

Town of Bourne Zoning Board of Appeals

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

April 17, 2019

I. Call to order

Chair Amy Kullar called to order the meeting of the Zoning Board of Appeals at 7:05 PM on April 17, 2019. Ms. Kullar explained under M.G.L., Section 40A, all appeals must be filed within 20 days of the filing of the decision with the Town Clerk.

Ms. Kullar announced the meeting was being recorded and asked if anyone in the audience was recording the meeting to please acknowledge such to the board. She noted Carol Mitchell was recording the meeting.

Members Present: Amy Kullar, Wade Keene, Harold Kalick, Associate Members Kat Brennan and Chris Pine.

Members Excused: John O'Brien, Tim Sawyer and Deb Bryant.

Also Present: Roger Laporte, Carol Mitchell, Thomas Donovan, Paul Cusick, Mary Cusick, Janice Schroeter, Walter Brady, Martin Rayner, Brian Curran and Haley Gabourel.

Amy Kullar will be writing the Decisions.

II. Agenda Items

1. Approval of Minutes – Ms. Kullar entertained a motion to approve the minutes of the March 20, 2019 meeting. **Ms. Brennan moved, Mr. Keene seconded to approve the minutes of the March 20, 2019 meeting.** With no discussion, the motion carried. 4-0-1. Mr. Pine abstained.

Sitting on the hearings; Amy Kullar, Wade Keene, Harold Kalick, Chris Pine and Kat Brennan.

2. 17 Buttermilk Way, Variance V04-2019– sought under M.G.L., Ch. 40A, Sec. 10 and from the Bourne Zoning Bylaw from Section 2457 for a departure from the requirement of table 2456 to alter a preexisting, non-conforming, single-family structure and such departure will be over the 10% allowable Gross Floor Area.

Materials – Public Hearing Notice, Abutters List, Petition for Variance, Assessor’s Map, Revised Gross Floor Area Calculation Worksheet, Revised Assessor’s Card, Shiretown Proposal, Site Plan, Google Directions, Sun Room / Open Deck Plan, Frame and Footing Plan, Four Seasons Proposal, DWD Engineering Plan and Forte Report.

Martin Raynor and Janice Schroeter addressed the members. Mr. Raynor described the proposed project.

Ms. Kullar discussed the Massachusetts standards for a Variance. She discussed criteria that must be met and doesn’t think this project meets all of the criteria.

She asked Mr. Laporte why a Variance is needed for the project. Mr. Laporte explained the board is allowed to grant a Special Permit up to 10% over the allowable GFA. This project is asking for 7% beyond that. After a brief discussion, Ms. Kullar stated she doesn’t see how this project can be approved. She suggested continuing the matter to allow the applicant to amend their application to show how the soil conditions, shape, or topography of such land is only affected on this parcel and not the rest of the zoning district.

Board Comment – Ms. Brennan questioned whether the applicant would consider reducing the size of the project; preventing the need for a Variance. The representative agreed.

Mr. Raynor asked for further explanation of Variance requirements. Ms. Kullar elaborated further. A brief discussion ensued.

Mr. Keene suggested ways to reduce the GFA.

Public Comment – None.

Ms. Kullar entertained a motion to allow the application to be withdrawn without prejudice. **Mr. Keene moved, Mr. Pine seconded to allow the application to be withdrawn without prejudice.** The motion carried. 5-0-0.

3. 11 Bell Buoy Rd., Special Permit Supportive Finding **SP05-2019** sought under M.G.L., Ch. 40A, Sec. 9 and the Bourne Zoning Bylaw Sections 1331 and 2320 that the alteration/demolition and construction of a new non-conforming garage structure is not substantially more detrimental than the original structure to the neighborhood.

Materials – Public Hearing Notice, Abutters List, Application for Supportive Finding, Assessors Card, Building Plan, Site Plan of Record, MapQuest Directions, Letter of Opposition from Thomas and Anne Smith and Section 2450 Gross Floor Area Worksheet.

Tom Donovan addressed the members and described the proposed project. He feels only a Supportive Finding is required; not a Special Permit.

Ms. Kullar announced she received a letter of opposition from abutters Thomas and Anne Smith. She read their objection into the record. A discussion ensued.

Ms. Kullar asked whether the applicant would consider changing the design of the proposed roof to make it flat. Mr. Cusick, the property owner, feels changing the pitch of the roof will make the structure more detrimental to the neighborhood. Ms. Kullar agreed.

Ms. Kullar stated she researched Massachusetts Law to see if one pertained to the right to a view and as far as she could determine, there isn't one. She explained therefore it is her belief no common law right to an unobstructed view, over an adjoining property in Massachusetts exists and her understanding that the board follows the common law rule.

Board Comment – Ms. Brennan opened a brief discussion regarding the Smith's opposition letter. Further discussion transpired regarding revising the pitch of the proposed garage roof.

Public Comment – None.

Ms. Kullar entertained a motion to close the public hearing. **Mr. Kalick moved, Mr. Keene seconded to close the public hearing.** With no discussion, the motion carried. 5-0-0.

Ms. Kullar entertained a motion. **Mr. Kalick moved, Ms. Brennan seconded to grant Supportive Finding SP05-2019 sought under M.G.L., Ch. 40A, Sec. 9 and the Bourne Zoning Bylaw Sections 1331 and 2320, that the alteration/demolition and construction of a new non-conforming garage structure is not substantially more detrimental than the original structure to the neighborhood per plans and specifications as submitted to the Town Clerk on 3/26/2019.** With no further discussion, the motion carried. 5-0-0. Ms. Kullar – yes, Mr. Keene – yes, Mr. Kalick – yes, Ms. Brennan – yes, Mr. Pine – yes.

4. **7 Studio Dr**, Variance **V06-2019**– sought under M.G.L., Ch. 40A, Sec. 10, from the Bourne Zoning Bylaw Section 2500 to exceed side setback. The proposed addition would have a final side setback of 4.4 ± feet and 3.3 ± feet.

Materials – Public Hearing Notice, Abutters List, Petition for Variance, Assessor's Card, Site Plan, Google Directions, Gross Floor Area Calculation Sheet, Non-Conforming Lot Coverage Worksheet, Letter of Support from Timothy Gibbs and Site Photographs.

Brian Curran and Haley Gabourel addressed the members. They submitted a letter of support from abutter, Timothy Gibbs. They described the proposed project which is to construct a sitting area and an accessible bathroom for their elderly aunt who lives in the household.

Ms. Kullar asked where the existing bathroom is located and questioned why it couldn't be renovated. Ms. Gabourel stated the existing bathroom is on the first floor but because the house is small, they'd like to give their aunt additional space. She noted that the town has the home listed as a four-bedroom dwelling with two bathrooms; however, it is actually a three-bedroom dwelling with only one bathroom.

A brief discussion transpired regarding the proposed location of the addition and its proximity to the adjoining property.

Ms. Kullar discussed the Variance requirements. She stated she is not sure that the topography of the lot, although awkward, is unique to that parcel in the neighborhood. She also stated she is not comfortable with the proposed final setbacks.

Board Comment – Ms. Brennan opened a brief discussion regarding the location of the shed on the adjoining property.

Ms. Kullar asked the building inspector to clarify the reason a Variance is needed for this project. Mr. Laporte explained the need for the Variance is because the applicant is proposing to construct the addition closer to the property line than is allowed under the bylaw.

A brief discussion transpired regarding the topography of the lot. At the end of the discussion, Ms. Kullar stated she now feels the three requirements needed to grant a Variance have been met.

Mr. Keene discussed reducing the size of the proposed addition from 160 square feet to 120 square feet. After the matter was discussed, the applicant revised the existing plan to reflect the reduction in square footage.

Public Comment – None.

Ms. Kullar entertained a motion to close the public hearing. **Mr. Keene moved, Mr. Pine seconded to close the public hearing.** The motion carried. 5-0-0.

Ms. Kullar entertained a motion to grant Variance request V06-2019 pursuant to the revised plan submitted that evening. **Mr. Keene moved, Ms. Brennan seconded to grant Variance V06-2019, sought under M.G.L., Ch. 40A, Sec. 10, from the Bourne Zoning Bylaw Section 2500 to exceed the side setback. The proposed addition would**

have a final side setback of 6.4 feet and 5.3 feet. The motion carried. 5-0-0. Ms. Kullar – yes, Mr. Keene – yes, Mr. Kalick – yes, Ms. Brennan – yes, Mr. Pine – yes.

Old Business – None.

New Business – Ms. Kullar announced she will be amending the Variance application in the next month. She would like the Variance requirements noted at the beginning of the application to eliminate confusion with future filings. A brief discussion ensued.

Ms. Brennan asked about fellow member, John O’Brien. Ms. Kullar informed the board that Mr. O’Brien will not be in attendance for several meetings due to personal reasons.

Mr. Kalick asked for an update on the 165 Jefferson filing. Mr. Laporte announced the Planning Board will hear the matter the following week. The applicant must show a substantial change has been made to the original plan and the Planning Board must agree by all but one voting member; before the matter may be heard by the Board of Appeals. The ZBA must then agree with the decision of the Planning Board before they may review the merits of the new application.

Public Comment – None.

III. Adjournment –

Mr. Kalick moved, Ms. Brennan seconded to adjourn the meeting. With no discussion, the motion carried 5-0-0. The meeting adjourned at 7:49 PM.

Minutes Submitted by: Carol Mitchell