

**ZONING BOARD OF APPEALS
MEETING MINUTES
June 28, 2023**

Location: Leicester Town Hall, Select Board Meeting Room

Member Present: Jim Buckley, James Reinke, Kurt Parliment, Vaughn Hathaway, Richard Johnston

Members Absent: None

Staff Members Present: Donna Main

Members of the Public in Attendance:

RECEIVED
2024 JAN -2 AM 8:32
TOWN CLERK'S OFFICE
LEICESTER, MASS.

Call to Order: Chairman Buckley called the meeting to order at 6:01 p.m.

Public Hearing – ZBA 23-07 – David Dufresne – 266 Auburn St.

Applicant seeks a special permit to divide an existing 10 acre lot into two (2) five (5) acre lots.

Chairman Buckley opened the public hearing at 6:02 p.m. Mr. Parliment read the public hearing notice into the record.

Ms. Main said there was no correspondence received. Mr. Dufresne owns 266 Auburn St. and wants to divide the 10 acre parcel into two 5 acre parcels and is seeking relief of the 100' frontage requirement. It meets all other criteria, including setbacks.

Mr. Buckley asked if he was looking for a special permit under the limited frontage lot and Mr. Dufresne said that was correct. Mr. Buckley asked if Mr. Dufresne owned both lots and Mr. Parliment asked what he wanted to do with the second lot. Mr. Dufresne said he owns both and wants to sell it for the buyer to build another single family.

Mr. Buckley has an issue that it is common ownership and part of granting a special permit is that they need to make a finding that this is in harmony with the general purpose and intent of the bylaw. Mr. Buckley's interpretation of the bylaw is that if someone had a 10 acre lot with 50' of frontage they could apply for a special permit under the bylaw. The intent was not that you have a 10 acre lot with 300' of frontage and break a piece off to create another lot that has limited frontage. Mr. Reinke agreed. Mr. Dufresne said it will meet all other setbacks. Mr. Hathaway asked if the line for division had existed before and Mr. Dufresne said no, the engineer divided it. Mr. Hathaway is not comfortable with where the lot line is being created and that they bylaw was for lots in existence and already had limited frontage to be able to be buildable as opposed to creating a lot that is not conforming to the district. Mr. Hathaway asked if it has been divided and has planning board approved the division. Mr. Dufresne said, no, that he did the first step suggested by the Building Inspector.

Mr. Reinke said that it has access to a way and an ANR is possible but this is the more restrictive Board and needs a special permit so it makes sense that the ZBA would go first. Mr. Hathaway said maybe if an ANR was approved and the new owner came for a special permit for reduced lot, then maybe the bylaw would apply, but owner wouldn't know if it was buildable. Mr. Dufresne said no neighbors said anything and the lot is all wooded and trees would remain.

Mr. Buckley asked if there were any comments from the public and there were none.

Mr. Reinke does not think it's consistent with the zoning bylaw as it doesn't meet the criteria for a special permit for a reduced frontage lot.

Mr. Hathaway said the Applicant has the option to withdraw the application without prejudice. If the Board votes it down, the Applicant can't come back for two years with the same petition. Mr. Dufresne said he talked to the Building Inspector and he suggested going to the ZBA and reiterated that it met all other requirements. Mr. Buckley said the Board is bound by the bylaw. Mr. Parliment asked if there was any way to resolve this problem. Mr. Buckley said they can only make a decision on what is presented but the Applicant can withdraw without prejudice. Mr. Dufresne said if it doesn't go now, it won't go at all and gave examples of other smaller lots with small frontages.

Motion by Mr. Reinke to disapprove the Special Permit for 266 Auburn St. ZBA23-07 to divide an existing 10 acre lot into two five acre lots.

Second: Mr. Hathaway

Discussion: None.

Record of Vote:

| | |
|--|---------|
| Jim Buckley | Aye |
| James Reinke | Aye |
| Kurt Parliment | Aye |
| Vaughn Hathaway | Aye |
| Richard Johnston | Abstain |
| Four (4) in Favor. One (1) Abstention | |
| Approved 4 to 1 | |

Public Hearing – ZBA 23-06 – Denisse Valentine – 65 Lakeview Drive

Applicant seeks a Special Permit to alter and extend a nonconforming structure.

Chairman Buckley opened the public hearing at 6:26 p.m. Mr. Parliment read the public hearing notice into the record.

Ms. Valentine, owner, requests approval to build two decks and a garden house at her property. This plan is also being presented to Conservation as it's within 100' wetland border. Ms. Valentine said her neighbors have no issues with her plan. She said the deck does not comply with the 40' setback and that there is a slope she is trying to work with to help with erosion. She said the second deck is 11" out of compliance. Ms. Valentine said the third structure will be a 10x10 garden house that is adding on to existing building and it's 5" too close to the side.

Mr. Buckley asked about the main deck and noted the house is closer so that deck is not a greater encroachment. Mr. Buckley said extending the existing shed along the same line and in the existing footprint, so he has no issue with that. Mr. Buckley said the second deck will be closer to the lot line than the house, so she needs a variance. Ms. Valentine can move the second deck 11" back so she has the 40' setback. Mr. Buckley said if she builds the deck to not further encroach then she doesn't need the variance. Mr. Buckley said she just needs a Special Permit and Mr. Reinke said with a condition that the second, smaller deck complies with zoning. Mr. Reinke said to have the plan show that the setbacks comply and show it to the Building Inspector. Mr. Hathaway said to

be clear and if they approve the Special Permit and the plan complies, she does not have to go back to the ZBA.

Motion by Mr. Reinke to approve the Special Permit for 65 Lakeview Dr. for the construction of a 26' x 16' deck on existing home as illustrated on the plan dated May 31, 2023 and to include construction of 12 x 12 deck as illustrated on the plan with condition that the deck become conforming in a revised plan and to approve the extension of the existing shed as illustrated on the May 31, 2023 plan.

Second: Mr. Parliment

Discussion: None.

Record of Vote:

| | |
|--|-----|
| Jim Buckley | Aye |
| James Reinke | Aye |
| Kurt Parliment | Aye |
| Vaughn Hathaway | Aye |
| Richard Johnston | Aye |
| Four (4) in Favor. One (1) Abstention Approved 4 to 1 | |

Public Hearing – ZBA 23-05 – Charlton Road Realty LLC – 778 Main St.

Applicant seeks a Special Permit to allow for the proposed impervious area within the Water Resources Protection Overlay District (WRPOD) with the proposed multifamily development.

Chairman Buckley opened the public hearing at 6:45 p.m. Mr. Parliment read the public hearing notice into the record.

Jim Bernardino, P.E., CMG Environmental, was present for the project. Mr. Bernardino gave a general overview of the proposed project. Mr. Bernardino was in front of the ZBA before with this project with a proposed 25 unit multi-family development with 3 units and parking area within the WRPOD. The Board did not vote in favor of that proposal and the plan has been revised and is being presented tonight. Mr. Bernardino said the total number of units was reduced from 25 to 13, the configuration of the building style and parking has also changed, and the site will still be accessed off of Main St. The original larger central parking area has been moved out of the WRPOD and impervious areas have been reduced to 28%. Mr. Bernardino described the stormwater system and controls. This is traditional paving areas and not porous as originally proposed so it can be better controlled for pollutant runoff and water quality. They have an Erosion and Sediment Control Plan and the project will be subject to the NPDES Construction General Permit.

Mr. Damien Berthaiume, Esq. is present to talk about the requirements necessary for the Board to approve the Special Permit. Mr. Berthaiume said that Quinn Engineering's letter shows the project meets the requirements for approval of a Special Permit and that the project meets the requirements for the following reasons:

- Multi family is allowed by right in this zone.
- Site is served by municipal water and sewer

- Proposed development will have no impact n the neighborhood or WRPOD
- Topography shifts away from the WRPOD protected area
- Soils are conducive to water soaking in and not running over the ground
- No adverse impact to the aquifer as it's on the outside edge of the aquifer
- Project as amended has taken the Board's input into consideration
- Quinn Engineering said the plans comply with the bylaw

Mr. Berthaiume asked the ZBA to issue the Special Permit.

Mr. Reinke asked Mr. Bernardino about the life expectancy of the underground infiltration system. Mr. Bernardino said it's longer than expected for this type of use and they have implemented excessive pre-treatment so less sediment in the chamber so there are less clogs. Mr. Bernardino said he would expect the system to last 30-40 years. Mr. Reinke asked for criteria of the maintenance plan. Mr. Bernardino said they will follow DEP stormwater guidelines and conditions of Planning and Conservation permitting. Mr. Parliment asked who is responsible to pay. Mr. Bernardino said it's a private developer but may be taken over by property management company or homeowner/condo association. Mr. Bernardino said this revised plan has been submitted to the Planning Board and he does not expect it to change if the ZBA votes tonight.

Mr. Buckley asked what the situation would be if the system didn't perform. Mr. Bernardino said even if half the system fails they have redundancies and reviews during construction. The system meets all town and state regulations. Mr. Reinke said those parameters are based on historical weather data so it is theoretically worst case scenario but a worse catastrophic storm is not predictable. Mr. Berthaiume said that the design is based on standard parameters and meets the purpose of the stormwater bylaw.

Mr. Buckley asked if there were any comments from the public. Ann Wheeler, 774 Main Street, said that even though the project is revised, that number of people in that space will adversely affect the neighborhood.

Motion by Mr. Reinke moved to approve the Special Permit for 778 Main Street ZBA 23-05 to allow for the proposed impervious area within the Water Resources Protection Overlay District (WRPOD) with the proposed multifamily development as per the revised plans.

Second: Mr. Johnston

Discussion: Mr. Reinke said this plan is so much better than the original plan for the WRPOD. Mr. Hathaway asked if the Board wanted to add a condition about the maintenance logs being provided. Mr. Reinke would be amenable.

Motion by Mr. Hathaway to amend the previous motion to add the condition that maintenance logs have to be provided on an annual basis to the DIS Dept.

Second: Mr. Johnston

Discussion: Mr. Buckley and Mr. Reinke talked about the new plan and system and that it's better than the previous plan.

Record of Vote:

| | |
|----------------|-----|
| Jim Buckley | Aye |
| James Reinke | Aye |
| Kurt Parliment | Aye |

| | |
|--|-----|
| Vaughn Hathaway | Aye |
| Richard Johnston | Aye |
| Five (5) in Favor. None (0) Opposed Approved 5 to 0 | |

General Discussion/Miscellaneous

- Peter DiGioia and Thomas Ayers, Ayers and DiGioia LLC, builders and owners for 25 Pleasant St. requesting an informal hearing regarding the stormwater recharge system. They are requesting review and approval of a revision or reduction of the impervious area criteria for the Cultec system from Special Permit from September 14, 2021. The original impervious area was 5,258 s.f. (Jan 2021) and amended to (Dec 14, 2021) 6,658 s.f. and amended to 3,118 s.f. (Jun. 20, 2023). Mr. DiGioia said it is the opinion of the developers, that the previous criteria used to calculate the Cultec stormwater system does not consider that the sidewalks and walkways cannot be contained by the current Cultec system. They have provided a revised Cultec system design to handle the roof run off for the proposed 3,118 s.f. Per Zoning Bylaws, the impervious area of the 3,118 area is less than 15% but greater than 125 s.f. Construction is almost complete, and he hopes Quinn has reviewed/commented on the revisions. They want to reduce the Cultec from a 32 chamber to a 6 chamber system.

Mr. Buckley said they would have to apply for a special permit. Mr. DiGioia is asking for approval tonight. Mr. Buckley said it requires a public hearing and they have to follow those laws.

Mr. Reinke asked if the calculations were too high and have now been re-calculated and Mr. DiGioia said yes. Mr. Buckley asked if Quinn Engineering had responded and Ms. Main said no. Mr. DiGioia said he submitted information in June and expected to be on this meeting agenda. Ms. Main said Mr. DiGioia did not submit an application.

Mr. Hathaway said they cannot give an approval without a public hearing. Mr. Reinke said his thought is they did a maximum system on the old property and they do not need that much. Ms. Main asked if it was an amendment to the Special Permit or if he needs a new Special Permit. Mr. Buckley said either way it needs a public hearing and information from an engineer. Mr. Parliment says if it takes a little longer and they don't have to spend the money for the larger system, they should wait. Mr. Buckley said they need to file for a Special Permit.

- Mr. Buckley said 651 Main St. was continued to tonight but Ms. Main said they were removed from the agenda because they owed the Town some money for Quinn Engineering's review. Ms. Main said they keep asking for a re-review of plans, but plans haven't changed. Ms. Main said the Applicant is under the impression that they weren't being heard tonight. Mr. Johnston said if they deny the project, they can't re-apply for 24 months. Mr. Parliment suggested continuing with a deadline. Mr. Hathaway suggested they come with information, or they will have to deny the project. Mr. Reinke said it's important to give the applicant the benefit of the doubt especially since the office told them they wouldn't be on the agenda tonight even though the ZBA sets the agenda.

Motion by Mr. Hathaway to continue to July 26, 2023 at 6pm.

Second: Mr. Reinke

Discussion: None.

Record of Vote:

| | |
|--|---------|
| Jim Buckley | Aye |
| James Reinke | Aye |
| Kurt Parliment | Abstain |
| Vaughn Hathaway | Aye |
| Richard Johnston | Aye |
| Four (4) in Favor. None (0) Opposed One (1) Abstained Approved 4 to 0 | |

Motion by Mr. Parliment to adjourn.

Second: Mr. Reinke

Discussion: None.

Record of Vote:

| | |
|--|-----|
| Jim Buckley | Aye |
| James Reinke | Aye |
| Kurt Parliment | Aye |
| Vaughn Hathaway | Aye |
| Richard Johnston | Aye |
| Five (5) in Favor. None (0) Opposed Approved 5 to 0 | |


Meeting adjourned at 7:49 p.m.

Respectfully Submitted by:

Lisa Westwell, Administrative Assistant
to the Planning Department


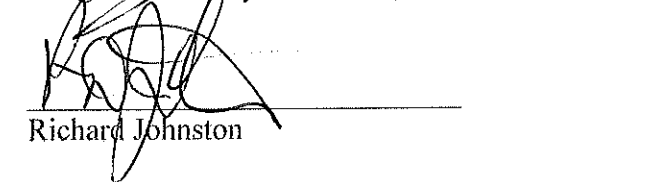
Date Approved: 12/27/23

Zoning Board of Appeals Signatures


Jim Buckley, Chair

James Reinke, Vice Chair


Kurt Parliment, Clerk


Vaughn Hathaway

Richard Johnston