

Town of Wenham
Zoning Board of Appeals
Meeting of October 13, 2021
Wenham Town Hall, 138 Main Street

Pursuant to the Open Meeting Law, MGL Chapter 30 A, §18-25, written notice posted by the Town Clerk delivered to all Board members, a meeting of the Zoning Board of Appeals (ZBA) was held on Wednesday October 13, 2021.

The Governor extended the suspension of certain provisions of the open meeting law that authorizes all members of a public body to continue participating in meetings remotely until April 1, 2022. This meeting took place via Zoom.

The Wenham Zoning Board of Appeals exercises all powers granted to it by Massachusetts General Laws, Chapters 40A, 40B and 41 and the Town of Wenham Zoning Bylaw. The Board hears and decides applications for special permits, appeals or petitions for variances from regulations governing dimensions of land or structures, appeals taken by any aggrieved by reason of his inability to obtain a permit or enforcement action under the provisions of MGL 40A and applications for comprehensive permits. Members are appointed by the Board of Selectmen for a term of three-years from July 1 – June 30. The Zoning Board consists of three Board members: Evan Campbell (2022); Dana Begin (2023). Anthony Feeherry (2024) and (up to) three Associate members: Kelly Schmidt (2022) Richard Modiszewski (2023); one open seat

- Call to Order - *With a quorum present Mr. Feeherry called the meeting to order at 7:10 pm announced the meeting was being recorded and those present:* A. Feeherry, Chair; D. Begin; Associate member: K. Schmidt

Not Present: E. Campbell; R. Modiszewski

Also present: Margaret Hoffman, Planning Coordinator; Catherine Tinsley, Recording Secretary

There were many residents from the Longfellow Road neighborhood present for the two public hearings.

Continued Public Hearings

- 7 Longfellow Road – Continued from September 20,2021 for a variance per Section 255.4.4.C.2 (Variance Required) and Section 255.13.6 (Variances) of the Wenham Zoning Bylaw to construct an addition to an existing nonconforming single family residence at 7 Longfellow Road (Assessor’s Map 7, Lot 025). Applicants: Chris Woods & Ellen Scannell

- Working Plan of 7 Longfellow Road, by Kane Land Survey, dated February 15, 2018.

- Ms. Hoffman read the legal notice as published in the Chronicle & Transcript September 2 & 9 2021

Mr. Feeherry gave a brief summary of the project and that the Board needs to see the exact location of the existing structure in relation to Longfellow Road. On a recent the plan, prepared for the town, the dwelling is shown in the middle of Longfellow Road. Town Counsel and the Building Commissioner were both reluctant to comment without a certified plot plan that confirmed the existing structure and Longfellow Road locations.

This application is requesting a variance to expand a preexisting, non-conforming structure on a non-conforming lot in the front of the property in the right of way. Chris Wood, applicant & homeowner, was present with his architect, Samuel Robertson.

Mr. Robertson reviewed he was asked to provide additional information for this meeting and presented a stamped mortgage inspection plan from Salem Five.

The Board acknowledged the two different plot plans; one showing the existing structure in Longfellow Road and one showing the structure set back from Longfellow Road, and agreed a certified plot plan needed to accompany the application and the ZBA’s decision.

Mr. Savoi, a colleague of Mr. Robertson, was recognized and said the exiting house is within the entire bounds of the property and the Mortgage Inspection Plan for Salem Five was stamped by a licensed surveyor and is a certified mortgage plan. He alleged that the “town” took part of Mr. Woods property when they widened Longfellow Road and that their client should not have to do research for the town on the lot lines changed due to the work.

Mr. Woods added the house was granted build permits in the past, which would not have been allowed if the house was in the right of way, and survey’s previous to the paving show the house on the lot and not in Longfellow Road.

Based on the size of the project, the area, and recent work in the neighborhood, the board was inclined to approve the request, but required a certified plan be provided.

The hearing was opened to the public. The following abutters/ neighbors spoke in favor of the project:

Andrea Collins said a survey of the area will show many discrepancies and that the town should have an accurate survey.

Tim & Amy Parziale direct abutters spoke in favor of the project and it was within the aspects and keeping within the neighborhood and they are not encroaching on the road or other property.

Christine Marie Rowland agreed the road was paved over and the house is not in the middle of the road and the addition improves the neighborhood

Jessica Baker the project fits with the neighborhood

Larry Oak reasoned that no one would have been allowed to build in the road.

Ms. Begin was in favor of the project and with the neighbors' comments, but with the conflict of surveys, supported a plot plan be provided. The Board was asked to approve a conditional plan to allow the project to go forward noting the Building Commissioner would deny the permit if the certified plan was not provided. Mr. Ferrara stated he was not willing to make a decision without the certified plot plan and that the Board would meet quickly when the plan was provided.

Note: The Board voted unanimously by roll call to continue the Public Hearing for 7 Longfellow Road to a date certain of October 28, 2021 at 7 pm via Zoom.

Public Hearings

• 21 Longfellow Road - on the petition of Pamela and Yianni Katsiris, 26 Ravenwood Rd, Peabody, MA for an amendment to a Special Permit dated July 5, 2017 for property at 21 Longfellow Road Wenham, MA (Assessors Map 7, Lots 50 and 52) to allow for an adjustment to the location of the structure, size of the garage and associated landscaping, septic and other site improvements.

- Ms. Hoffman read the legal notice as published in the Salem News September 29, 2021 & October 5, 2021
- ZBA Special Permit, July 5, 2017
- Fedora Engineering Plans, September 21, 2021
- Weston & Sampson Peer Review estimate, August 27, 2021
- Cease & Desist Order, April 7, 2021- present

Applicants Pamela & Yianni Katsiris, Raven Road, Peabody, were present with their engineer Giovanni Fodera, Fodera Engineering.

Mr. Feeherry gave a brief overview of the special permit granted for a single family home at 21 Longfellow Road. Due to opposition/appeal from neighbors and legal issues, the plan was modified and after a downsized home/plan was proposed a special permit was eventually approved by the ZBA to be built in strict compliance with the plans submitted including the Conservation Commission's contingencies. The house is by definition has not been built in strict compliance including the location of the house is not built where proposed and appears to have been increased in size.

The petitioner was asked to give a brief presentation but Mr. Feeherry noted the ZBA was likely to engage a consultant to give additional advice to the Town on the plan; this is on the Conservation Commission's agenda later in the month. It is likely the ZBA will ask for Weston & Sampson to provide to the Town with engineering services regarding the amended project.

Ms. Hoffman noted many plans have been submitted (septic, engineering, Conservation, etc.) and the Town does not have the expertise to understand all the changes. Ms. Hoffman recommended this hearing be continued and the applicant provide the Town with funding for consultant peer reviews. Ms. Hoffman referenced a quote from Weston & Sampson for conservation, zoning, and site plan review; estimated cost of \$4,700.

Ms. Katsiris along with the engineer, gave an overview of the status of the construction, and attributed a surveying error for the location of the house being different from the plan, and referred to the previous hearing (7 Longfellow Road) that surveying is difficult in this area.

Mr. Feeherry alleged the entire foot print of the plan was different than approved, including the size of the garage increased from a one to a two car garage, the location of the septic, the dry wells, the retaining walls, an addition of patio & jacuzzi and summarize the entire project needs a professional peer review so the ZBA has a clear understanding prior to making decisions. Mr. Fodera summarized his work to date and that they are trying to work with the current (as built) project.

He stated that a review of the original plan compared with what was built has been completed and identified the house was built 21 feet to the southeast (toward Pleasant Pond) from the approved location. Mr. Fodera suggested this was a mistake in pinning the foundation but has moved the house out of the wetlands, which he opined was an improvement. This location also provided extra space to enlarge the garage. Mr. Fodera agreed the dry well was built in the wrong spot and will be moved. The retaining wall on the left side was changed to rip rap and boulders were installed to protect the slope along the driveway; he alleged that all setbacks have been met.

The hearing was open to the public for comment:

Larry Oak, Longfellow Road abutter, commented their driveway is on a paper road, not a right of way. He explained the previous owner paved over his property and he stands to lose 7.5 feet of his property as it is now with the dirt pushed onto his side and would like to recover it. He noted rip rap was installed instead of the finished retaining wall and looks messy. He supported the project move forward.

Andrea Collins, Longfellow Road, questioned the change from retaining wall to rip rap and asked the town what the ongoing concerns from environmental aspect that needs a consultant.

Mr. Feeherry responded the Board's concern is the changes made to the landscaping, drywells, surface drainage, and impacts to wetlands and when told to build in strict compliance with approved plan and in strict conformance with the Conservation Commission and Board of Health. These boards/ commission / departments work together to approve the proposed plan and expects it to be built in accordance with the approved plan and to be kept updated. The surface drainage/ erosion is a concern and if the new septic plans can be approved.

Linda Medeiros, Longfellow Road abutter, stated in addition to the violation of condition #1 of the ZBA decision, to build in strict compliance, she stressed the violation of condition #7 for any and all changes to come back before the ZBA for

approval was also violated. She expressed her frustration that this was not done and now the ZBA is being told how much better the new design is, even though a Cease & Desist order was issued on April 7, 2021.

The movement of the hammerhead area is not “open land” and requires more clearing of trees/land to achieve the hammerhead, especially after so much has already been cleared and is shocking. She noted the dry wells now appear to be in the buffer zone, and the extension of the house on the right puts their patio and jacuzzi (not on the original plan) and retaining wall into the 200 foot no disturb zone, noting the Conservation Commission told them to keep this area clear. Ms. Medeiros opined there is no possible way the applicant did not know the house/septic was moved. This all should have been brought back for discussion and approval and it is unfortunate this causing more delay and the neighborhood has been living with the ongoing work for years.

Tim Parziale, Longfellow Road, question what surveyor or engineer made the mistake and wrongly plotted the existing foundation and the building inspector that suggested moving components of the home. Mr. Fodera said it was an outside engineer that plotted the foundation incorrectly and did not feel the ZBA hearing was the appropriate place to discuss this. Ms. Katsiris added no other changes have been made other than the location of the home in error and the garage change was made with the” blessing of the Building Inspector” at the time.

Mr. Feeherry noted the Engineer, Surveyor, or Building Inspector were not present to speak to the allegations and reiterated the ZBA decision did not say changes approved by Building Inspector, or verbal changes, were satisfactory.

Lisa Kelly & Lester Plumber, Longfellow Road, observed the hammerhead for snow is the right of way on a paper street and questioned how this will affect the property lines?

Royal Rowland, South Street, compared the two hearings on the ZBA agenda and questioned the previous applicant can't build a moderate addition that fits the neighborhood but this applicant based their project on a paper road, has built a very large house, that moved 20 feet closer towards the pond and can be seen from the beach, and removed many trees not authorized, and is now proposing to go forward with “what we have” and not what was approved. In closing he alleged there is garbage on the property and the site is a mess and this is all very frustrating and such a monumental error.

Jessica Baker, Longfellow Road, questioned when the stop work order in place and that the neighbors are trying to move forward but alleged work continued on site and before and after set hours, work on an outdoor chimney; neighbors were told to call the police, but no one felt comfortable doing that. Ms. Baker spoke in support for the house to be built as approved and questioned the dormers, and the basement that was supposed to be on grade, the addition of an outdoor chimney, and expansion of a 2 car garage. She observed this is only supposed to be a two-bedroom home and increased parking on the lot will increase traffic. Matt Baker noted the safety gate has not been up and the Katsiris was allowed a pod on site due to accused stealing, which the neighbors would not do, and the site is neglectful and questioned if it is in writing that the Building Inspector at the time allowed changes on site? Nothing is in writing.

Mr. Feeherry stated it is the Board's intention that there are significant issues to address that relate to conservation, septic, and construction, and a peer review is needed; the hearing will be continued contingent on the applicant agreeing to engage, and provide the funds for, the consulting peer review. He noted those in attendance can also speak at the upcoming Conservation Commission meeting.

The Cease & Desist Order was issued April 7, 2021 the applicant was given permission to complete the roof make the building weather tight, do chimney and dig test pits.

Vote: The Board voted unanimously by roll call vote to continue the Public Hearing for 21 Longfellow Road to a date certain of November 9, 2021 at 7pm via Zoom on the condition the petitioner complies with the request for a peer review as presented and paid by the applicant.

Those ZBA members not present will be asked watch the meeting and sign an affidavit to participate in the upcoming meetings.

Administrative

- Meeting Minutes – September 17, 2021 & September 20, 2021: The minutes were held for review.
- Other matters, as may not have been reasonably anticipated by the Chair (Discussion Only)
- Next Meeting: October 28, 2021 & November 9, 2021
- Adjourn- The Board voted unanimously by roll call to adjourn at 9:08 pm.

Respectfully Submitted By
Catherine Tinsley
10.26.21