

**Zoning Board of Appeals
Minutes of October 3, 2012
Bourne Town Hall
Buzzards Bay, MA 02532**

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Lee Berger, Chairman
John Priestley, Jr., Vice Chairman
Tim Sawyer
Judith Riordan
Wade Keene
John O'Brien (excused)
Harold Kalick
Tom Armstrong

Roger LaPorte, Inspector of Buildings

Member(s) of the public: Mr. James Mulvey

List of Documents

- None

Meeting called to order

7:30 pm by Chairman Berger.

Approval of Minutes

Riordan MOVED and SECONDED by John Priestley to approve minutes of 9/19/12 as submitted.
VOTE 5-0.

#17-12 Special Permit Extension or Alteration of a Pre-existing non-conforming structure or use

David & Marie Bren. Location: 18H Hideaway Village. Map 14, Section No. 48, Lot 65 in an R-40 zoning district. Proposal: Applicant requests to raze existing detached condominium and construct a new one.

Sitting on the board: Lee Berger, John Priestley, Judith Riordan, Tim Sawyer and Wade Keene.
Also present: Harold Kalick and Tom Armstrong.

Tom Armstrong recused himself as this matter involves Hideaway Village.

Joshua Bows representing applicant. The existing cottage is in a state of disrepair. Looking to remove and rebuild a new cottage. The proposed cottage will include a living room, bathroom, office, kitchen with a small dining area, master bedroom, guest room and bathroom. Location of the new cottage is generally in the same location, increasing the front set back by 1 foot in the front and about the same on side setback. Received condo association approval and submitted with application. Looking for the board to consider Section 2450 as proposed

cottage is just over 1,000 square feet. This is one of the larger lots with exclusive use. The existing cottage is very tight on lot itself (lot is almost 4,000 sq ft). Applicant submitted letters from two direct abutters supporting project.

The height of proposed cottage is approximately 25 feet from the ground to the peak of the roof. There are 1,000 SF on the 1st floor and 2nd floor is 700 SF.

Roger Laporte asked the board to consider if it is appropriate to apply Section 2450, due to exclusive use areas.

Chm. Berger – if the board applies Section 2450 with regard to setbacks which cannot do with Hideaway Village.

The consensus of the board is that due to the size of the lot and the abutters' support, and the fact that the project does meet the zoning height requirements, and section 2450 applies to non-conforming lots and Hideaway Village is one big non-conforming lot, it is extremely difficult to apply section 2450 to the exclusive use areas of Hideaway Village. In light of the fact that most of the exclusive use areas are very small, if section 2450 was applied to exclusive use areas, rather than the non-conforming lot, it is likely that no condominiums could ever be enlarged at all.

No further board comments. No public comment.

Priestley MOVED and SECONDED by Riordan to close hearing. VOTE 5-0.

Priestley MOVED and SECONDED by Riordan to grant Special Permit #17-18 on the basis of the cottage moving further from the street, it is visually more attractive and conforms to the intent of the existing zoning bylaw, subject to review and approval by the sewer commission and the Fire Department. Provided said approvals are forthcoming, the new house is to be built in accordance with the plans dated 10/26/11 paired by Williams Design. VOTE 5-0.

#18-12 Special Permit Extension or Alteration of a Pre-existing non-conforming structure or use

Frederick & Carolann Poringham. Location: 12-H Knollview Road, Buzzards Bay. Map 14, Parcel 4859, Lot No. 12-H in an R-40 zoning district. Proposal: Applicant requests to build an 8'x10'x8' storage shed.

Sitting on the board: Lee Berger, John Priestley, Judith Riordan, Tim Sawyer and Wade Keene. Also present: Harold Kalick and Tom Armstrong.

Tom Armstrong recused himself as this matter involves Hideaway Village.

Applicant requests shed for storage.

Chm. Berger conducted a site visit and stated he could not see the shed from the street. The project has received the approval of the fire department and the Hideaway Village Condominium Association.

No board questions. No public comment.

Riordan MOVED and SECONDED by Priestley to close hearing. VOTE 5-0.

Riordan MOVED and SECONDED Keene to grant Special Permit #18-12 for a storage shed in accordance with and in the location shown on the plans submitted. VOTE 5-0.

#08-18 - Comprehensive Permit, 40B

Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Foretop Road, Buzzards Bay, MA, 02532 to construct 16 residential units, 4 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called "Chase Estates" on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36.

Sitting on the board: Lee Berger, John Priestley, Judith Riordan, Tim Sawyer and Wade Keene. Also present: Harold Kalick and Tom Armstrong.

Chm. Berger – sent latest draft decision to the board.

Atty. Attea for applicant focusing on limited possible edits and discussion:

General Conditions

Page 3 - #1 under Procedure and Timeframes. Applicant has no concerns, but Chm. Berger has concerns since there are no final plans to call "approved plans." This will be edited by Attorney Witten in the final decision.

Page 6 - #7 – provide adequate security for completion of project, but try to limit cost of bonding, or bonding at various phases. Request made to eliminate the need to include in that bonding or security arrangement the cost of planting saplings on the property in the event construction was not completed.

Applicant agrees with most from Town's consulting engineering, but is not agreeable to planting saplings.

Chm. Berger asked if saplings need to be planted to prevent erosion. Applicant saw grading, hydroseeding and planting of seedlings for further stabilization. Going further seems more cosmetic.

Atty. Attea – The cost to bond the cost of every tree planted every 20 feet is more than applicant is willing to pay for; there is a difference between site stabilization and site beautification.

Wade Keene – intention was for the trees to help with erosion.

Page 15 – Landscape. Chm. Berger read into record language. Atty. Attea has issue with language, saying that planting trees for site stabilization seems “over reaching”.

Chm. Berger – asked how much it would cost to plant trees. Atty. Attea said to plant a sapling every 20 feet across entire project with no project commencing is not agreeable. Planting seedlings is okay, not saplings.

Page 6 – seedlings vs. saplings language. Chm. Berger said Mr. Houston believed it would not cost a whole lot of money to bond.

Mr. Pappas - there are still a lot of trees and hopes to provide the town with a level of comfort with stabilization.

Judith Riordan – asked when is a project considered abandoned. Chm. Berger feels within three years.

Sawyer – the ability to stabilize slopes is his biggest concern which can be done with grass and plant a few trees.

Mr. Mulvey – raised issue of the quality of hydroseeding and who it is acceptable to. Chm. Berger responded the board’s consulting engineer.

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Item #58 – connecting access (barrier or berm). Applicant does not have any issue.

Mr. Sean Scully, abutter, inquired if barrier will stop the connection between the two properties.

Mr. Roger Laporte – if the Fire Department has a change, they would have to ask the board to change a condition. If there is a change in any condition of the Special Permit, it has to come back before the board.

Mr. Brian Burkhead – asked if the berm will be put in right away. It will be put in before the applicant applies for a building permit. Mr. Burkhead’s concern is with Mr. Pappas’ trucks and people who work with him who come in from the skating rink, ride up and come up through the warehouse into his back lot and through the neighborhood.

Mr. Laporte – the berm will be sufficient to prevent a vehicle from passing through. If there is evidence of off road vehicles, the applicant does not get the permit.

Chm. Berger – if the berm is no longer there, the Building Inspector issues a cease and desist order. The language is sufficient the way it is.

Mr. Pappas – the berm will be 6 ft high and will plant with trees.

Mr. Scully – asked what happens if the berm disappears. Mr. Laporte said the condo association would be cited.

Chm. Berger – raised issue with the bypass road. With Canalside, the board had previously decided not to require Canalside to build it because we weren't certain that Mr. Pappas would even file for a 40B permit at that time. The bypass road was drawn on one map at one point. The Canalside decision didn't Canalside to build the road, but required Canalside to allow Pappas to connect to the Canalside bypass road without any payment of a fee. How to get the road to the bypass road built is the question. We could require Mr. Pappas to put some money in an escrow account and requires the condo association to come up with the rest, but this may make it impossible to market the condos. Chairman Berger was hoping to have a number from Mr. Houston as to cost, but he did not have a number yet.

John Priestley stated that given the attitude of the Vocational School in previous negotiations, he seriously doubts the road will be built, and to have money held in perpetuity would hinder the applicant. One of ZBA responsibilities is to not put conditions on that would make the project financially unfeasible.

Chm. Berger stated that Canalside was conditioned upon the building of the bypass road. A lot of money has been spent which gives reason to believe it will be built. He asked applicant what he thought the access road to the bypass road would cost.

Atty. Attea – in 12/07, this was a 32 unit project. Since that time, applicant is down to 16 units, and as a concept it enhances both properties. Canalside hasn't secured the right to build the access road or the bypass road. Applicant sees this as an unnecessary risk.

Atty. Attea – applicant has agreed to pave from the entrance lane to the property line. He understands the issue, but there is a significant cost of construction and odds are that it may not happen. He asked about the Canalside comprehensive permit. Chm. Berger stated a 3 year renewal of the permit had been approved about a year ago, so they have 2 more years left before they have to begin construction or come back to the Board to renew the permit again.

Pappas – entrance way is safer for Schooner Pass and Port O'Call, safe for 30 houses. He has cut number of units to almost in half and feels the board is basing approval on something that may not happen.

Applicant's engineer – estimated the cost of the bypass road would be \$300/foot which equates to \$100, 000 - \$300,000 dollars.

Priestley – recommends to continue the hearing until the board hears from the Board's engineer as to the cost of the bypass road.

Riordan MOVED and SECONDED by Priestley to continue hearing to 11/7/12 at 7:40 pm. VOTE 5-0.

Old Business

None.

New Business

None.

Public Comment

None.

Adjournment

John Priestley MOVED and SECONDED by Tim Sawyer to adjourn meeting. Meeting adjourned at 8:35 pm. UNANIMOUS VOTE.

Respectfully submitted,
Lisa Groezinger, sec.