

Approved 11.30.21

Town of Wenham
Zoning Board of Appeals
Meeting of November 9, 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 Tuesday November 9, 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; E. Campbell; Associate members: R. Modiszewski; K. Schmidt
Also present: Margaret Hoffman, Planning Coordinator; Catherine Tinsley, Recording Secretary

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

Continued Public Hearings – October 13, 2021

• **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.

- Site Plan, 21 Longfellow Rd., September 21, 2021
- Application
- Memo Re: 21 Longfellow Road Request for Amendments to Special Permit from M. Hoffman, to the ZBA, 11.9.21

The applicants, Pamela and Yianni Katsiris, and the project Engineer, Giovanni Fodera, were present.

In full disclosure, Mr. Campbell was not present for the first meeting of the hearing on October 13, 2021. According to Chapter 39: Section 23D Mr. Campbell is not disqualified from voting in the matter solely due to his single absence on October 13, 2021 provided he signs a *Mullin Rule Exemption Affidavit* that he has watched the video of the October 13, 2021 meeting. Mr. Campbell's affidavit is a part of the record.

In summary, the Zoning Board issued a decision in 2017 for Special Permit for the property at 21 Longfellow Road to demolish the burned structure and build a new 2 bedroom, single family home after appeals from the abutters were considered. A stop order (Cease & Desist) was issued in April of 2021 for work done outside of the Special Permit. There is an application for an amendment to the original Special Permit before the ZBA, and a request for an amendment to the Order of Conditions issued by the Conservation Commission for 21 Longfellow Road.

The petitioners and their engineer presented the new application at the October 13, 2021 meeting. A peer review consultant was hired by the town, at the expense of the petitioner, to provide the town with a detailed report of what has been constructed different than the submitted & approved plans the ZBA's decision was based on for the Special Permit. Mr. Feeherry reviewed the major changes from the approved plan being the location of the house 21 feet west and closer towards the Pleasant Pond, the garage was increased from a one car to a two car size, and numerous site changes, ie addition of a roof over enlarged patio, and retaining walls.

Pam Katsiris clarified that their engineer, Giovanni Fodera was not with them during the time the changes were made. She cited the foundation was pinned in 2020, in error by the surveyor, and alleged it was approved on site by the former building inspector, who also suggested the garage be altered to avoid water runoff, which changed the garage door location and provided an opportunity to extend the garage 7 feet to allow entrance from the side.

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Mr. Feeherry observed this property is in the Aquifer Protection District and impervious lot coverage may not exceed 20%. The original plan identified lot coverage at 18.1%, but as built (proposed) it is estimated at 22.8%. The larger dwelling, additional roof proposed over patio area, jacuzzi /trellis area increases the amount of lot coverage. This is problematic. When asked to explain how the house foundation was pinned 21 feet off from the approved location, Ms. Katsiris said it was the surveyor that made the mistake. The Board referenced a 2017 plot plan with Vernon Leblanc identified as the surveyor and Mr. Griffon as the engineer; the Katsiris said it was a different surveyor. A Cease & Desist order was issued when this was discovered in April, after the house was partially built. The applicant has since submitted a new survey plan. The engineer was questioned about the use of a 1,500 gallon septic tank; this is an oversized tank for a 2 bedroom house. Mr. Fodera stated it was the size tank proposed in the previous plan and he just carried it over but the leaching field is designed for a 2 bedroom house. Mr. Feeherry confirmed that there is a specific deed restriction on this house which is limited to a 2 bedroom home. The Board of Health has requested additional information on the new septic plan.

There was a discussion on the use of the hammerhead drive to turn around by the town emergency vehicles and the Department of Public Works (DPW) to pile excess snow and it was confirmed this is still there; the driveway was expanded on the property for off street parking to allow home owner to get vehicles out of the way. Ms. Hoffman said the DPW was amenable to depositing snow in this hammerhead area.

The ZBA observed a lot of time was spent in 2017 on the plan, and other than being 21 feet from the approved location, the Katsiris were questioned why the house wasn't built as approved with the one car garage and block retaining walls. Additionally there is rip-rap stabilization, the addition of a patio with a 4 foot wall, roof, trellis, jacuzzi, and over excavating, none of which was approved by the Zoning Board. The Special Permit allowed for a 2,484 square foot house with a one-car garage with a driveway off Oak Street to better blend with the neighborhood of smaller homes. It was noted the site was over excavated and was now was in the process of being restored. Other variances are now needed such as the lot coverage in the aquifer being in excess of 20% and work permitted on half of the paper street (Oak Street) that now goes all the way through the street; the ZBA must be cautious about approving any work on a paper street, not owned by the applicant.

Ms. Hoffman confirmed the Tree Warden was doing a site visit the following day on November 10.

The hearing was open to the Board members.

Ms. Schmidt identified that she was not part of the 2017 process, but it was obvious the ZBA took a lot of consideration in the approval and now with all the unauthorized work, she suggested the ZBA review the changes one by one and address the infractions individually.

Mr. Modiszewski referred to the language in the 2017 Special Permit that the applicant must adhere to strict compliance to what was approved, accident or not, and considering all the changes made without approval, he opined the ZBA will set a poor precedence for other situations if not addressed, and noted he struggled to balance the positions of the homeowners and neighbors. He reiterated this work is in the aquifer, and many of the specific conditions of the 2017 Special Permit were not followed.

Mr. Campbell agreed with the previous statements and questioned if there was town documentation from the former building inspector regarding the reconfiguration of the garage and the extended roof line; no plan has been provided to show the increase in lot coverage.

Ms. Hoffman noted the Conservation Commission said the house location being 21 feet closer to the pond had no impact. The Commissioners were concerned with the pavers being proposed for the patio as they require maintenance to be considered infiltrating. Because annual monitoring is cumbersome it will not be done. It was noted that pervious asphalt is proposed for the driveway.

The hearing was open for public comments.

- Amy & Tim Parziale opined a lot of redesigning was going on for a 21 foot mistake of the location of the foundation and questioned who made the mistake and why that person was not being held responsible to move the house back to the approved location? And further questioned why does the septic, wall, tree removal all have to change and why is the Town entertaining changes and not the house being moved? He went on to observe half the basement is a crawl space but from a distance it looks like a full basement, and there is a full set of dormers on the second floor and if there is added living space in this area? Questioning a roof pitch change.

Mr. Fodera confirmed the basement is still crawl space without windows. The pitch of the garage roof line is for storage.

Mr. Feeherry responded the town was not known to be involved in the 21 foot mistake of citing the house and although moving the house is possible, it is not practical.

- Linda Medeiros, first noted her concern with the violations of conditions 1 & 7 of the Special Permit.

She echoed coming to an agreement on the conditions and deed restriction for the Special Permit in 2017 was "torturous" and were put in the Special Permit to ensure what is happening now would not happen. She opined this is an oversized 2 bedroom home outside of the character of the neighborhood with a septic system designed for a 4 bedroom home and questioned why if there is a deed restriction for a 2 bedroom home, is a 4 bedroom system allowed to be installed? Ms. Medeiros alleged the applicants' intention to follow the conditions was never there and cited that when the previous dwelling was demolished in February 2020, no limit of work fence was installed (condition #1) and a gaping hole was left in the ground. The current limit

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of work fence is not where it's supposed to be even though the Conservation Commission was clear where it was to be installed, adding if it had been installed properly, the over excavation onto the abutting town property may not have happened. Ms. Medeiros commented if all these changes can be made, as if there was no Special Permit or conditions, why even have a Zoning Board of Appeals.

Ms. Medeiros referenced the Special Permit that states the new structure shall be complete within one year of demolition (April 2021) and questioned the legal status of the Special Permit since the structure is not completed within the timeframe. She asked for clarification of this is an amended or new application for a Special Permit.

Mr. Feeherry responded that if the changes are de minimis, the ZBA may amend the Special Permit without a public hearing, but these changes were severe and required a new notice and public hearing for an amendment to the Special Permit.

The Engineer was instructed to update the square footage of the lot coverage and provide a plan that more closely complies with what was approved including a reduced garage size. Mr. Feeherry reiterated the reasons the Special Permit was given was because it was special, and not allowed as a matter of right

The Board concurred the plan for 21 Longfellow be updated and the square footage of the house/lot reduced to be in line with the Special Permit. Mr. Feeherry reviewed that a Special Permit needs a 3-0-0 vote to be approved.

Mr. Modiszewski clarified that the plans are to be redrawn that do not exceed 20 % of the lot coverage to avoid the need for a variance and stressed this sets a precedence in town to not follow the written decision of a town board/committee.

Ms. Hoffman noted a storage pod is allowed on site by right for 45 days and observed it is not possible for the Pod to be in the rear of the property. She questioned if a Special Permit is required. The Board asked for the Pod to be shown on the updated plan.

Vote: The Board voted unanimously by roll call to continue the hearing for 21 Longfellow Road to a date certain of November 30, 2021 at 7 pm via Zoom.

Administrative

- Meeting Minutes – 10.13.21 & 10.28.21

Vote: The Board voted unanimously by roll call to approve the minutes of October 13, 2021 and October 28, 2021.

- Other matters, as may not have been reasonably anticipated by the Chair (Discussion Only)
- Next Meeting: November 30, 2021

*Respectfully Submitted By
Catherine Tinsley
11.21.21*