

**TOWN OF DUXBURY**



**BOARD OF APPEALS**

**DUXBURY BOARD OF APPEALS**

**MEETING MINUTES**

February 8, 2024 @ 7:30 p.m.

TOWN CLERK

2024 APR 26 AM 9:56

DUXBURY, MASS.

**ATTENDANCE:** Philip Thorn (CPT), Wayne Dennison, Emmett Sheehan, Freeman Boynton Jr., Tanya Trevisan and Borys Gojnycz

**Other persons present at the hearing:** Amy Kwesell, Town Counsel, James Wasielewski, Director of Municipal Services & Lauren Haché, Principal Assistant

**CALL TO ORDER:** Chair Pro Tem Philip Thorn 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 9**. 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 #2023-21, Bell Point LLC, 0 Tobey Garden St. APPEAL (CONT'D):** *The Board voted 4-0 to uphold the Zoning Enforcement Officer's determination*

**ZBA Case #2023-22, Bell Point LLC, 0 Tobey Garden St. VARIANCE (CONT'D):** *The Board voted 4-0 to deny the variance*

**ZBA Case #2024-01, Husk, 160 Marshall Street APPEAL:** *The Board voted 4-0 to uphold the Zoning Enforcement Officer's Enforcement Letter*

**ZBA Case #2024-02, DeFranceaux, 273 Autumn Ave.:** *The Board voted 5-0 to approve the special permit with conditions*

**ADMINISTRATIVE**

A. Approve Meeting Minutes

*Emmett Sheehan makes a motion to adjourn. Wayne Dennison seconds.*

## **BOARD OF APPEALS MINUTES**

**Case No: 2024-02**

**Petitioner: DeFranceaux; Upward Spiral**

**Address: 273 Autumn Avenue**

**Date: February 8, 2024 Time: 7:30 p.m.**

**(Continued from January 11, 2024)**

**Members present:** Philip Thorn (CPT), Wayne Dennison, Tanya Trevisan, Emmett Sheehan, Freeman Boynton Jr. and Borys Gojnycz

**Members Voting:** Philip Thorn (CPT), Wayne Dennison, Freeman Boynton Jr., Emmett Sheehan and Borys Gojnycz

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

- Philip Thorn opens the public hearing for the special permit application for an in-home business practicing massage therapy. Mr. Thorn continues to read the case response memos from the Board of Health, the Planning Board and the Design Review Board.
- Christine DeFranceaux introduces herself and states I agree about the sign proposal and we were thinking a small sign hanging from the mailbox, something very small.
- Jim Wasielewski states a sign cannot hang from the mailbox, the home occupation can request a sign that is less than 2 square feet with a special permit
- Wayne Dennison states the notice does not mention the sign or the bylaw sections, it's not in the actual notice and I think the request may be inappropriate
- Jim Wasielewski states I don't see anything in the bylaw
- Wayne Dennison states as statutory notice requirements, the sign should also be in the notice and I don't think that was the case here
- Amy Kwesell, Town Counsel, states the section noticed includes the sign requirements so I think this is fine, there is a risk that someone may be upset and so that is a risk the board would need to determine
- Jim Wasielewski states where would you want the sign
- Christin DeFranceaux states I was thinking under the mailbox across the street
- Jim Wasielewski states no, that's not your land, it would have to be flush mounted to the home
- Christine DeFranceaux states that's fine, I understand
- Wayne Dennison states section 410.7 of the bylaw, the principle use of the property is a home and I don't see any other impediment to this other than the sign
- Christine DeFranceaux states I am fine with that, we do not need to have the sign, we can operate without it
- Amy Kwesell states so then I would issue the special permit without the sign and then it's clean
- Wayne Dennison states and then you can always come back to request the sign
- Philip Thorn opens the meeting to the public

- Myrna Walsh, 280 Autumn Ave., I just have a few questions, but I am for this. Is this for one client at a time or more than one? And I do have a little worry about parking and I do want to make sure no one parks on that blind curve at the property. I am also curious about hours of operation
- Christine DeFranceaux states we do have a very large driveway that can accommodate at least 6 cars, but in the application it does stipulate 2 people at a time, which is for couples' therapy, so I would be happy to limit that to no more than two cars at a time. As far as hours of operation, I think that they should be along the lines of 8am-6pm, is that acceptable Myrna
- Myrna Walsh states yes, that is great
- Philip Thorn states Monday through Friday
- Christine DeFranceaux states I would ask for Saturday as well and asks Myrna Walsh if that works, as she states she values their friendship as their closest neighbor
- Myrna Walsh states yes, I think you need to have that especially for your couples' therapy
- Philip Thorn states so Monday through Saturday 8am-6pm
- Amy Kwesell states Mr. Chair I would recommend a condition that cars must be parked in the driveway
- Philip Thorn agrees and states and condition the hours of operation
- Freeman Boynton Jr states I am a little concerned about the driveway, this plan shows the driveway is only 6 feet long
- Christine DeFranceaux states no, we expanded and widened the driveway beyond the garage. It is actually three cars wide and three cars deep
- The Board looks at the existing photos
- Freeman Boynton Jr states what about the concern of backing out of the driveway every hour
- Christine DeFranceaux states we do this daily, it seems unnecessary to request a turnaround
- Discussion ensues over the driveway and they determine the curve is gradual
- Myrna Walsh states that their driveway seems sufficient and the road is not overrun with vegetation. I don't think there is an issue as long as people don't park on the street
- Borys Gojnycz states so the State over sees this, do they weigh in or is there an inspection that they do
- Christine DeFranceaux I am not sure
- Myrna Walsh states may I answer, because Lauren Haché was so helpful with this, the State license Board for Massage Therapy issue the license and the State can inspect any time during office hours but there is no pre-inspection
- Philip Thorn states thank you for that, now I think we can entertain a motion to close the public hearing
- Emmett Sheehan states so moved
- Tanya Trevisan seconds the motion
- All in favor PT, WD, TT, ES, FB
- Philip Thorn states is there any discussion

- Philip Thorns states I will entertain a motion to approve the special permit with the conditions discussed no parking n the street, no sign and hours of operation Monday-Saturday 8am-6pm
- Emmett Sheehan seconds (no motion made yet)
- Freeman Boynton Jr states I am still uncomfortable with the parking and backing out; maybe we condition this on Jim taking a drive out
- Jim Wasielewski states I can address that, I have been out to the property several times and the sightline is pretty clear, there is no shrubbery, it's really clear and for a good distance
- Emmett Sheehan states I have been on that site with the previous home owners and had no issues backing my truck out
- Freeman Boynton Jr states ok, well I will make a motion to approve the special permit with the conditions mentions
- Emmett Sheehan seconds
- All in favor WD, PT, ES, FB, BG (TT)

**Motion: It was moved, seconded and voted (5-0) to close the public hearing.**

Moved by: ES	Seconded by: TT
Number in favor: 5	Number opposed: 0

**Motion: It was moved and seconded and voted (5-0) to approve the special permit with conditions.**

Moved by: FB	Seconded by: ES
Number in favor: 5	Number opposed: 0

## **BOARD OF APPEALS MINUTES**

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

**Petitioner: Bell Point LLC**

**Address: 0 Tobey Garden Street**

**Date: February 8, 2024 Time: 7:30 p.m.**

**(Continued from January 11, 2024)**

**Members present:** Philip Thorn (CPT), Wayne Dennison, Tanya Trevisan, Emmett Sheehan and Borys Gojnycz

**Members Voting:** Philip Thorn (CPT), Wayne Dennison, Tanya Trevisan, Emmett Sheehan and Borys Gojnycz

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

- Philip Thorn re-opens both public hearings for the Appeal and Variance request for 0 Tobey Garden Street and states that we have received new correspondence which includes an original building permit and a determination from county commissioners regarding the subdivision of the property
- Wayne Dennison states it looks like we also have a water service connection card
- Philip Thorns states I apologize, it's on the back of the permit and it's dated June 7, 1972, so obviously the northern parcel. Is the Applicant present to speak to the Board
- Philip Thorn states it appears there is no applicant
- Amy Kwesell states yes this was properly continued as you might recall and as a courtesy to Applicant as there were only four board members at the opening of the hearings on January 11, 2024. The Applicant did present their case, we heard from the public and there was a straw poll taken. The hearing was continued and the Applicant had the opportunity to submit more evidence, but has not submitted anything, the materials submitted were done so by Jim and Lauren, so I believe you can move forward tonight with a vote; it is still a public hearing though
- Philip Thorn opens the hearing to the public
- Patrick Stout, 283 Old Tobey Garden Street, I spoke at the last hearing, we are direct abutters, and continues to stress the concerns about developing on this small parcel and continues to discuss the chain of ownership and also there was an email that was sent in by an Abutter that was sent over today.
- Amy MacNab, 269 Old Tobey Garden Street, expresses the concern about developing a parcel that is pre-existing, non-conforming and that the pressure to develop every last piece of land is going to increasingly get worse. It's easy to see the two split parcels before the roadway was put in, completed a square parcel one acre in size. I think the language in the building permit, the building permit looked at the totality of the two parcels and the road, so they were granted a building permit and I think that was the right call. I don't think it was anticipated that the two parcels would not stay in the same ownership.
- Philip Thorn reads an email from Steven Bates, 197 Old Tobey Garden Street and states that completes everything we have received. Do we have any other comments

- Amy Kwesell states yes Mr. Chairman, I was going to suggest that you vote on the Appeal first and then vote on the Variance second
- Wayne Dennison states the public hearing is still open
- Wayne Dennison moves to close both public hearings
- Emmett Sheehan seconds
- All in favor WD, ES, PT, TT, BG
- Philip Thorns states I have a couple of thoughts, it appears to me that yes at one time there was one lot, but when the street came in, it appears the building permit was issued for one parcel and based on the tax assessment for the parcel we are discussing tonight, it appears to be unbuildable since 1972
- Amy Kwesell states with regards to the appeal they are stating they can enjoy the exemption under MGL chapter 40a section paragraph 4, sentence 1, my opinion this is incorrect and doesn't apply with the separate lot exemption as this was not separated by zoning but rather by a taking.
- Wayne Dennison moves to deny the appeal on the grounds that the lot does not enjoy the separate lot protection and is not a grandfathered lot
- Emmett Sheehan seconds
- All in favor PT, BG, ES, WD, TT
- Wayne Dennison states in respect to the variance, we have a high standard here and you have to show a hardship relating to soil, suitability, shape or topography and on top of that they have to show that the relief they are seeking won't be more detrimental to the neighborhood. They did not support any hardship and the neighbors are all unanimous in being opposed to this so I would move to deny the variance request
- Emmett Sheehan seconds
- All in favor PT, ES, BG, TT, WD

**Motion: It was moved, seconded and voted (5-0) to close both public hearings for case 2023-21 Appeal and case 2023-22 variance.**

Moved by: WD	Seconded by: ES
Number in favor: 5	Number opposed: 0

**Motion: It was moved and seconded and voted (5-0) to deny the appeal request**

Moved by: WD	Seconded by: ES
Number in favor: 5	Number opposed: 0

**Motion: It was moved, seconded and voted (5-0) to deny the variance request.**

Moved by: WD	Seconded by: ES
Number in favor: 5	Number opposed: 0

## **BOARD OF APPEALS MINUTES**

**Case No: 2024-01**

**Petitioner: Charles J Husk**

**Address: 160 Marshall Street**

**Date: February 8, 2024 Time: 7:30 p.m.**

**Members present:** Philip Thorn (CPT), Wayne Dennison, Emmett Sheehan and Borys Gojnycz

**Members Voting:** Philip Thorn (CPT), Wayne Dennison, Emmett Sheehan and Borys Gojnycz

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

- Philip Thorn opens the public hearing and reads the public hearing notice and the case response memos from the other boards and memos from neighbors
- The Applicants Agent, Brendan Cooke with BERLUTI McLAUGHLIN & KUTCHIN LLP, presents to the Board his case that the accessory structures and their utilities have been removed from the Wetlands Protection Overlay District and that the need for a special permit and excessive relief through their removal from the property is moot
- Town Counsel, Amy Kwesell states how were the utilities removed
- Brendan Cooke states the Applicant manually removed them as they were above ground
- Charles Husk explains that the Conservation Commission has hired a peer review consultant working with them and the flagging of the coastal bank on the property
- Phil Thorn states so for clarity the utilities run to the bungalows were water and electricity
- Charles Husk states well, there was never any water connected to the trailers
- Emmett Sheehan states did conservation approve the new location of the bungalows
- Charles Husk states conservation committee has been out to the property and are aware and Nancy ok'd that and there is currently an open order of conditions
- James Wasielewski states so for clarity we were first made aware through a complaint on October 19, 2020 and also there is a history here and you continue to do the work first and dealing with the consequences after. Moving forward will you do the right thing and apply for permits first?
- Brendan Cooke states well, these are under 200 square feet, so they are exempt from a building permit requirement
- James Wasielewski states well I believe we saw some mini-splits or air conditioning on these and subject to MGL C143 S96 the exemption only applies with exception of the specialized codes and since the energy code now applies here, a building permit would be required as would plumbing and electrical permits
- Brendan Cooke states that is why we removed all electrical going to these bungalows
- Charles Husk states we did pull electric and plumbing permits
- Jim Wasielewski states there was an underground 100amp service installed according to the permit pulled

- Amy Kwesell states but you just said this was above/on the ground service
- Wayne Dennison states it is my understanding that even if the structure is under 200 square feet you still need a zoning permit
- Jim Wasielewski states correct
- Wayne Dennison continues so a zoning permit requires a site plan that depicts the area in which you want to install the less than 200 square foot structure and at least some outline as to what the foundation is, are either of those supplied relative to the new locations for these structures
- Jim Wasielewski states all I have is the new plot plan that we received today; this is the first that I am hearing that they were relocated
- Wayne Dennison states but you didn't issue a zoning permit for these structures for the area in which they are NOW located
- Jim Wasielewski states not in this area, no
- Brendan Cooke states the zoning permit that was previously issued didn't reference an area
- Wayne Dennison states well a zoning permit has to reference an area
- Jim Wasielewski states that is correct, it has to be depicted on a plot plan
- Charles Husk states we were going to, that's a good point, we should update the location, whatever else we need to do
- Jim Wasielewski states I do have a plot plan for the original zoning permit, which wasn't on there was the delineation of the WPOD
- Wayne Dennison states right but on that original plot plan are the proposed locations of the structures on there as they now sit
- Jim Wasielewski states no
- Wayne Dennison states we have had two decisions that have never been appealed; I agree that the removal from the wpod order is moot, the portion of the order that the applicant is excessive which is removal from the property, I believe should be upheld because there is no existing zoning permit for the new locations of the structures. I would uphold the order of removal unless and until there is a zoning permit that permits the structures on the property
- Brendan Cooke states one of the bungalows has not moved, so one new zoning permit for the moved bungalow
- Jim Wasielewski states we issued zoning permits back in 2021 as the structures were already constructed and this was done in a reactive manner due to an order from conservation.
- Attorney David Uitti, Counsel for the Neighbors, states I am not aware of any approval from Conservation Commission and on the ANRAD shows that the revised locations are still in a protective resource area. I would also gather that in order to obtain a zoning permit, the board of health and conservation commission would have to sign off on these permit applications as well
- Emmett Sheehan states that is what we are saying, you built it and then moved it and never with proper permitting and plans depicting it



- Wayne Dennison states until a zoning permit is applied for with a new plan depicting location, I would uphold the ZEO's determination and order
- Wayne Dennison moves to close the public hearing
- Emmett Sheehan seconds
- All in favor WD, ES, BG, PT
- Philip Thorn states any discussion
- Wayne Dennison moves to uphold the Building Inspectors order to remove the structures from the property
- Emmett Sheehan seconds
- All in favor BG, ES, PT, WD

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

Moved by: WD	Seconded by: ES
Number in favor: 4	Number opposed: 0

**Motion: It was moved and seconded and voted (4-0) to uphold the Zoning Enforcement Officer's Order of removal.**

Moved by: WD	Seconded by: ES
Number in favor: 4	Number opposed: 0

\*Shellfish License 2024-2025

SH-24-49

Submitted On: Mar 7, 2024

Applicant

👤 DON WEBBER  
📞 781-424-9294  
@ DONWEBBERIP@GMAIL.COM

Applicant Information:

Duxbury Resident?

Yes

Driver's License #

S74188060

Birthdate

10/14/1957



62 or older?

\*Shellfish License 2024-2025

SH-24-50

Submitted On: Mar 7, 2024

Applicant

 LISA WEBBER  
 781-424-6761  
@ LWWEBBER@HOTMAIL.COM

Applicant Information:

Duxbury Resident?

Yes

Driver's License #

S12636925

Birthdate

11/07/1959

62 or older?