

Minutes of the BOXFORD ZONING BOARD OF APPEALS
Virtual Attendance Due to Coronavirus Pandemic

June 29, 2023

Present:

Paula Lia Fitzsimmons, Chair
Steve Merriam, Vice- Chair
Ralph Nay- Clerk
David Valzania- Clerk

Others Present: Peter Delaney, Teresa Mason, BCatTV, Brian Beasley, Alex Constan, Barbara Bisceglia, Daniel Powers, Dennis Sheehan, Ross Povenmire, Richard Connick, Steven Harrington, Sophia Goulet, Don Bornstein, Mark Kablack

7:00 PM Call to Order

With a quorum present, Chair Fitzsimmons called the meeting to order at 7:00 PM.

Continued Business:

- **Case #1038, 39 Lily Pond Rd**

Applicant: Joseph DiPietro & Anna DiPietro

Chair Fitzsimmons reads case into record, explains that if this application isn't moved forward by the next meeting, they should speak with applicant to see if they want to withdraw application.

Motion made by Merriam to Continue Case #1038 to July 27, 2023.

Seconded by: Nay

Roll Call (Called by Secretary, Teresa Mason):

Paula Fitzsimmons- YES

Ralph Nay- YES

Steve Merriam- YES

MOTION CARRIED: Unanimously

- **Case #1039, 49 Mill Road**

Applicants: Dennis Sheehan

Discussion:

Dennis Sheehan begins by mentioning that this case has been on the Board's agenda for a while now. Merriam asks if the proposed door is actually proposed, Dennis Sheehan responds that a contractor came out to look and he'll have to do some renovation. Mr. Sheehan explains that he may open some walls and if he has a conflict, he may try to come back. Vice-Chair Merriam agrees if they approve the special permit, it would be conditioned on the door being installed, it wouldn't be a situation where they approve it and then he comes back and say its not do able. Fitzsimmons initiates that there's no door there, and if they issue permit and nothing is done, it would be breaking the law, Mr. Sheehan states he knows it would be illegal. Merriam explains he does not want to have to make Mr. Sheehan come back if the plan with the door doesn't work, Fitzsimmons mentions coming back next month after he sees if this door would work instead of applicant having to go through this all over again. Mr. Sheehan said he can get a contractor to come out and do the work. Nay joins saying that cutting a hole in the wall to find out, then come back next month with an answer may be a better plan, then hopefully will finally be able to close this out with Peter Delaney, Building Inspector. Mr. Sheehan asks if from the board's perspective, he meets with the Building Inspector and gets a contractor and it doesn't work, why would he not be able to come back and reapply to look for a new solution. Mr. Delaney adds that putting a condition in their decision to come back in 30 days or 60 days would work. Fitzsimmons agrees to give the 60-day condition and for Mr. Delaney to monitor this, and ensure that the work is done within 60 days, or send a letter to Mr. Sheehan. Mr. Sheehan mentions how 120 days would be ideal, Fitzsimmons entertains motion to close evidence.

Motion made by Merriam to close Case #1039.

Seconded by: Nay

Roll Call (Called by Secretary, Teresa Mason):

Paula Fitzsimmons- YES

Ralph Nay- YES

Steve Merriam- YES

MOTION CARRIED: Unanimously

Fitzsimmons says the occupancy permit will be conditioned upon the installation of the door on the proposed floor plan dated June 12, 2023 within 120 days. Nay asks for the Occupants names, Mr. Sheehan lets him know that it's in the application filed with the clerk. Nay also adds the condition should end with "resulting in a certificate of occupancy for an accessory apartment." Merriam reads the amended condition: I move that the ZBA grant a special permit for an **accessory apartment** under Article V, Section 196-13(C) of the Bylaw for case 1039, applicant Dennis Sheehan, for the property at 49 Mill Road in accordance with the most recent plans submitted having found that the use is in harmony with the intent and purpose of the bylaw subject to the following condition:

The approval is conditioned on the installation of the door as shown on the plan dated June 12, 2023 and inspection and approval of the building inspector within 120 days resulting in a Certificate of Occupancy for an accessory apartment.

Seconded by: Nay

Roll Call (Called by Teresa Mason)

Paula Fitzsimmons- YES

Ralph Nay- YES

Steve Merriam- YES

Motion Carried: UNINAMOUSLY

- **Case 1041, 13 Cross Road**
Applicants: Richard Connick Jr. & Alyssa Palazzo

Discussion:

Richard Connick begins by explaining he was reached out to by Teresa, Secretary, earlier in the week regarding the fireplace in his plans making the accessory too big, so the architect revised the plans. Fitzsimmons mentions this isn't a regular fireplace the Board is used to seeing. Mr. Connick explains the area that the fireplace is taking up and the area the flues are taking up, that the width of a chimney is not the whole fireplace, and that it is a brick-and-mortar fireplace. Nay adds that there's probably 2 inches of space at the most between the wood frame and the masonry mass from the basement. Fitzsimmons asks if the board is okay with the 6sq ft highlighted in green portion being the only part portion of the fireplace that's included, Nay says yes, and Merriam said that Mr. Connick's explanation helped clarify the shared space.

Motion made by Merriam to close Case #1041.

Seconded by: Nay

Roll Call: (Called by Secretary, Teresa Mason)

Paula Fitzsimmons: YES

Ralph Nay: YES

Steve Merriam: YES

MOTION CARRIED: Unanimously

Merriam moves that the ZBA grant a special permit for an **accessory apartment** under Article V, Section 196-13(C) of the Bylaw for case 1041, applicant Richard Connick Jr & Alyssa Palazzo, for the property at 13 Cross Road in accordance with the most recent plans submitted having found that the use is in harmony with the intent and purpose of the bylaw.

Motion made by Merriam to close Case 1041 with this condition.

Seconded by: Nay

Roll Call (Called by Secretary, Teresa Mason):

Paula Fitzsimmons: YES

Ralph Nay: YES

Steve Merriam: YES

Motion Carried: UNANIMOUSLY

- **Case #1042, 8 Cedar Street**
Applicants: John Cowhig & Sherry Fuller

Chair Fitzsimmons recuses herself from the Case. Ralph Nay becomes Chair Pro-Tem

Fitzsimmons informs that David Valzania's last meeting is today, he will be off the Zoning Board after this meeting.

Discussion:

Merriam reads Planning Board's recommendation into record, which recommends the ZBA grant a special permit unanimously. Merriam mentions there was a discussion of moving the location of the building on the plan, but Mr. Cowhig explains that they just want to get the job done quickly, so that plan isn't happening anymore. Merriam mentions that on the site plan that shows the addition and setbacks, it doesn't show the setbacks from the original structure, which he believes should be on the plan. Mr. Cowhig states that the setbacks from the original garage aren't changing, but that they can be put in the plans. Merriam said because the current design does not increase the existing nonconformity, the mass isn't an issue. Mr. Cowhig reiterates that he can have Adam Donohoe include these setback numbers, and that all the info is there. Chair Nay states if the Town decides within 10 years that the garage is non-conforming, the Town can force a removal of it. Nay adds that the statute that the Planning Board chose to recognize, is not the statute that pertains to John's situation. Mr. Cowhig asks for a vote right now, and Merriam states it is up to the Chair, Nay says it would be a no vote.

Motion made by Valzania to close evidence on Case #1042

Seconded by: Merriam

Roll Call (Called by Secretary, Teresa Mason):

Ralph Nay (Chair Pro-Tem): YES

David Valzania (Vice Chair, Pro-Tem): YES

Steve Merriam (Clerk, Pro-Tem): YES

MOTION CARRIED: Unanimously

Merriam explains he's looking at non-conforming motions in the past, and gives an example of the Board having 363 Main Street with a non-conforming structure and they approved a plan to add to the front of the structure. Adds in that 599 Main Street added a front porch structure under a special permit, and the same at 23 Elm Street, with non-conforming setbacks. Nay researches and asks for a recess for 5-10 minutes.

Seconded by: Merriam

Roll Call (Called by Teresa Mason):

Ralph Nay: YES

Steve Merriam: YES

David Valzania: YES

Nay states that the cited locations above were constructed prior to Zoning Regulations. Nay said this garage was done well within modern day rules and regulations. The only option is putting back what he has. Merriam asks if they were to move it to a conforming location, there would be no issue here, besides needing a Special Permit if the lots not conforming. Merriam asks if the answer is to move to approve and not succeed, or see if the applicant would seek to withdraw the application and seek to move the building. Merriam asks Chair Nay if he wants to open evidence or keep case closed, Mr. Cowhig says he just wants to hear what Nay researched. Nay states they can't follow unless they open evidence.

Motion to reopen evidence moved by Merriam.

Seconded by: Valzania

Roll Call: (Called by Secretary, Teresa Mason)

Ralph Nay: Yes

David Valzania: Yes

Steve Merriam: Yes

Mr. Cowhig asks because all the other cases that Merriam mentioned, those were done before building permits, and Nay says they were done before Zoning Regulations. Nay says this would have come out sooner if this project required a survey, but it did not. Merriam explains his different options to Mr. Cowhig, continuing with this, talk to Donohue, speak to lawyers, withdraw application. Mr. Cowhig asks if they can move this to a special permit where he moves the dwelling within the setbacks currently right now, but Merriam says no, he'd have to withdraw the application without prejudice because it's a different project with different plans.

Motion made by Merriam to continue case #1042 to July 27, 2023.

Seconded by: Valzania

Roll Call (Called by Teresa Mason):

Ralph Nay: Yes

David Valzania: Yes

Steve Merriam: Yes

MOTION CARRIED: Unanimously

- **Case 1035, Board of Health Letter**

Paula entertains motion for authorization from the board to sign letter for the Board of Health, which she will forward to the Chair of the Board of Health.

Motion made by Steve Merriam.

Seconded by: Ralph Nay

Roll Call (Called by Secretary, Teresa Mason):

Paula Fitzsimmons: YES

Ralph Nay: YES

Steve Merriam: YES

Motion Carried: Unanimously

New Business:

- **Case #1043, 427B Ipswich Road**
Applicants: Adam Wilver & Ann Perrotti

Clerk Nay reads the legal ad into the record.

Steve Harrington, applicant's representative, wishes to withdraw Case #1043 without prejudice. The property is going through changes that will take a while.

Motion made by Merriam to withdraw Case #1043 without prejudice.

Seconded by: Nay

277 **Roll Call** (Called by Secretary, Teresa Mason):

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279 **Paula Fitzsimmons: YES**

280 **Ralph Nay: YES**

281 **Steve Merriam: YES**

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283 **MOTION CARRIED:** Unanimously

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286 • **Case #1044, Lot 20B Wildmeadow Road**
287 **Applicant, Matthew & Genna Hill**

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289 Clerk Nay reads the legal ad into the record.

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291 **Discussion:**

292 Don Bornstein, Attorney of Matthew and Genna Hill, begins by giving background of Lot 20B
293 Wildmeadow Road to the Board, and that the Hill's wish to build a driveway on this lot so they
294 can build a house, but they cannot comply with all of the requirements of 196-29B (2). Dan
295 Powers, an engineer, shows his design of the Lot 20B Wildmeadow. Mr. Powers said this lot
296 has a substantial slope to it existing, and you very quickly go from an elevation at the wetland
297 crossing of 75-76 feet to a high point of 144 feet.

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299 Kevin O'Hara, resident from 13 Wildmeadow Rd, whom is a direct abutter, joins the call and
300 states that it's going to dramatically change the ground there. He states that all of the abutters
301 have water problems from this location. He says it's a vital concern for him, since his driveway
302 runs up to the swale, and that they've raised the leech field 20'. Mr. O'Hara shows on his
303 screen pictures of the driveway with floodings and states his concerns. Merriam requests that
304 Mr. O'Hara submit those pictures to the board. Fitzsimmons says from her perspective, she'd
305 be looking for more documentation surveyed regarding the shapes in Boxford showing that this
306 property has a unique shape and some more information regarding the purported radical soil
307 conditions. Also, Fitzsimmons mentions she's concerned with the cut and fill numbers, 33ft cut
308 and 24ft fill, where the by-law only allows 8. She also adds granting that relief does not go
309 against the purposes and intent of the by-law. Mr. Bornstein responds by showing highlighted
310 by-law 196-29 to explain that it is written that the 8ft is to preserve the stability of the existing
311 natural topography, and he will explain more on that subject. He states that they will gather
312 their missing information regarding the slopes, the soils, the wetlands, the nature of the
313 frontage, and the access and how it shows that the lot is unique. And on the hardship aspect,
314 they will provide more information on why that hardship runs to the Hill's. Mr. Bornstein
315 mentions there is no way to construct a home on this lot without requiring some type of
316 variance, and he believes this cut and fill variance is the most appropriate variance to protect
317 the natural topography. Mr. Bornstein responds to Mr. O'Hara that he doesn't have any of the
318 information of an illegal fill on this lot, and mentions that Mr. O'Hara appealed this in 2008.

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320 Motion made by Merriam to continue Case #1044 to July 27, 2023.

323 **Seconded by: Nay**

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325 **Roll Call** (Called by Secretary, Teresa Mason):

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329 **Paula Fitzsimmons: YES**

330 **Ralph Nay: YES**

331 **Steve Merriam: YES**

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334 **MOTION CARRIED:** Unanimously

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337 • **Case #1014, 8 Willow Road**
338 **Applicants: The Willows/Toll Bros.**

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340 Clerk Nay reads the legal ad into the record.

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342 **Discussion:**

343 Mark Kablack, Attorney representing the Applicant, begins by explaining that this is the
344 amendment to the special permit regarding the dry hydrant location. He states that this has
345 created delays, and that they have proposed to install the dry hydrant at an alternative location
346 which the Conservation Commission has approved, but they still need the flexibility to allow
347 closing. He requests the ability to have the Town issue an Occupancy Permit for 4 units, and
348 amend condition 31, to allow the 5th Occupancy Permit. Mr. Kablack tells the Board that the
349 Fire Department has already supported this amendment, and is requesting the Board's
350 consent. Fitzsimmons asks to first address the issue with the hydrants and the timing
351 regarding this. Mr. Kablack mentions that the first closing is supposed to happen next month,
352 and that if they vote tonight, they should be able to have the first closing. Fitzsimmons states
353 that there is a power issue here, and asks what's the timing on the power from transformers or
354 National Grid here. Mr. Merchant explains they are waiting on National Grid, they have not
355 given them a date yet, but National Grid is on site and has been on site working for the past
356 few weeks. Fitzsimmons asks if it's realistic that National Grid will be done, and Mr.
357 Fitzsimmons states it is a realistic possibility. Merriam asks what is the timing on the installing
358 of the dry hydrant, given that an approval is in place. Mr. Merchant says after a preconstruction
359 meeting, as of June 1st, a permit was issued that requires they notify a variety of ancillary state
360 and Indian agencies that have 30 days to reply, so they have an additional 30-day window that
361 they need to wait in order to start the installation. Mr. Merchant says that the construction is
362 done in a matter of a week, and then they need the Fire Departments approval, so give or take
363 2 weeks. Mr. Kablack mentions that they have flexibility that they have targeted
364 August/September, not a certain date, but a target date. Mr. Kablack mentions that the new
365 Boxford residents are expecting a certain date, and they are shooting to meet that date for
366 them. Valzania asks if there is any exposure that the town takes on that having residents in
367 this community without dry hydrants, does it create a bigger risk of loss due to fire? Merchant
368 responds that a dry hydrant is more of a community measure rather than a specific project

measure, Kablack backs it up by adding that's why they work with the fire department and receive their help so the Board is more comfortable on that front, that this is more of a neighborhood improvement. Merchant mentions that an Occupancy will not be issued until these conditions are met, and that there will be a performance bond posted. Fitzsimmons agrees with Valzania that she needs to speak with the Select Board regarding risks and Insurance Exposures that the Town takes on before letting new residents move in, and putting residents at risk. Alex Constan, an abutter on 162 Spofford Rd, who is also on the Board of Health, joins and adds that the Board of Health is waiting on 3 matters: an inspection of waste water treatment plant, to review the plans from the waste water treatment, and waiting on SOP's on Operations of Water Public Supply. Constan says these three things needs to be completed before the Board of Health signs off on an Occupancy Permit. Merchant states that the Board of Health signed off on the plan of the Septic System, but he's aware the rest is needed before being signed off on a CO. Lauren Gray, 38 Pine Plain Rd, asks how confident the Board is that there is just going to be the 4 Occupancy Requests, and if things go to plan, there won't be requests for more. Fitzsimmons states if they come back requesting more, they'll review each request. Gray asks that the Board checks the liability for any catastrophic fire for residents who have lived here for decades. Fitzsimmons says she will bring that to the Select Board, that it is up to them. Gray then questions if there needs to be a written contingency that without power, would there be an occupancy permit issued? Delaney states he would not issue an occupancy permit without any power. Fitzsimmons tells applicant to get a recommendation from the Planning Board for next meeting, Merriam said they have a requirement to seek a recommendation, but they don't have to abide by it. Povenmire states his next Planning Board meeting is July 19th. Fitzsimmons says if there is power on by July 20th, she'll have a Special Meeting with the Board to discuss the Planning Board's decision.

Motion made by Merriam to continue Case #1014 to July 20th, 2023 for a special meeting.

Seconded by: Nay

Roll Call (Called by Secretary, Teresa Mason):

Paula Fitzsimmons: YES

Ralph Nay: YES

Steve Merriam: YES

MOTION CARRIED: Unanimously

- **Case #1045, 28 Dana Road**
Applicants: Barbara & Matt Bisceglia

Clerk Nay reads the legal ad into the record.

Discussion:

Brian Beasley, Contractor working with Mr. and Mrs. Bisceglia, begins by stating they are looking to make an in-law apartment. Beasley shows the Board his plans, and Merriam asked if he has a more detailed plan with detailed calculations on the plans. Nay said there's some things on the plan that don't make sense, that you have an area of 714sq in an apartment, and 400sq ft of a common area, but that gets you to 1100ft, which doesn't work. But also, but the bigger issue is, there are two big areas here that are not connected to each other and you have to go into the common area to get into both of them. Nay mentions that they just finished Case 1041, and that Beasley should look at the plans they provided to see which area works and doesn't work here. Beasley mentions that the finished common area at the 400sq feet isn't a part of the in-law apartment, and Nay responds that you'd have to travel through the common area to get to the other part of the plan, which does not work. Nay adds that the plans as drawn are not going to work, and that Beasley needs to outline the whole perimeter that needs to be done. Merriam tells Beasley that he has two common areas as shown on the plans. Nay recommends going back to the by-law and make sure that everyone is on the same page. Fitzsimmons said looking back at the by-laws will help show what needs to be in red and outlined. Fitzsimmons adds she thinks these plans need some added information. Nay said the entire area of work that's going to create the accessory apartment needs to be highlighted in red, Fitzsimmons states that the necessary information needs to be in the file. She suggested getting this done before the Planning Board meets on July 19th, and to call them to be put on the Planning Board's agenda after making the recommended changes.

Motion made by Merriam to continue Case #1045 to July 27, 2023.

Seconded By: Nay

Roll Call (Called by Secretary, Teresa Mason):

Paula Fitzsimmons: YES

Ralph Nay: YES

Steve Merriam: YES

MOTION CARRIED: Unanimously

Minutes review moved to June 27, 2023 meeting.

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With no further business, on a **MOTION** made by Merriam, seconded by Nay, the Zoning Board of Appeals meeting of June 29, 2023 adjourned at 9:54 PM.

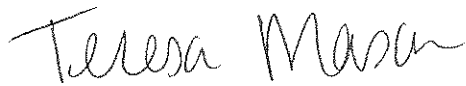
Roll Call (Called by Secretary, Teresa Mason):

Paula Fitzsimmons: YES
Ralph Nay: YES
Steve Merriam: YES

MOTION CARRIED: Unanimously

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Respectfully submitted,



480 *Teresa Mason*
481 *Minutes Secretary*