

Town Of Dighton



Town Of Dighton
Zoning Board of Appeals

Wednesday October 21, 2015
7:30 PM

TOWN CLERK
DIGHTON, MA
BY _____

2015 NOV 19 PM 4:18

RECEIVED

Members Present: Kenneth Pacheco Peter Caron
Robert Adams Sr. Greg Logan
Zachary Caron

40B Legal Consultant: Marguerite Mitchell, Esquire

ZBA Administrative Assistant: Rosalind Grassie

Call to Order:

Vice-Chairman Kenneth Pacheco called the meeting to order at 7:30 PM and explained how the hearing process would proceed and he made a motion.

Motion Kenneth Pacheco second Robert Adams Sr. to adjourn the meeting at 10:00 PM.

All in favor Aye

Case # 06-09 Stoney Ridge Estates:
Contact: Bisher Heshim

Kenneth Pacheco explained that at the last meeting 5 lots were released in phase 3 and 1 lot phase 2 and that the developer was here tonight to request the release of more lots.

He read a letter from Atty Mitchell regarding the release of lots held in covenant: see attachment A

He then read the comment letter from GZA GeoEnvironmental, Inc.

See attachment B, He explained that he had been out to Stoney Ridge and had viewed the sediment in the bottom of detention basin and agreed with the developer that it would be better to wait until the housing lots had stabilized before the sediment in the detention basin is removed. He then read the cost to complete letter from GZA GeoEnvironmental attachment C. Kenneth then stated that it was his understanding that you are before us to request the release of more lots.

Bisher Heshim: I would like to request the release of 2 lots.

Peter Caron: We released lot #11 last meeting. We still have 4 lots held in lieu of a bond. You are now asking to release (2) of the (4) lots being held.

Bisher Heshim: This is work that has been done therefore reducing the amount of the bond. At the last meeting the Board said they would release (1) lot and after more work was completed to come back and they would consider releasing another lot. That is why I am here tonight.

Peter Caron: The (2) comments from GZA that need to be addressed the first one was resolved because we said that the property boundary markers would not be installed until completion because they would be destroyed.

There was a discussion about the boundary marked being added to the plan and the Building Commissioner stated that they would be added to the plan as an as-built.

Peter Caron: The second concern the detention basins have been agreed upon. He stated that with these issues having been addressed he feels that (2) lots could be released.

The Board discussed the release of lot #11 last month and the release of #8 this month would be in line with the formula of (2) lots to cover the cost to complete plus an additional lot

Bisher Heshim: Would you release (1) lot to me tonight, please

Kenneth Pacheco: Who Are the Voting members?

Robert Adams: Peter- Kenneth –Greg

James Aguiar: When will the property bounds be installed? After you complete a phase and the houses are built out.

Bisher Heshim: The bounds will be installed when the phases are completed.

Abutters: None

Motion Kenneth Pacheco second Peter Caron to approve the Special Permit with conditions

- **2-3 12' foot evergreens need to be planted**
- **The distance apart the trees need to be planted will be decided by the Tree Warden and Building Inspector with them taking into account the advice from the installer**
- **Evergreens should be maintained to keep them healthy as determined by the Tree Warden**
- **The evergreens will be in place the entire time the panel is in place**
- **Every effort should be made that the plantings will be made this fall planting season. If this cannot be achieved, than the evergreens need to be installed by April 20, 2016.**

Kenneth Pacheco added that a revised plan be submitted and approved by the building inspector showing the placement of the array being more than 50' feet away from the property line.

All in Favor

Aye

Motion granted

Motion Kenneth Pacheco second Peter Caron that the Board members that approved this special permit read and if in agreement sign the decision as soon as it is drafted

All in favor

Aye

Case #09-15 883 Main Street Variance:

Voting members: Peter Caron– Kenneth Pacheco- Robert Adams Sr.

Kenneth Pacheco explained that the petitioner was requesting to divide their 100 + acre lot into (2) lots one having insufficient frontage. Board had made some requests and the petitioner had not shown up at the last meeting so that hearing was continued until tonight and they are not here again tonight.

Motion Robert Adams Sr. to approve

Peter Caron: We had asked the petitioner to go to the Planning Board My concern is that every house in that area has substantial frontage. We had concerns with the pork chop lot that would be created.

We asked the applicant to go to the Planning Board to see what the process was to put a road in and make the house in the back legal. The Planning Board has met 2-3 times and the applicant has not shown up at any of those meetings.

The fact that they have not shown any interest in continuing this process my opinion is that we deny.

Robert Adams Sr.: I am on Board with you we requested certain things to be done to give the Board the leverage to perhaps have a reason to approve. They have not provided us with that information on that basis alone is enough for a denial.

Motion Robert Adams Sr. second Peter Caron to close the Public Input

All in Favor

Aye

Motion Robert Adams Sr. to approve

There was no second

Motion Kenneth Pacheco second Peter Caron to deny this petition.

All in Favor

Aye

Case # 14-15 2530 Maple Swamp Road:

The Building Commissioner spoke on behalf of Ms. Pelrine. He stated that There might be an alternative idea in order for satisfying the requirements of caring for her elderly Grandfather. He has discussed them with her and there is an alternative method for her to ascertain what she is after without subdividing this lot. She may want to withdraw her petition.

Robert Adams Sr.: Do you understand that if you withdraw your petition you can come back to the Board again with a new petition and if you don't withdraw and you are denied you

will have to wait (2) years before you can come before the Board again.

Julie Pelrine: Yes

Peter Caron: Your option of withdrawing is always the best case scenario. If you withdraw the Board would have no problem having you reconsider in the near future and they would waive the application fee. She would still be responsible to notify the abutters and the legal notice in the Gazette.

Julie Pelrine: I would like to withdraw.

Motion Robert Adams Sr. second Kenneth Pacheco to accept the withdrawal.

All in Favor

Aye

Case # 13-15 0 Elm Street Fatima 123 Realty Trust

Motion Kenneth Pacheco second Peter Caron to continue the hearing until November 18, 2015 meeting.

All in Favor

Aye

Case # 18-15 0 Maynard Lane Variance Extension

Vice Chairman Kenneth Pacheco read the legal notice posted in the Taunton Daily Gazette. He asked that he not be picked as a voting member on this case because he had been on the last 4 cases.

Voting members picked Peter Caron – Robert Adams Sr.- Greg Logan

Chairman Peter Caron informed the petitioner that Robert Adams Sr. and Greg Logan were relatives and asked if they were ok with them being voting members.

Atty. William Rounds explained that they have a large parcel of land at the end of Maynard lane and they had come before the Board requesting it be separated into 2 lots with insufficient frontage. The Board granted them a variance with the conditions that they divide the frontage evenly between the two lots and only build single family homes. That variance is about to expire and they are here tonight requesting a 6 month extension. He explained that

next month they will be back before the Board for a special permit for a potential solar farm and the other lot was under agreement for a single family home. He stated that they had gone to the planning Board and had gotten their approval as well.

Robert Adams Sr.: The lot that you are making a solar farm will be in place of building the house?

Atty. Rounds: Yes, if the solar farm is built there will not be any house built simultaneously, the solar farm will be the only use.

Robert Adams Sr.: That will be the elimination of the house lot but yet you get commercial the property out of the deal?

Peter Caron: We granted you the two house lots and you have (1) one under agreement. What is the reason for jumping so quickly to the solar panel? You came here asking for 2 house lots. What has changed?

Joseph Baptista: At this time we are looking at a potential solar farm for lot #8, Lot #7 has just been put under agreement. We are asking for a 6 month extension of the variance granted last November.

Peter Caron: Do not take lightly the Board granting you relief from those small frontages. The Board as well as the town is worried about town growth.

Abutters: None

Motion Kenneth Pacheco second Robert Adams Sr.: To close the public Input.

All in Favor

Aye

Motion Carries

Motion Peter Caron second Robert Adams Sr. approve the (6) six month extension, 180 days from November 12, 2015.

All in Favor

Aye

Motion Carries

Peter Caron: If you are coming before the Board next month for a solar project please make sure that you are prepared. We will be happy to push your case off till the next month if you would like more time to prepare.

Atty Rounds: Thanked the Board and said that he would notify them if they needed more time to prepare.

Case # 19-15 Alice Dumenigo Realty Trust 0 Elm Street:

Kenneth Pacheco read the legal notice in the Taunton Daily Gazette
Voting members Picked were

Robert Adams Sr. – Zachary Caron- Peter Caron

Wayne Dumenigo presented the case. He explained the property is in a trust and his father needs money. They are looking to make this parcel a buildable lot and possibly sell it. The property did have a variance in 1986 when Mr. Carr had divided the parcel and built a house on parcel A.

Peter Caron: What is your actual frontage?

Mr. Dumenigo: 228' feet we are 22' feet short of what is required

Peter Caron: How wide is the cemetery?

Robert Adams Sr: This property has been before this Board before, a variance to divide the parcel into (2) lots was approved for Ralph and Shirley Carr with each lot having 228' feet frontage and they sold one of the lots to Mr. Lefrance. The Dumenigo's purchased the other lot but the variance has gone away. The cemetery gives them added frontage. We did approve this twice before I am sure.

Robert Adams: Please check the records to see when this property was before us?

James Aguiar: The Cemetery is 42' feet wide.

Peter Caron: If the variance was recorded it has expired and we need to treat this as a brand new case. Mr. Dumenigo there has to be a hardship not just that your dad needs money.

Abutter: Gerald Amaral 2945 Elm Street Dighton:

Stated that he was here on behalf of Alice Dumenigo Trust and that he is in favor of the variance.

Peter Caron: Explained that the ZBA is not advisory Board but the hardship for this property is the cemetery. If that cemetery wasn't there you would have sufficient frontage. For the record sir your hardship is the cemetery correct

Mr. Dumenigo: Yes

Robert Adams Sr. Did you find the variance cards on this property?

James Aguiar: Yes, she did. And that property was subject to variances in the past and they were all approved.

Peter Caron: You have a year to act on this variance if it is approved.

Robert Adams Sr. How many abutter notices were sent? There is only (1) one abutter here tonight

Rosalind Grassie: 11 abutters were notified

Peter Caron: I don't have an issue with this request. There is a legitimate hardship.

Motion Peter Caron second Zachary Caron to close the public hearing
All in Favor **Aye**

Motion Peter Caron second Robert Adams Sr. to take the case under advisement.

All in Favor **Aye**

Peter Caron read a letter that he would be sending to the Board of Selectmen requesting the need for increasing the Board of Appeals Secretarial position be made a full time 35 hour position see attached. Peter explained that the position of secretary, clerk ZBA / BOH is in the process of being separated by the Board of Selectmen. He stated that the because she is here 35 hours per week the lines have been crossed as to when the work gets done for the Board of Health as well as the Board of Appeals. In prior years the secretary, Rita Sullivan worked 20 hours and left at 11AM. Now the secretary is here doing Board of Health work so if someone comes into the office or calls she is available to assist them. If she didn't serve dual roles there would be no ZBA representative here after she would clock out.

The amount of work that is coming in has increased dramatically from that of just a few years ago. Our last permitted 40B Somerset Woods is under appeal and now the counting of those affordable numbers expires the beginning of March 2016. He stated that there are (3) three potential 40's that are waiting to submit their applications as soon as we lose those affordable numbers. They also discussed the increased work load for the Chairman of the Board as well as the secretary. He discussed the fact that he is at town hall 3-4 days a week sometimes twice a day. There are multiple texts and phone calls on a daily basis that Kenney Pacheco can attest too also. It has become a full time job for the secretary as well as for the chairman.

Kenny Pacheco stated that he agreed 100 percent. He stated that he had been acting chairman for the past few weeks and he was very surprised at the amount of work the secretary has to do. He explained that on numerous occasions he witnessed people waiting to sit down with her. He said that when he finally got to sit down with her phone doesn't stop it is constant for

her. I don't know how she has been able to maintain the quality of work that she has done this far with working 20 hours a week for us? I defiantly feel that she should be doing this work full time for us at 35 hours a week. She will then be able to spend all of her time on our issues. The (3) 40B's will not only impact the Board but will also impact the secretary. I support this 100 %. I have had the opportunity to see this letter beforehand and I agree we should approve it and give it to the selectmen. I am in favor of the letter.

Peter Caron explained that the Building Commissioner has received funds from the town to automate our system. Which is going to require a lot more work from the secretary to get that up and running. In the end it will make things easier for the town but that is 2-3 years away. For now myself and Ros are in the process of changing all of our forms to make the process much more user friendly and streamline application process. Automation is coming.

Greg Logan stated that he works in a lot of towns pulling permits and the Department heads are not schooled enough to understand the new process. It is going to take a long time and there will be a lot of headaches the first year.

Building Commissioner we will not be going fully automated. We all enjoy the face to face interaction, hand shake at the door with the public. I am going to find a balance between getting into the 21st century and the hand shake and smile at the door. I do agree going electronic is going to be chaotic.

Peter Caron it will just be the Zoning Board and the Building Department at this time going electronic.

Greg Logan I am in favor of making the secretarial position a full time job at 35 hours.

Zachary Caron asked about Ros becoming the 6th member of the Zoning Board and it was noted that she had withdrawn her request.

Robert Adams Sr. stated that since Ros has been here I have had to read more than I ever had to before. The efficiency of this Board is far beyond anything that he had ever done as secretary. She gets my vote I am in favor, very much so.

Peter Caron the (5) five of us are in favor

Motion Peter Caron second Kenneth Pacheco to submit this letter because the Board approves adding 15 hours to make the position 35 hours.

All in Favor

Aye

The Board signed the letter to the selectmen requesting the hours change

Peter Caron asked the Board for their input regarding starting the ZBA Meeting's at 7:00PM from now on. The Board discussed the meeting's schedule and decided to start meeting at 7:00 PM on November 18, 2015

Motion Peter Caron second Kenneth Pacheco to start the meeting of the Zoning Board of Appeals at 7:00PM instead of 7:30.

All in Favor

Aye

Peter Caron stated that he had submitted a letter to the Board to the Selectmen and he would also be going to the Finance Committee as well as a Special Town meeting to request a stipend increase for the Board. He stated that he had mentioned the stipend increase to the Board but a vote was never taken. Do you gentlemen want me to continue with this request? YES. He discussed the fact that they had always been on the same pay scale as the Planning Board but for several years now we chose not to take any increase in pay. The Planning Board used to meet twice a month now with the 40B's we meet much more than the Planning Board ever did. They make on average about \$1000 more a year than we do. He also explained that he requested the chairman of the Board get \$500 more due to the added workload the chairman is responsible for.

Motion Kenneth Pacheco second Peter Caron that the chairman's pay be increased in the amount of \$2500 and the rest of the members pay be increased to \$2000.

All in Favor

Aye

Peter Caron stated that he would like to go back to the secretary position for a minute regarding the talent and skill that is required to do this job. Can you imagine if I, Ken or Bob left this Board along with Ros, I am not saying things would fall apart but you would have (2) fairly new members and one would have to be the chairman with no knowledge of what happens here on a daily basis. They would be obligated to come here fill out application's with petitioner and train someone to do all that work.

Greg Logan stated that he would resign.

To call Ros a secretary is a gross representation of she actually does.

Greg Logan: She is very much involved behind the scenes.

Peter Caron read another letter to be submitted to the Selectmen regarding the past request for a pay grade increase for the secretary. See attached.

We would like you to consider our past request of increasing the pay grade from a (4) four to a (6) six for our secretary. We believe we have presented you with enough information in the past for the reasons for our request. We understand this is not an easy issue and requires more discussion and would greatly appreciate your opinions and advise on this

The time has come. It is amazing when you watch her manage the office as well as I can't stress enough a 24 hour mistake on our part could cost the town hundreds of thousands of dollars. Imagine if we did not meet deadlines for a 40B and it all went to appeals and they won by default. Something that is close to happening with Somerset Woods because of the Conservation Commission. Ros has always stopped that from happening. If she left we would have to get a professional zoning board of appeals secretary from another town and at a grade 4 which is equivalent to the lowest level it is an insult on what we require from our staff.

Motion Peter Caron second Robert Adams Sr. approach the Selectmen / Finance Committee / Town however it is done to increase the pay grade from a (4) to a (6).

Kenneth Pacheco stated that he didn't think a name should be attached to this because when they separate the positions it is going to be reposted. Ros can apply for this position she can apply for the Board of Health if they

approve a full time position. We can add presently we have an expert in this field without her the Board would fall apart.

Peter Caron stated that he is 100% correct. I purposely didn't put Ros' name on this request for that very reason.

All in Favor

Aye

We are going to hand deliver these letters to the Selectmen tomorrow October 22, 2015.

Kenneth Pacheco stated that he has been acting chairman for the last few weeks due to Peter's surgery and I can't believe the amount of work that Peter does for this town. When he first proposed the pay increase for the chairman at \$2500 and the board members at \$2000 I questioned that. In the past Chairman, Joe Pacheco had divided the monies up. I can't believe the amount of work that Peter does that we don't see. We come to the meetings we have everything all together. I retired and I'm spending half the week here I get paid \$1000 dollars a year. I get phone calls at night from Marguerite and from Ros.... I just can't believe all the work that is now involved with the ZBA and what is now required from the chairman and the vice chairman. It is unbelievable and now we are now going to be hit with more 40B's.

Robert Adams Sr.: It is the stuff after the 40B's are permitted that gets me.

Peter Caron: Stated that he had talked to Dean Cronin as well as the Building Commissioner regarding Dighton Woods and them violating the conditions of the permit. From the ponds not being mowed, to signage, to trash. The Building Commissioner is stretched thin. We need to consider a member of the Board being assigned to police these developments. The Building inspector does not know all of the conditions in each permit.

Building Commissioner: I do my best and I work very hard and I don't make bones about it. The fruits of this Board through your tenacity with these 40B's should be realized fully. Frankly I have to prioritize every day. I think by making the secretary a full 35 hours and having a dedicated chairman I think we can work together to try to come up with a plan that would make sure the enforcement was done and the developers followed the permit.

Peter Caron: I have always said the work starts after the comprehensive permit is signed.

Kenneth Pacheco: I wanted to mention briefly about the Police Station. The Planning Board denied their request tonight to make the entrance into the power plant a street. So the case will be coming back to the Zoning Board but not before November 18, 2015. They will have their engineer at that meeting to speak to us regarding safety and how the easement is beneficial for safety. Also I have asked them show us a plan with the curb cut that is already there to see how that would impact the parking spaces. Technically we could deny the variance and force them to use the curb cut. Mass Highway is not going to give them anything. We have requested it. There have been comments made at the meeting not from us but from others. Saying that Mass Highway would not approve it. We want something in writing. We are not going to get that.

Peter Caron: Before us is a request to either approve or deny a right of way. It is that simple. I don't know if we are prepared to say "no but these should be the alternatives". I almost think we should take a vote up or down on the request. If it is denied then so be it you will have to go back to the planning stages. The Building Inspector has said that they need a variance for the easement and I think that is the scope of our responsibility.

Building Commissioner: I would like to add that under a variance petition you need to prove hardship. It is the petitioner's responsibility to prove that hardship to this board. There has to be something presented to this Board or you open yourself up for an appeal. If they do give this Board a true hardship and I believe there may be some then I think you can act accordingly in a just way. If they can't come in here and prove any hardship then I am not sure that the Board can make that decision appropriately.

Peter Caron: You have been involved with this project from the beginning? I understand what you are saying about the Board and having to prove a hardship that is for an easement as well.

Building Commissioner: No the easement is already written into the deed.

Peter Caron: So why do they have to prove a hardship?

Building Commissioner: Because they are asking for a variance from not entering a lot through its frontage. Our bylaw says you need to enter a lot through its frontage and exclusively through its frontage. If you are not

doing that you are proposing to enter it from another way just like insufficient frontage or anything of that nature.

Peter Caron: So that is a reason to deny it. I am assuming that they have done their homework and say this is the best alternative.

Kenneth Pacheco: I don't think we should anything with this case. We did request something from Mass Highway and everyone seems to agree that we are not going to get anything from Mass Highway. But their engineers are going to prepare something for us showing the safety issue. I spoke to Dean after the Planning Board meeting tonight that we are requesting that we have a new plan showing us how it would impact if they were to use the Wardell curb cut and I want something from Mass Highway. Everyone keeps saying we are not going to get anything from Mass Highway but the Attorney tonight for the Planning Board, Lisa Meade said that their engineers could come up with something to show the ZBA that it is a hardship because of the safety issue. I spoke to Dean and I spoke to Dennis and I told them that is what we are expecting at the next meeting. This petition expires November 19, 2015. We need to have our meeting on November 18th it is too late to put it on November 4th there was a request to have a meeting November 11th that would be 3 meetings for us and it is a National Holiday. The earliest it will be heard is November 18th.

Building Commissioner: I am getting a lot of call regarding LED imaging signs. I would make the recommendation if these are going to be more and more prevalent from here on out which I think they will be maybe we should consider changing the actual bylaw. So that it loosens it up a little bit and we reduce the number of petitions that come before this Board.

Peter Caron: They should be required by special permit. So when the bylaw is rewritten it should be written that you need a special permit from zoning.

Building Commissioner: The lumens is a big thing. I mentioned to Kenny Pacheco that I would see if I have it in my budget to buy a lumen meter. We can come up with a lumens intensity maximum and make sure these things are done right.

Motion Robert Adams Sr second Zachary Caron to adjourn the Meeting at 9:25.

All in Favor

Aye