dennison moves to approve the meeting minutes from November 27, 2023. Philip Thorns seconds*

*Wayne Dennison makes a motion to adjourn. Tanya Trevisan seconds.*

## **BOARD OF APPEALS MINUTES**

**Case No: 2023-20**

**Petitioner: Peter McNerney**

**Address: 12 Samoset Road**

**Date: January 11, 2024 Time: 7:30 p.m.**

**(Continued from December 14, 2023)**

**Members present:** Wayne Dennison, Tanya Trevisan, Philip Thorn and Borys Gojnycz

**Members Voting:** Wayne Dennison, Tanya Trevisan, Philip Thorn and Borys Gojnycz

**Other persons present at the hearing:** James Wasielewski, Building Commissioner & Lauren Haché,  
Principal Assistant

- Wayne Dennison opens the public hearing and reads the public hearing notice and the case response memos from the other boards and memos from neighbors
- Peter McNerney, the Applicant, explains the project to the Board, stating this is a raze and rebuilt, the home has been in the family for decades and is beyond repair due to mold and structural problems. We would like to keep the same foundation and build something more solid, with a higher ceiling. The existing home is within the front setback, so to rebuild in the footprint, we would be increasing the volume. We are also in the process of having a new septic system designed and a permit filed
- Wayne Dennison states how many bedrooms are in the current house
- Peter McNerney states there are two downstairs and then upstairs has 4 ½ small bedrooms and as we rebuild it, we will end up with a total of 5 bedrooms
- Tanya Trevisan states in the application where the percentage change is, you only have the coverage for the house and not the garage, should the garage be included?
- Peter McNerney states we did include all of the dimensions and drawings but none of the garage is in the non-conforming area, it is beyond the setbacks
- Wayne Dennison states so Jim, they can build the garage without a special permit
- Jim Wasielewski states correct, we did have the engineer add the calculations and a new sheet submitted that is not consistent with the plot plan
- Wayne Dennison states so where is the existing non-conformity, just the front setback
- Jim Wasielewski states yes, no issues with coverage at all
- Wayne Dennison states ok
- Philip Thorn states so the garage is being slid back, but it the proposed house being slid back
- Jim Wasielewski states well maybe .1 feet
- Wayne Dennison states where on the plan is this utility that runs along the property that is connected to these other surrounding properties
- Jim Wasielewski states it is faint and runs along the property line
- Wayne Dennison states there was a letter submitted about construction vehicles limited on private ways
- Peter McNerney states they are not private ways, just unpaved

- David Amory, 18 Puritan Road, states we have met with Peter McNerney and we did have a nice meeting. We met about the powerlines and also the private roads are privately owned. Samoset Road is a public Road, Puritan Road is a private way as is Elder Brewster Road. Over the years, construction vehicles have damaged the unpaved roads and led to deterioration. It would just be appreciated to try to keep the dirt roads preserved from further damage is possible. There was a historical meeting back in September and they did institute a one-year delay. There are some historic timbers in the existing home.
- Wayne Dennison states why would this proposal and the new home, change that existing powerline condition in any way
- David Amory states is this an opportunity to address this now
- Tag Carpenter, 267 Summer Street and also the Chair of the Historical Commission and I wanted to speak to the delay on the demo of the home. The structure was moved onto the lot from another location in the 1920's, so the materials in the home are 19<sup>th</sup> century timbers.
- Peter McNerney agrees and states unfortunately there is not much of the home left from the original structure
- Tanya Trevisan states the powerline that runs through the lot, does this serve this property as well
- Peter McNerney states yes, about 5 other homes as well and states if the other households want to bury that line, I am happy to pay my fair share if we are all in agreement, it has not been a big issue between us. If the group gets together and wants to bury this, I agree and will do my fair share
- Wayne Dennison states so Jim, all that is happening here is that we're going to get a second story in this front setback
- Peter McNerney states it's actually the first-floor ceiling
- Philip Thorn states I am still confused, it shows the proposed dwelling is going to sit on the existing foundation
- Peter McNerney states that is correct, but the roof overhand increases into the setback which is increasing the volume
- Jim Wasielewski states there is an increase in the length in the set back as well and explains the increase
- Wayne Dennison states any further questions
- Borys Gojnycz states I am still concerned about the utility line and the septic
- Jim Wasielewski states the utility line is completely outside of our jurisdiction, that's up to the utility
- Wayne Dennison states it doesn't change the existing condition
- David Amory states perhaps there could be a condition attached to this, we tried to tape off where the septic was, so the power trucks that came out a few years ago wouldn't drive over the septic
- Suki Amory, 18 Puritan Road, states the storms out there are a nightmare with the powerlines. It is complicated

- Peter McNerney states I have no problem with working with the neighbors, but I think this is a separate issue than what this permit is for
- Wayne Dennison states so this Board is limited in our jurisdiction, but we don't determine how utilities work or who has rights to use the road or how to use the wood from your old house. We determine whether this modest extension to this home is not posing a further detriment to the neighborhood. We have four members tonight, rather than five, so we typically take a straw pole as to whether the four sitting are likely to vote in favor or against. I would vote to approve
- Tanya Trevisan agrees
- Philip Thorn agrees
- Borys Gojnycz also agrees
- Wayne Dennison moves to close the public hearing
- Tanya Trevisan seconds
- All in favor WD, TT, PT, BG
- Wayne Dennison moves to approve the special permit
- Tanya Trevisan second
- All in favor WD, TT, BG, PT

**Motion: It was moved, seconded and voted (4-0) to close the public hearing.**

Moved by: WD

Seconded by: TT

Number in favor: 4

Number opposed: 0

**Motion: It was moved and seconded and voted (4-0) to approve the Special Permit as requested:**

Moved by: WD

Seconded by: TT

Number in favor: 4

Number opposed: 0

## **BOARD OF APPEALS MINUTES**

**Case No: 2023-21 & 2023-22**

**Petitioner: Bell Point LLC**

**Address: 0 Tobey Garden Street**

**Date: January 11, 2024 Time: 7:30 p.m.**

**Members present:** Wayne Dennison, Tanya Trevisan, Philip Thorn and Borys Gojnycz

**Members Voting:** Wayne Dennison, Tanya Trevisan, Philip Thorn and Borys Gojnycz

**Other persons present at the hearing:** Amy Kwesell, Town Counsel, James Wasielewski, Building Commissioner & Lauren Haché, Principal Assistant

- Wayne Dennison opens both public hearings for the Appeal and Variance request for 0 Tobey Garden Street and reads the public hearing notices and case response memos for this case
- Dan Gorman spoke on behalf of the Applicants, the DeLorenzo family and explained what they are seeking. Mr. Gorman continues to explain the taking that took place by the Town in 1952 split this parcel to create Tobey Garden Street and Old Tobey Garden Street, which created two non-conforming lots. The northern of these two lots was built upon in 1972 as non-conforming.
- Wayne Dennison states Jim, have we figured out how the north parcel was permitted to be built
- Jim Wasielewski, the Building Commissioner, states the street file does not indicate any special permitting on file, not does the Planning Department
- Wayne Dennison states so Amy, I saw an email from you about an analyzation, would you go through your analysis
- Amy Kwesell, Town Counsel, states thank you, the applicant appealed to Jim under the separate lot exemption, which is found in section 40A section 6 paragraph 4, which isn't what is happening here. This was done from a taking, thus leaving the lot and was never conforming and does not enjoy the separate lot exemption. The lot would be required to have 20,000 sq. ft of area and 50 feet of frontage are what are required for that exemption and thus this does not apply here.
- Wayne Dennison asks about the frontage, stating it looks like it has over the 50 feet
- Amy Kwesell confirms that it does
- Dan Gorman states I do agree with that assessment
- Wayne Dennison states lets hear the variance claim
- Dan Gorman states I am assuming that the northern lot was granted some where along the way to build on that parcel. There is a hardship in terms of no compensation in 1952 at the time of the taking
- Jim Wasielewski states do the DeLorenzo's have any documentation
- Dan Gorman states no
- Amy Kwesell states the letter states that the northern triangle could have only been developed if the Town grandfathered the northern lot or if a variance was granted,

there is a third in which a mistake could have been made and a building permit was granted

- Wayne Dennison states this is a unique shaped lot, Amy did you do the variance analysis
- Amy Kwesell states yes, they are asking for more than just a variance from the 150-foot circle, they also will need a lot area variance as well. While the lot is a unique shape, the northern lot is the exact same shape, so there are 3 prongs to a variance. The property has to be unique in soil, shape or topography and by unique, the statute states it has to be unique in shape from all other properties in the zoning district. The second prong is hardship and the third prong is that it meets the purpose of the zoning bylaw-detriment
- Wayne Dennison states so, I understand hardship, this analysis is difficult.
- Amy Kwesell states at the time of the taking they would have been eligible
- Wayne Dennison opens the hearing up to the public
- Borys Gojnycz states has this parcel been taxed as buildable
- Philip Thorn states there are two different codes, but I am not certain what those codes are
- Amy Kwesell states it does state vacant land on this parcel
- Philip Thorn states it is only assessed for \$17,000 which doesn't seem appropriate for a buildable lot
- Patrick Stout, 283 Old Tobey Garden Street, states I am the closest abutter to the vacant lot and we have been here for 40 years and we were always told that they used the total of the two lots to build on the northern lot. The northern lot was built on and sold several times, so I was surprised that the DeLorenzo's still owned the southern parcel, I had assumed that the parcels would go together. Mr. Stout continues on with concerns about traffic and proximity to his home
- Amy MacNab, 269 Old Tobey Garden Street, states concerns over the dangerousness of allowing buildable on unbuildable land and the pressures of building on every possible lot. I feel strongly that this is not eligible for a variance. Ms. MacNab states I do believe that they maybe counted both parcels as one to allow for the house to be built on the northern lot and perhaps it wasn't conveyed over for whatever reason. This is also in the APOD, so one bedroom per 10,000 square feet, this would be restricted. For all those reasons, I am not in favor of this application.
- Borys Gojnycz states what could be built on this lot, especially if it wasn't taxed as buildable
- Dan Gorman states as of right now with a variance, you would have a one-bedroom home
- Tag Carpenter, Summer Street, I grew up at 140 Tobey Garden Street and it is my recollection that there was a deal made with building the northern house considering the southern piece completing the lot
- Wayne Dennison states since we only have four members and that would require unanimous support, we typically offer a straw poll and allow the Applicant to continue to another date when there is a full board. So straw poll, this strikes me as unfortunate but given the circumstances I would be inclined to vote against a variance
- Philip Thorn agrees and notes that the lot hasn't been taxed as buildable this entire time

- Tanya Trevisan agrees and states the detrimental effects this could have I am against this
- Borys Gojnycz states I agree, I would be inclined to deny
- Wayne Dennison states so we can continue if you would like and get a full board of five or we can vote to deny
- Dan Gorman states did the northern property meet the 150-foot circle
- Wayne Dennison states that the 150-foot circle issue for me indicates that you will be required to have multiple variances in terms of setbacks and beyond
- Dan Gorman states it is only one variance due to the shape
- Amy Kwesell states it cannot be just one, due to its size
- Dan Gorman notes there is a proposed plan with a one-bedroom house
- Amy Kwesell states the building is in the setback
- Dan Gorman states we can create something not within the setback
- Wayne Dennison states we can continue to talk about this and let you marshal more evidence for the variance, you would also need a special permit
- Dan Gorman states I am looking for feedback from the Board about my argument around the awkward shape the taking created
- Wayne Dennison continues well you have to show hardship and detriment and I don't think you're close on those and we are willing to give you more time
- Dan Gorman continues I am mostly concerned about the shape
- Wayne Dennison states well you have another parcel the exact same shape and exact same size directly across the street which is what Town Counsel is telling us
- Dan Gorman states for the record the two parcels were under two separate owners at time of taking
- Wayne Dennison states would you like to continue
- Dan Gorman agrees to a continuance
- Wayne Dennison moves to continue to February 8, 2024
- Tanya Trevisan seconds
- All in favor WD, TT, PT, BG

**Motion: It was moved, seconded and voted (4-0) to continue the public hearing to February 8, 2024.**

Moved by: WD

Number in favor: 4

Seconded by: TT

Number opposed: 0