

Town of Wenham
Zoning Board of Appeals
Meeting of September 20, 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 Monday September 20, 2021 at 7 pm
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 and 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 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
Rich Maloney, Building Commissioner (L-7:30pm)

Public Hearings

- **96 Maple Street** - on the petition of Andrew St. Pierre, 96 Maple Street, Wenham, MA, for a variance from Sections 5.1 (Table of Dimensional Requirements) to construct an 18 x 24 foot addition to the existing dwelling within the 15' setback at 96 Maple Street (Assessor's Map 023, Lot 009).
 - Application for Public Hearing May 28, 2020 including Plot Plan dated April 8, 2020
 - Ms. Hoffman read the legal notice as published in the Chronicle & Transcript Thursday September 2, 2021 and Thursday September 9, 2021
 - To avoid the appearance of a conflict of interest, Mr. Modiszewski disclosed that he and Mr. Pierre coached Little League together during the spring but this would have no bearing on his decision.

Andrew St. Pierre, petitioner was present and spoke to the request to build an 18 x 24 foot addition to his home at 96 Maple Street and gave a brief overview. The ZBA granted a variance for this same project in May of 2020. Mr. Pierre stated he was unable to find a contractor and the variance has lapsed. Mr. St. Pierre submitted a new application; there are no changes to the proposed plan.

The hearing was open for public comment. There was none.

Vote: The Board voted unanimously by roll call to grant the required variance for an 18 x 24 addition at 96 Maple Street, within 15 foot side yard setback as shown on plan dated April 8, 2020.

Vote: The Board voted unanimously by roll call to allow the variance to be approved with a single wet signature by the Chair, Toney Feeherry.

Vote: The hearing for 96 Maple Street was closed unanimously by roll call vote.

- **7 Longfellow Road** - 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).
 - Site Plan and proposed project
 - Ms. Hoffman read the legal notice as published in the Chronicle & Transcript Thursday September 2, 2021 and Thursday September 9, 2021.

This application is to request a variance to allow the homeowner to expand a preexisting, non-conforming structure on a non-conforming lot in the front of the property in the right of way.

The Building Commissioner Rich Maloney opined the Board cannot grant any relief for the owner to do any work at the front of the property because the existing structure is in the right of way as laid out on the plan and the ZBA technically has no

authority to grant this relief. The Town's regulations would allow the Board to grant a variance or a special permit but only on work that is done within the homeowner's property lines.

Architect Samuel Robertson, Savoie Nolan, was present along with the applicant Chris Woods.

The proposed project renovates the existing carport to living space and adds a carport on the side with a small addition and deck towards the rear of the property. This does not meet the 20 foot set back in the front.

Mr. Robertson pointed out the lot line runs through the middle of the existing house and suggested there was a survey or recording error. He referenced a 1948 survey map showing road and the house built along side of the road noting a dwelling would not have been permitted to be built on the road. There is a steep ravine in the back and is unbuildable.

The hearing was opened to public for comments & questions.

- George Pawle South Street, spoke in favor of the project and stressed the difficulty with the lots in the neighborhood. He supported the applicant be allowed to do the work and encouraged the board to take a broad view and vote in favor.
- Tim & Amy Parziale, Longfellow Road spoke in favor of the renovation in its entirety including the addition of a carport. Mr. Parziale noted the project was in keeping with the neighborhood and not an overbearing structure, which was important to this "tight knit neighborhood".
- Linda Medeiros, Longfellow Road, spoke in favor of this project. She reminded the Board this area is made up of paper streets and was unaware of a street ever being anywhere else. She observed a lot of the homes in this neighborhood are on the edge of the street. She also added that this project was on a small scale and fits in the neighborhood.

Mr. Feeherry responded most of the Board was familiar with the neighborhood, but questioned the authority of the ZBA to approve construction on land not owned by the applicant. He recommended the town get an opinion from Town Counsel on this matter if the ZBA has the ability to grant relief for the construction on property not owned by the petitioner (paper streets) and is there a way to straighten this out on Longfellow so the paved way and paper street are the same or clarify the situation.

Mr. Modiszewski commented the proposed project is not materially more detrimental and would not make the property anymore non-conforming.

Note: The Board voted unanimously by roll call to continue the hearing for 7 Longfellow Road to a date certain of Wednesday October 13, 2021 at 7 pm via Zoom.

- **36 Essex Street -Academy at Penguin Hall** -for an amendment to a Site Plan Approval issued February 4, 2016 per Section 255.13.7.D.4 of the Wenham Zoning Bylaw for the conversion of the site to include dormitories to accommodate a weekday boarding program for students at the Academy at Penguin Hall, 36 Essex Street Wenham, Massachusetts. (Assessors Map 40 Lot 003).
 - Ms. Hoffman read the legal notice as published in the Chronicle & Transcript Thursday September 2, 2021 and Thursday September 9, 2021
 - Proposed plan
 - A list of questions/ concerns and responses form the applicant was provided

The Board posted a meeting for their site visit to the Academy on Friday September 17 to view the dorm area; minutes were recorded.

Molly Martins, President of the Academy at Penguin Hall, was present and spoke on the Site Plan amendment for residential space to support students that travel a long distance to attend this all girl school. There are 150 students attending the Academy and the number of students anticipated to take advantage of the boarding program initially is 6 to 9 girls.

The area being renovated was used by the Sisters of Notre Dame for residential use in the 1960s. The space was repurposed but not changed. The students would stay Sunday evening/ Monday morning through Friday afternoon. The chef will prepare the evening meals.

The hearing was open to the board for comments / questions.

Mr. Campbell indicated he was inclined to grant the request and potential expansion but to put a limit on the number of students and staff member(s) that may live on site. Ms. Martins responded that this would be outside of the scope of the ZBA as well as the ratio of students to adult.

The hearing was open to the public for comments / questions.

- Michelle Bailey, Remington Road, stated the Dover Amendment applies to educational use, and questioned if the property is being used solely for education and asked the Board to look at the records of vehicles registered to this address. She also noted the Academy is often in arrears with the town (water bill, fees) and encouraged the Board not to issue a finding until all arrears are paid. Ms. Bailey asked for the ratio of supervision of minor students be required.

Mr. Feeherry noted that no Certificate of Occupancy would be issued to any applicant for outstanding arrears until all money due the town is paid. Regarding the subject of other businesses being run out of this facility, Mr. Feeherry reported the Board was assured there were not. Martins construction maintains the large (50-acre property) and building and has equipment on site. The ZBA's authority is to determine the dormitory use is acceptable under the Dover Amendment, under the educational program, and bound by good practice with the families to assure the students are safe. There must be full compliance with the Fire Department, Building Commissioner, & Board of Health.

The questions from town staff and the answers provided by Ms. Martins will be posted and part of the record.

It was noted that the Dover Amendment is not as clear about full time live in supervisors. As long as the residential use is in support of the educational program, it is consistent with zoning as written. It is however more specific for a dorm parent who uses this as a permanent residence, even without students on campus, that they are employed by the Academy.

Vote: The Zoning Board members voted unanimously 5-0-0 by roll call to approve the requested amendment to the Site Plan Approval for the Academy at Penguin Hall at 36 Essex Street issued February 4, 2016 to allow for the proposed dormitories use by students at the non-profit educational facility with a determination that the use together with residential use by staff in support of the residence halls qualifies as an exempt use under the Dover Amendment. All residential use shall be in support of the educational use only. All interior renovation work will be in strict compliance with any requirements of the Board of Health, Building Inspector and Fire Department as well as any state agency. No site plan approval or permits are to be issued until the Academy is in compliance with Section 174-1 of the Wenham General Bylaws and all outstanding fees, taxes and other items owed to the Town have been paid.

The Chair will sign the decision on behalf of the Board.

Vote: The hearing for 36 Essex Street was closed unanimously by roll call vote.

Administrative

- Updates on Regulation Project and Master Plan

The Town continues to work with Weston and Sampson on the updates to the Rules & Regulations. The process is a little slower than originally thought. Most of the regulations are outdated and had to be reformatted.

The Planning Board voted to not appoint a Master Plan Steering Committee. The RFP for a consultant will be sent out. A discussion regarding the Steering Committee will be revisited with the consultant.

- Meeting Minutes – August 23, 2021 - *The minutes were held for review.*

- Next Meeting: October 13

Adjourn- The Board voted unanimously by roll call to adjourn at 8:48 pm.

Respectfully Submitted By

Catherine Tinsley

9.22.21