

**Zoning Board of Appeals
Minutes of December 7, 2011
Bourne Town Hall, Lower Conference Room
Buzzards Bay MA 02532**

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

List of documents:

- #33-11 email from Atty. Attea with regard to acceptance of lot line dated 12/7/11 – 1 page
- HAV – draft abutter notification – 1 page

Meeting called to order

7:30 pm

Approval of minutes

Riordan MOVED and SECONDED by O'Brien to approve minutes of 11/2/11 as submitted. VOTE 5-0.

O'Brien MOVED and SECONDED by Riordan to approve minutes of 11/16/11 as submitted. VOTE 5-0.

7:35 p.m. - #33-11 – SPECIAL PERMIT - CONTINUED

Kevin and Nicole Lord c/o Bracken Engineering, Inc. Location: 7 Indian Trail, Sagamore Beach. Map 2.3, Parcel 26 in an R40 zoning district. Proposal: Applicant seeks special permit per Section 2457 for increasing gross floor area to a pre-existing non-conforming lot.

Sitting on the Board: Lee Berger, John Priestley, Tim Sawyer, Judith Riordan and Wade Keene. Also present John O'Brien and Tom Armstrong.

Don Bracken, engineer for applicant. Atty. Attea representing applicant.

Mr. Bracken submitted a letter from Mr. Tim Bennett, Engineer for abutter Mr. Novakowski. According to the letter, Mr. Bennet, after reviewing worksheet provided by Mr. Bracken, agrees that placement of the boundary line by Bracken between Novakowski and client is correct. Mr.

Novakowski had a site plan at the last meeting but he did not leave a copy with the ZBA. Atty. Attea said the lot line on abutter's site plan was not correct and is now in agreement with Mr. Bracken's findings.

Chm. Berger discussed the meaning of a footnote on the lot coverage/gross floor area worksheet with Coreen Moore with regard to gross floor area and the meaning of a one story garage. If the garage floor is counted as part of gross floor area, the ZBA doesn't have the authority to grant what is being asked. Chm. Berger pointed out that the footnote is also in the definition section of the bylaws under "maximum gross floor area."

Atty. Attea requested to see the version of the definition from Chm. Berger. Mr. Bracken said his office received the bylaw 4 or 5 days ago. After reviewing the definition, Atty. Attea said the ZBA has authority under chapter 40A and the case law to exercise discretion. Chm. Berger said, "except under Section 2450," unless we interpret a one story garage to mean a garage that only houses cars on one floor. Atty. Attea says the application meets decision criteria and is the better plan as far as impact on neighborhood and abutters. The ZBA is allowed to use its discretion. Since there is no definition of a one-story garage, this is the best outcome. He also doesn't feel the Board is setting a precedent and bylaws need to be clarified.

Chm. Berger said the Town has tied the Board's hands and cannot give more than 10%. The only way to get around this is by stretching with the definition. Priestly said to look at intent - only one story is a garage and the rest is included in the calculations.

Atty. Attea said the Board in its decision can define a one-story garage.

Mr. Laporte said there are some two story garages in Sagamore that house cars on two floors. Chairman Berger noted that he is aware of garages in which cars are raised by hydraulics so that a second car can be parked under the first, and wondered whether that would be considered a two story garage under the bylaws.

Mr. Bracken said he submitted an alternative site plan which demonstrated what the applicant could do by right, without living space above the garage, but which would move the structure much closer to the boundary line. It was also noted that most of the neighbors have living spaces above their garages.

Mr. Laporte said he has no problem with the applicant's position as it is well within what the bylaw intended. He was part of the bylaw writing process. Part of the intent was to make the structures more in keeping with the neighborhood.

Chm. Berger said that to approve the special permit, the Board would have to find that failure to grant the departure from the chart in the bylaws would result in a hardship to the applicant.

Atty. Attea said it would be a hardship for applicant's growing family that needs more room to live, that the economy is such that it would be a financial hardship if they had to sell their home to buy a bigger one. Mr. Lord said he came up with plans to give additional space with the garage in the least imposing way possible.

Mr. Laporte said the Town doesn't defend grants, so if the Board voted to grant the Special Permit, Atty Attea should draft the decision, since he would have to defend it if anyone appealed (which was unlikely since no one was objecting at this hearing). Atty. Attea agreed to submit a draft decision for the Chairman's review.

Priestly MOVED and SECONDED by Riordan to close the public hearing. VOTE 5-0.

Priestley MOVED and SECONDED by Riordan to grant Special Permit #33-11 for the extension or alteration in accordance with the site plan per Bracken for Kevin Lord dated 9/19/11. VOTE 5-0.

7:40 p.m. - #08-18 Chase Estates

Request for continuance due to economics per Atty. Attea. Mr. Pappas needs to revisit the finances involved with his project, considering that the market is sliding in the wrong direction. Atty. Attea wants to come before the Board with a final package and wants to review that final package with the Town's consultants in advance of the next meeting so we are all working from the same page.

Chm. Berger said Mr. Pappas paid what he owed to Atty. Witten and Mr. Houston. He anticipates meeting with consultants moving forward prior to the next meeting, but pointed out that Mr. Pappas would need to come up with more money for the consultants if he expected them to work on his proposal.

Atty. Attea said he heard from the engineer who was working on the details but needed an updated pro forma. Materials will be sent to the Board in advance of the next hearing.

Mr. Mulvey mentioned the possibility that the property may be sold to the Upper Cape Tech School. Atty. Attea said there is no deal now, but up to this point there have been so many starts and stops that they are not hanging their hat on that process.

Riordan MOVED and SECONDED by Riordan to continue the hearing to Wednesday, 2/1/12 at 7:40 pm. VOTE 5-0.

Old Business

Continued discussion with Hideaway Village. Chm. Berger has not heard from the HAV, but handed out his draft to the Board and said this document could be put into the Hideaway Village Condominium Association (HAVCA) routing slip. Armstrong to take said draft copy and

give to the HAVCA for their review and comment. Chm. Berger said another method would have names listed by HAV and given to applicant, and applicant would have to pay the additional \$5 per abutter. The Notice is the first paragraph. Certifications would be separate (or use the one page sheet). Armstrong to report at the next meeting on 12/21, where this matter will be discussed again under old business. The Board will likely vote on this matter at that meeting.

Chm. Berger notified the Board of the Cape Cod Commission (CCC) mail with regard to upcoming hearings on New Generation Wind and a Transmission line in December, 2011.

Chm. Berger received Planning Board fee schedule from Ann Gratis. He said the schedule was significantly higher than the Board of Appeals. He said if adopted (applicant pays an extra fee of \$5 per abutter) this may be a way to handle notifying the “abutters” within Hideaway Village. Mr. Laporte explained Planning Board has consultant fees and salaries for the Town Planner and others, which the Board of Appeals does not, and those fees and salaries account for the higher fees.

Public Comment

None.

Adjournment

Priestly MOVED and SECONDED by Sawyer to adjourn. Meeting adjourned at 8:13 pm.
UNANIMOUS VOTE.

Respectfully submitted - Lisa Groezinger, sec.