

**Zoning Board of Appeals
Minutes of November 2, 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
Harold Kalick
Thomas Armstrong

List of documents:

- #33-11 stamped plot plan submitted by abutter – 1 page dated 2006
- #35-11 plot plan, Cumberland Farms – 1 page dated 2006

Meeting called to order

7:30 pm

Approval of minutes

O'Brien MOVED and SECONDED by Sawyer to approve minutes of 10/5/11 as submitted.
UNANIMOUS VOTE.

Sawyer MOVED and SECONDED by Keene to approve minutes of 10/19/11 as submitted. VOTE
3-0-2 (Riordan, O'Brien - abstentions).

7:35 p.m. - #33-11 – SPECIAL PERMIT

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, Harold Kalick and Tom Armstrong.

Don Bracken, engineer for applicant Kevin Lord. Property located in Sagamore Hills. Lot sizes
are varied. Locus lot is the combination of two original lots to make one 12,000 sq. ft. lot.

Photographs shown to the Board with renovations and upgrades of homes across the street and to the North of applicant. Proposal is to construct an attached garage and family room above the garage which goes with the feel of the neighborhood.

Plot plan reviewed briefly dated 9/19/11. Applicant doesn't need a special permit for lot coverage, but is asking for a 9.3% increase over what is allowed by the bylaw table. Applicant states his application is unique since he is not counting garage area as part of the gross floor calculations. In the table for calculations, applicant states one of the footnotes says you should count the gross floor area of the garage if there is living space above. However, if a garage is constructed with a living room attached, instead of above, it would not be counted. The family addition with attached garage would conform to the table. Applicant states the proposal is better for the neighborhood aesthetically vs. relocating a portion of the driveway.

Chm. Berger would like some clarification from the Town Planner as to whether the gross floor area of a garage should be counted under the bylaw if there is living space above the garage.

Abutter Jon Obakowski has a stamped plot line done in 2006 by Bracken showing his lot line 20' past the chain link fence. Bracken said he was the engineer on the project who did the septic at the time, not the survey. The current surveyor of Mr. Lord's property disagrees with the surveyor of Mr. Obakowski's property. Mr. Obakowski contends that if his surveyor is correct, the proposed addition would encroach on the setback in that it would only be 9 feet from the lot line (as opposed to 12' required). Such an encroachment would require a variance, and not just the gross floor area special permit being requested.

Chm. Berger suggested the matter be continued to allow the two surveyor's to get together to try to agree on the boundary line. The applicant agreed.

Riordan MOVED and SECONDED by Priestley to continue the hearing for Special Permit #33-11 to 11/16/11 at 7:35 pm. VOTE 5-0.

7:40 p.m. - #35-11 – Special Permit

Carolyn Parker (agent)/VSH Realty – Cumberland Farms. Location: 435 Shore Road, Monument Beach. Map 30.4, Parcel 167. Proposal: Applicant seeks to remove existing 6'x4' price sign from light pole. Replace the 6'x8' with new 3'x8' CF panel and a new 3'x8' LED price sign.

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

Manny Paiva, Planning Department Manager for Cumberland Farms, represented the applicant.

Current signs include a single 8x6 internally illuminated sign, and a 4x6 price sign affixed to the light pole. Cumberland Farms purchased the property in 1975 and the signs were installed in 1975. The entire chain is switching to electronic signage so attendant can change prices on the computer.

Certified design plan by P&P Engineers dated 5/25/2006 were submitted to the Board and copy provided for the file (#35-11).

Building Inspector Roger Laporte said Section 3240 allows one free standing sign total of 16 sq. ft. in the village district. There is no issue with lighting as LED signage is allowed in a V-B zoning district. Applicant is making lighting more signage more conforming in that the total square footage is being reduced.

However, Section 3210 is confusing since it appears not to permit any deviations from the bylaw for new signs replacing old signs. Section 3210 a) states "No sign shall be erected and no existing sign shall be enlarged, reworded, redesigned, or altered in any way unless it conforms with the provisions of this Bylaw." Section 3210 b) states that "no sign other than [very small or temporary signs] shall be erected, enlarged, or structurally altered without a sign permit issued by the Inspector of Buildings, which shall only be issued for signs in conformance with this bylaw." However, seemingly contradicting section 3210 a), section 3210 b) goes on to say: "A copy of any sign Special Permit issued by the Board of Appeals shall also accompany the application [to the building inspector]." Finally, section 3210 h) limits the height of signs to 15' "unless authorized to [increase the height by] special permit by the Board of appeals."

Chm. Berger said that if a sign is grandfathered, and the applicant wants to make the signage more conforming, the Board would generally agree, assuming it has the authority. However, there is nothing in the bylaws that specifically authorizes the Board of Appeals to be the special permit granting authority for signs, although the bylaw certainly implies the Board of Appeals' authority. Chairman Berger will speak with the Town Planner concerning this issue.

Chris Farrell, Chairman of the Planning Board, stated he thought there was something in the bylaws prohibiting internally lit signs. Laporte stated he had checked with the Town Planner and LED signs were not prohibited in a village business district. Farrell mentioned the Cumbeland Farms sign on Main Street. Laporte said when Cumberland Farms applied for that permit more than 10 years ago, this bylaw was not in effect.

Chm. Berger asked if there is a need for the name Cumberland Farms on the price sign, because without the name the sign could be smaller. Mr. Paiva said it is the standard size for a Cumberland Farms sign, that Cumberland Farms now has its name on all its price signs, and he does not have the authority to agree to take the name off the sign.

Kalick compared the colonial style sign on Main Street to the proposed signage. Mr. Paiva can simulate a colonial looking sign, wrapping detail around the sign and post, keeping within the same footprint of the sign. There is a setting mechanism within the sign. When application is approved, the setting can be dimmed at night, but if it is too dim it may flicker. Cumberland Farms would be okay with a condition limiting the brightness of the sign. Mr. Paiva added that the Hyannis Bearses Way sign was approved with a similar condition.

Chm. Berger said as a condition, language should be included to limit the signage lighting to the lowest intensity without flickering.

Mr. Paiva proposed to make the Cumberland Farms symbol opaque (during the day it would be blue; at night you would only see the Cumberland Farms words). Mr. Paiva will bring an architecture design for the sign and post to the next hearing.

Chm. Berger would like to see final plan before voting whether to issue a special permit.

Priestley MOVED and SECONDED by Riordan to continue the hearing for Special Permit #35-11 to 11/16/11 at 7:40 pm. Applicant to bring architecture plans and lighting setting of the LED.

7:45 p.m. - #36-11 – Variance

Franco Raponi c/o J. Ford O'Connor. Location: 11 Trowbridge Road. Map 24.3, Parcel 23. Proposal: Applicant seeks to obtain variance to apply to legalize second apartment for low income rental under Section 4120 which requires owner occupancy.

7:50 p.m. - #37-11 – Special Permit

Franco Raponi c/o J. Ford O'Connor. Location: 11 Trowbridge Road. Map 24.3, Parcel 23. Proposal: Applicant seeks to allow low income accessory dwelling in a non-owner occupied home.

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

Attorney Ford O'Connor, for the applicant, stated that the apartment was put in at the time it was purchased. They cannot find records, but in 2006 the Board of Health records show the apartment. Mr. Raponi has since moved out. They would like to have two apartments, one to be "affordable." No new construction is proposed.

Chm. Berger stated the plans indicated there was an office upstairs. Atty. O'Connor said it had once been used as an office, but it is a dwelling limited by the Board of Health to four (4) bedrooms.

Laporte said some of the area near the dwelling is zoned business, but this area is an R-40 and believes Mr. Raponi's mother lived in the apartment. No permits are available to show how the apartment came about. When Laporte went in to inspect, there was one person living there. It appeared another apartment was being constructed. Laporte put a total of two (2) cease and desist orders on the property.

Laporte said, at some time the office turned into a dwelling unit. There were two kitchens when Mr. Raponi purchased the lot. Laporte said there are no permits for any of this work that has been done.

Chris Farrell, Planning Board, asked at what point does the town allow a single-family home to become a two-family home. He feels this will open the gateway for other similar projects. Laporte stated that one of the concerns of the Planning Board when considering the accessory dwelling bylaw was the property should be owner occupied (less problems with owner occupied vs. absent landlord), which is why the applicant is asking for a variance.

Chm. Berger asked when the second kitchen was put in. Atty. O'Connor said no information was found, but felt that while the zoning is R-40, the locus does not have a residential feel, but more of a business district or a village business district.

Vincent Mackenzie, abutter (owns medical building), said Mr. Raponi in the past used the property as an office. Mr. Mackenzie allowed Raponi to put in a curb cut which Mr. Mackenzie says was abused by tenants; and the tenants raised other problems as well. Since Mr. Raponi moved, the property has not been maintained. Police have been at the area as well. Mr. Mackenzie said the property had three (3) tenants at one time.

Chm. Berger talked about the need for a hardship based on soil conditions, topography, or shape in order to be entitled to a variance, and stated this was not the case here. Nor was this a grandfathered two family home.

Chm. Berger suggested applicant withdraw without prejudice. The applicant agreed.

Riordan MOVED and SECONDED by Sawyer to allow applicant to withdraw without prejudice. VOTE 5-0.

New Business:

Hideaway Village Condominium Association – Continued discussion with Mr. Horne, General Manager of HAVCA

Chm. Berger received email requesting to continue the matter for discussion at the next meeting.

Priestly MOVED and SECONDED by O'Brien to continue Hideaway Village Condominium Association discussion to 11/16/11 under New Business.

Other business

Chm. Berger emailed Open Meeting Law documents and stated mail he receives (CCC hearing notice of NStar transmission line 11/9/11 & CCC hearing notice of New Wind Project 11/10/11) should not be discussed unless on the agenda.

Public Comment

Chris Farrell requested that when issues of bylaws being poorly worded arise during Board meetings, the Board should bring the matters to the attention of the Planning Board.

Jim Mulvey said that while the exit to Cumberland Farms on Main Street is well lit, he has trouble finding the entrance. Mr. Paivia, the Cumberland Farms representative, stated he would look into the matter.

Adjournment

Priestly MOVED and SECONDED by Sawyer to adjourn. Meeting adjourned at 9:00 pm.
UNANIMOUS VOTE.

Respectfully submitted,
Lisa Groezinger, sec.