



TOWN OF DUXBURY
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BOARD OF APPEALS

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

DUXBURY BOARD OF APPEALS  
MEETING MINUTES  
March 14, 2024 @ 7:30 p.m.

**ATTENDANCE:** Judith Barrett (CPT), Emmett Sheehan, Philip Thorn, Wayne Dennison (remote) and Borys Gojnycz (remote)

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

**CALL TO ORDER:** Chair Pro Tem Judith Barrett 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 2024-04, Badeau, 18 Josselyn Avenue (Cont'd):** *The Board voted to continue the public hearing to April 25, 2024*

**ZBA Case 2024-06, Buckley, 37 Priscilla Lane:** *The board voted 5-0 to close the public hearing and grant the special permit subject to conditions to be discussed at a later time*

**ADMINISTRATIVE**

**A. Webster Point Village:** *The Board voted unanimously to approve payment of an invoice for legal fees incurred by Special Town Counsel for the Webster Point Village case*

**B. Approve Meeting Minutes**

*Judith Barrett makes a motion to adjourn. Philip Thorn seconds.*

## BOARD OF APPEALS MINUTES

**Case No: 2024-04**

**Petitioner: James and Lisa Badeau**

**Address: 18 Josselyn Avenue**

**Date: March 14, 2024 Time: 7:30 p.m.**

**(Cont'd from February 22, 2024)**

**Members present:** Wayne Dennison, Philip Thorn, Emmett Sheehan, Judith Barrett and Borys Gojnycz

**Members Voting:** Wayne Dennison, Philip Thorn, Emmett Sheehan, Judith Barrett and Borys Gojnycz

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

- Judith Barrett, Chair Pro-Tem, re-opens the public hearing and states we have new materials including a revised plan set, and emails with concerns for the project as well as letters in support.
- Jessica Williams shares her screen and explains a revised plan where they are reducing some of the mass and we are now proposing to pull the proposed garage from the existing footprint towards the street by a little over a foot. The rear property line, we will propose putting a fence up to buffer the rear of the garage and the Kaszynski property line. We are only adding an additional 12 square feet of area in non-conforming area and overall an addition of 53 square feet; a net change of 0.3%, which we feel is not detrimental to the neighborhood. Ms. Williams continues and explains the new proposed design and changes to roof lines and then shows the abutting properties and the mass of those existing structures relative to the Badeau proposal. Lastly, Ms. Williams shares what a two-story structure looks like with the 30-foot midpoint allowable in Duxbury and then a much smaller proposal of the Badeau's. We feel the changes we have made are beneficial to the Kaszynski's and we have reduced volume and area and rear setback
- Emmett Sheehan states the sun study modeling is fantastic, thank you
- Judith Barrett states are there any questions from the Board; hearing none, we can open this to the public
- Wayne Dennison states I appreciate the thoughtful presentation
- Philip Thorn states have the Kaszynski's seen the new plans
- Jessica Williams states we presume he has seen these
- Steven Kaszynski, 11 Friendship Lane, states I am appreciative of the changes that they have made, but we have not been able to review these new plans in a timely manner. I do wonder if there is a revised specifications page for the actual special permit. I do see that there will be an additional 2 ½ feet to the structure at the property line, but I am wondering where the fence would go and how far that would be from the new structure. What is the maximum height of this proposed structure
- Jessica Williams states this is well lower than the height of the Badeau's house, however, we are about 20 feet off the ground, that is to the ridge. The Bylaws height is the midpoint and I am referring to the ridge. The midpoint of the gable is about 15 feet so well below the 30-foot height limit. I want to go on the record that we are seeking the

Boards approval, we certainly understand the public comments, but this is a determination the Board makes.

- Steve Kaszynski asks about the fence and I am wondering where the fence is going and now you are going to take away the foot and half we have now to the garage. Are you taking that away?
- Jessica Williams states actually the fence will be run along the Badeau's property line, that is their 1 ½ feet on their side. The fence would be on their property behind their garage
- Judith Barrett states it's their property
- Liz Bone, 38 Josselyn Street, states for the record, the property has been like this for years, it is just the way the neighborhood is and I feel this is a win-win and I feel Jessica has done an amazing job
- Jim Badeau, 18 Josselyn Ave., I am the homeowner and I would like to address Mr. Kaszynski's comments about not having enough time to review the revised plans, these were posted on the town website days ago. When this first started, the day I received plans from Jessica I sent them to all of the abutters and asked for questions and concerns so as to not surprise. We had support from many and then Mr. Kaszynski asked for some heights and Jessica gave those to him and we never heard from them again, so the idea that we would reach out again and provide the changes makes no sense to me.
- Joe Conway, 22 Josselyn Ave., I am directly next door and would like to point out the way the neighborhood was built, we have very small lots and we are all trying to create new spaces in keeping with the character. I think this is a beautiful proposal, this is a modest proposal.
- Judith Barrett states does the Board feel they need additional information
- Board members concur no
- Philip Thorn makes a motion to close the public hearing
- Wayne Dennison seconds the motion
- All in favor BG, JB, PT, ES, WD
- Judith Barrett states do we want to deliberate on this tonight
- Wayne Dennison states yes, I don't see any reason not to. I want to say I don't care one whip if someone is a summer resident or not, they are property owners and they have all the rights. I also was impressed with all of the thought that went into revising the plan that the Applicants and Architect came up with. I think this is an appropriate special permit and I would vote to approve this.
- Philip Thorn states I agree with Wayne, the proposal was extremely thoughtful, but I am leaning towards maybe doing another site visit with the revised drawings in hand.
- Judith Barrett states the only problem is we have closed the public hearing
- Emmett Sheehan states I am close, but I too wouldn't mind going back out on my own
- Judith Barrett states I think the Applicants have done what they can with this tight lot while making changes to address the neighbor's concerns.
- Wayne Dennison states Phil expressed a desire to go back out and in order to do that, we have to re-open the hearing and I don't want to deny him that, but I am satisfied. The whole fence discussion, a fence goes on the property line period.

- Emmett Sheehan states I agree with Phil regarding re-opening
- Philip Thorn states I would like to, I don't feel like I have a clear enough view without the new plans
- Judith Barrett states I am not available March 28<sup>th</sup>, the next date would be April 11<sup>th</sup>
- Wayne Dennison moves to re-open the public hearing
- Philip Thorn seconds
- All in favor JB, PT, BG, WD, ES
- Judith Barrett states we are back to open session
- Jim Wasielewski states there is a benefit to the proposal in terms of fire protection, a fire resistance rating since it is within 5 ft. of the property line.
- Steve Kaszynski states I would like to mention drainage, where would drainage run to
- Jessica Williams states all of the drainage due to the building code, we are not allowed to drain on any other property. We will have gutters and all overflow will land in a drainage zone with gravel
- Tristan Partain, builder for the project, reiterates that the water drainage will be mitigated
- Jessica Williams states may we look at a date where all 5 Board members are available
- Philip Thorns moves to continue the public hearing to April 25, 2024
- Emmett Sheehan seconds
- All in favor WD, JB, ES, PT, BG

**Motion: It was moved, seconded and voted (5-0) to continue the public hearing to April 25, 2024.**

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

## **BOARD OF APPEALS MINUTES**

**Case No: 2024-06**

**Petitioner: Francis J Buckley**

**Address: 37 Priscilla Lane**

**Date: March 14, 2024 Time: 7:30 p.m.**

**Members present:** Wayne Dennison, Philip Thorn, Emmett Sheehan, Judith Barrett and Borys Gojnycz

**Members Voting:** Wayne Dennison, Philip Thorn, Emmett Sheehan, Judith Barrett and Borys Gojnycz

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

- Judith Barrett opens the public hearing and reads the hearing notice and contents of the application. Ms. Barrett reads the case response memos from the Board of Health, the Planning Board, the Design Review Board and the Planning Board and a memo from the Conservation Agent and asks the Applicant to proceed
- Tristan Partain, Partain and Sons, represented the Applicants and states the proposal is to raze and rebuild the dwelling and pull the home back from the front existing setback to comply with the setbacks. The front setback is going from 9 feet to 25 feet and the left setback will for from 17 feet to 28 feet off the left side property line and then from rear property line we will place the home 15.7 feet. The lot is 14,800 sq. ft. and 15% of that would be 2,234 sq. ft. and with the additional 3% we can go to 2,387 sq. ft. and we are proposing to go to 2,332 sq. ft.
- Francis Buckley, the Applicant, introduces himself and thanks the Board for their time and states I am excited to bring my family to town. Mr. Buckley states I made a preliminary landscape plan to share with the Board and the Neighbors and hopefully gain support for this project
- Judith Barrett states does the Board have any questions or comments
- Emmett Sheehan states I have a comment, the 3% rule is really is not a rule, it's an ask
- Judith Barrett states well it's in the Bylaws and depending on who you ask, it's applied differently. Some say that if you are already non-conforming, then it doesn't apply
- Judith Barrett states does the Building Commissioner wish to opine on this
- Jim Wasielewski states I would love to; I understand what is written in print which is basically what Triston did here. The Board can use the rule to measure detriment to the area. It depends on the Boards perception of detriment. If the existing is already over 15%, then that is another issue.
- Emmett Sheehan states non-conforming lot, non-conforming dwelling which is becoming more conforming. Is this by right?
- Jim Wasielewski state it is not by right, it's by coverage
- Emmett Sheehan states why can't folks stay within that 15%, a new lot these days we can't do that
- Jim Wasielewski states right, but new lots now are required to be 40,000 square feet. In order to protect some of these pre-existing, non-conforming coming from Mass general Law, the Bylaws were changed to add this 3% rule

- Wayne Dennison states may I weigh in. We go over this a lot and I fully understand Emmett's concern, but there is not a 3% rule, it's a 3% adjustment. If the lot coverage is already over 15%, we are not talking about a situation that is implicated with the 3% adjustment. If the lot is under 15%, then you can ask for the 3% adjustment and this is what Town Counsel has opined and is consistent with MGL. It's up to this Board as a matter of detriment. If the lot is under 15% to start with, then we are constrained by the Bylaw to give no more than 3%.
- Judith Barrett agrees, this is a guideline
- Tristan Partain states we are currently with 11% coverage
- Judith Barrett states thank you, so we don't even need to have this discussion
- Emmett Sheehan states I was just looking for clarity
- Judith Barrett states Wayne or Borys do you questions before we open to the public; hearing none, I will open this to the public for comment
- Bob Burpee, 43 Priscilla Lane, states I have a few concerns, the first is the Lane and the protection of the lane in terms of construction vehicles. It is a private lane and although I did already speak with Tristan, I wanted to go on record with this concern. Tristan did say he will do all he can to protect it. Also, not to block the road. Second, the drainage and concerns about where that water is going to go. Those are the things I am most concerned about.
- Judith Barrett states thank you
- Wayne Dennison states Mr. Burpee, thank you for the comments specifically since you have been in this business for 50+ years. Are there conditions that you would think of that would speak to your concerns that we could implement on this special permit.
- Bob Burpee states with a little bit of time, I could certainly come up with a few. I would be happy to do that in conjunction with Tristan
- Judith Barrett states my question is to staff here, how do we review drainage and storm water on an individual lot
- Jim Wasielewski states based on the contours, maybe drywells are the answer. I do know Tristan and his integrity, he does things the right way. For a single residential lot, we don't normally do that. The Zoning Bylaw does charge that you have to maintain drainage on your own lot.
- Judith Barrett states how do we review for that
- Jim Wasielewski states maybe adding the contours to the plan; the challenge with any structure is dealing with sloping ranges around the house. Based on the pre-existing conditions, that is not being done now.
- Bob Burpee states there are some trees there now that create a berm between the house and Priscilla Lane and those trees will come down.
- Philip Thorn states if the bylaw addresses shedding water from your property onto a neighboring property, is this really an issue we need to be involved with or is that really an enforcement issue if something arises during construction.
- Judith Barrett states unless it raises the issue of detriment to the neighborhood
- Philip Thorn states Mr. Burpee do you feel this project is detrimental to the neighborhood

- Bob Burpee states No
- Jim Wasielewski explains the contour elevations and states maybe in consideration of this, maybe a proposed final topo and how swails and water will be mitigated and that is typically done on a final as built and is something this Board could condition be done
- Emmett Sheehan states I have a comment, I actually went out to the lot and walked it and it's fairly flat and there is a lot of lawn area to suck up water and if they do the right thing with gutters...
- Jim Wasielewski states also I can't imagine the existing structure has drains that recharge, so although impervious is increasing, but the addition of those drains the recharge will be better than existing.
- Tristan Partain states yes, we do have a plan for drainage in place
- Judith Barrett states is there anyone else to speak
- Chris Popple, 23 Priscilla Lane, states although we have peaks of the bay, my heart sank a little when this came up, but I do agree and know that you have the right to build what you want on your property. My questions are what is the angle of the house that the new home will sit and then what is the total height and the actual coverage. Will I still see the sun?
- Tristan Partain shares the proposed and existing and states we are moving it further back and parallel with the road. The total height will go from 19 feet to 25 feet. The width of the house will be 38 feet on the garage. There is potential that the view will still be there.
- Chris Popple states ok, it is becoming a battle of the tiny cottages and big new builds.
- Judith Barrett states you raise an interesting point. We don't have good guidance when the Bylaw blankets the district as the entire town with residential compatibility. The beach is under the same scrutiny and it's very difficult. This is a planning issue
- Jim Wasielewski agrees and states there should be individual districts
- John Lovett, 36 Priscilla Lane, directly across from the new build. I want to start by stating Leo and Joanne Vercollone have been wonderful neighbors. We have been here 11 years and we are looking forward to welcoming FJ and his family. In fact, when we did a remodel, Tristan did the remodel and we rented 37 Priscilla Lane, so a lot of friendly's in the room. I will say that my view will be impacted and I don't contest that, I understand new builds happen. What I am concerned about is the off-street parking proposed on the landscape plan showing overflow parking. My front door will be mapped up right there and Priscilla Lane is 11 feet wide, it's tiny. I have children that play street hockey so that is my concern
- FJ Buckley states I will remove the overflow parking. The landscape plan is preliminary so I have no problem removing it. I didn't consider that when coming up with this. I did think about the view a lot, I would hate to be in that situation. I feel badly, honestly. I understand.
- Judith Barrett states so it seems like there may be some additional work here, I am wondering if we should continue to work on some conditions
- FJ Buckley states I am really hoping to get through this tonight and I am willing to make concessions and I will put in drywells and cut the overflow parking.

- Bob Burpee states I feel that are going to do what they say they are going to do, I am very comfortable with that. I am comfortable working with Tristan. I am not here to delay it
- Judith Barrett states we have to have set conditions here; here's my concern, we issue the special permit and you all say you'll work together and then you don't go forward and sell the property and someone else comes along and doesn't do what we discussed. It puts us in a predicament
- Jim Wasielewski states could the Board make the special permit non-transferable. Second, this is the first time I have ever seen us poll the crowd to add conditions
- Emmett Sheehan states I agree Jim
- Judith Barrett states, well we are asking; do you want to write the conditions
- Emmett Sheehan states this is reaching
- Wayne Dennison states can I respond to Jim. My view on this is that this is a collective process and if someone with 50 years of experience in this Town and stands up and talks, I don't understand why we can't ask him what he thinks. I would like to benefit from the knowledge in front of us. I see no problem with asking for his expertise
- Jessica Williams, 1243 Tremont Street, states the Mass State Building Code section 401.3 has language protecting properties adjacent during and after construction for drainage.
- Philip Thorn states that was my question earlier, since this is a private road
- Jim Wasielewski states I would make a condition that the final as built has the topo final grading and drainage
- Judith Barrett states what would the Board like to do
- Emmett Sheehan states I would like to close the public hearing and vote
- Philip Thorn agrees
- Judith Barrett states you feel you have enough information
- Philip Thorn moves to close the public hearing
- Emmett Sheehan seconds
- Judith Barrett states any discussion
- All those in favor say aye
- PT, BG, WD, JB, ES
- Judith Barrett states is there a vote or more discussion with the Board
- Wayne Dennison states I would absolutely entertain reasonable conditions; we have 90 days to write this decision and draft the conditions
- Emmett Sheehan states I would say all down spouts and all drainage goes into a system to not leave the property
- Judith Barrett states what about protecting the lane
- Philip Thorn states I don't think we can impose anything as it's a private way
- Wayne Dennison states but we have to determine detriment
- Judith Barrett states why can't we vote to grant this subject to drainage and impacts to the way
- Wayne Dennison states I am perfectly fine with that
- Emmett Sheehan states when will we hammer this out

- Judith Barrett states when we meet again
- Discussion about the conditions ensue
- Judith Barrett states why don't we make a motion to approve the special permit subject to the receipts of final conditions that we can implement in the special permit I.E drainage, the construction traffic on the Lane
- Emmett Sheehan disagrees about implementing conditions
- Judith Barrett states I am trying to address the concerns of the neighbors; All those in favor of granting the special permit subject to the conditions that will be drafted and reviewed at a later date such as drainage and stormwater
- Borys Gojnycz seconds
- All those in favor WD, JB, BG, ES, PT

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

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

**Motion: It was moved and seconded and voted (5-0) to approve the special permit subject to conditions to be discussed at a later date.**

Moved by: JB                      Seconded by: BG  
 Number in favor: 5              Number opposed: 0