

# ***Town of Bourne Zoning Board of Appeals***

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

December 7, 2016

### **I. Call to order**

Chairwoman Amy Kullar called to order the meeting of the Zoning Board of Appeals at 7:00 PM on December 7, 2016. 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.

### **II. Members Present:** Amy Kullar, John O'Brien, Wade Keene, Timothy Sawyer and Harold Kalick.

### **III. Members Excused:** Associate Members, Kat Brennan and Lee Berger.

**Also Present:** Roger Laporte, Carol Mitchell, Barbara Higgins, Karen McDevitt, Richard Giesecke, Susan Giesecke, Scott Froman, Rhiannon Froman, Phil Austin, Jim Mulvey, Michael Stusse and Kelley Jason.

**Documents:** Agenda and documents pertaining to Special Permit, **2016-SP32** and Appeal of Building Inspector's Decision, **2016-A22**.

### **IV. Agenda Items**

#### **1. Approval of Minutes -**

Ms. Kullar entertained a motion to approve the minutes of the November 16, 2016, meeting. **Mr. O' Brien moved and Mr. Keene seconded to approve the minutes of the November 16, 2016 meeting as submitted.** With no discussion, the motion carried. 5-0-0.

*Sitting on tonight's hearings are Amy Kullar, John O'Brien, Wade Keene, Tim Sawyer and Harold Kalick. Ms. Kullar will write the Decisions.*

Informal Discussion on Pocasset Mobile Park – Ms. Kullar explained to the representative, Mr. Austin, that the board is unable to hear the matter because it doesn't meet the requirements under the Open Meeting Law. She asked the applicant to discuss with the Town Planner, Coreen Moore, the process he must follow in order to be heard by the Zoning Board of Appeals. Mr. Austin agreed.

Ms. Kullar informed the board that she will share an email from Town Counsel Troy regarding this matter.

Board Comment – None.

**2. 10 Lucia Lane** – Special Permit **2016-SP32**, Requesting a Special Permit per section 4120-4123 of the Bourne Zoning By-law, under M.G.L., Ch. 40A, Sec. 9, to convert existing basement space into an accessory dwelling.

Scott Froman addressed the board and discussed the proposed project. The applicant is seeking to convert his basement into a small apartment for his daughter. He referred to the submitted plan and discussed the layout of the proposed apartment.

Board Comment – Mr. Kalick asked whether or not an approval letter was received from the Board of Health with regard to the home's septic system; it wasn't included with the application. Mr. Froman stated when he built the home he planned on finishing the basement at some point and factored that in when building the septic system. He stated when he filed the application for this hearing, he checked with the Town and was told his septic system will accommodate the additional rooms and the information pertaining to that would be included in the board's package. Ms. Kullar stated it was not included. Mr. Laporte informed the board they can add a condition that requires Board of Health approval.

Public Comment – Abutter, Richard Giesecke, asked for an explanation of the term, accessory dwelling. Mr. Laporte explained that some towns refer to it as an in-law apartment; however, the Town of Bourne refers to it as an accessory dwelling unit because it's not just for an in-law, it may also be for a family member or caretaker. He added, when an applicant receives a Special Permit for the accessory dwelling, a specific person has to be named in the permit; in this case it's his daughter. Changing the name of the occupant would require permission from the Appeals Board and abutters would be notified of the request. A brief discussion ensued.

Mr. Giesecke also discussed concerns with regard to parking. He discussed the layout of his property and expressed concern that additional parking may be needed as a result of the accessory dwelling. He questioned where the occupant of the dwelling will park their vehicle. Ms. Kullar explained that the By-law requires parking to be either in a garage or on a paved surface. Mr. Giesecke described the layout of the applicant's driveway. He expressed concern that his property will be damaged because the applicant's driveway cannot accommodate additional vehicles; which would force occupants to park on the road or even on his property. Ms. Kullar acknowledged Mr. Giesecke's concern but doesn't feel it's relevant to the application being presented. She stated parking enforcement is not the ZBA's role. Mr. Laporte stated unless there are

signs posted that specifically prohibit parking on the road, parking on the road is allowed. A discussion ensued.

Mr. O' Brien noted there is no documentation in the filing that specifically names the occupant of the accessory dwelling. He explained that the By-law requires the name be listed in the motion and the applicant must understand that only the person listed may occupy the accessory dwelling; it can't be rented if the occupant leaves. Mr. Froman stated he understands the requirements. Mr. Laporte asked what his daughter's name is who will occupy the dwelling. Mr. Froman stated her name is Rhiannon Froman.

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

After a brief deliberation, **Mr. Sawyer moved to grant the application for a Special Permit for an accessory dwelling to Scott Froman of 10 Lucia Lane, Sagamore Beach, MA, for the intent of his daughter, Rhiannon Froman, to occupy said accessory dwelling, contingent upon the Board of Health's approval of the septic system due to the additional bedrooms, and that vehicles must be parked in the driveway and legal spaces. Mr. O' Brien seconded.** With no further discussion, the motion carried. 5-0-0.

**3. 0 Commonwealth Ave,** Appeal of Building Inspector's Decision **2016-A22**, request to appeal the Building Inspector's Decision under M.G.L. Chapter 40A, section 8. The applicant is appealing the Building Inspector's Decision that a lot has been merged for zoning and is contiguous and not separately buildable.

Ms. Kullar informed the representative that Mr. O' Brien and Mr. Kalick were not present at the initial hearing and questioned Mr. Laporte as to whether or not the matter could still be heard. Mr. Laporte stated in order to move forward, four board members need to be present. Attorney Michael Stusse stated although he previously submitted substantial material on the matter, there was never an actual hearing; the matter was continued. He feels that sharing the material with the two members who were not present at the initial hearing is sufficient enough to move forward. He stated he has a brief presentation and is comfortable with moving forward with Mr. Kalick and Mr. O' Brien hearing the matter. Mr. Keene concurred that the board continued the matter without conducting a hearing. Mr. Laporte stated the representative is allowed to begin the presentation from the beginning. Ms. Kullar asked Mr. Stusse to start again from the beginning.

Mr. Stusse addressed the board and referred to a map of a subdivision that was laid out in 1986; lots 1, 2 and 3. Lot 2 is located at 0 Commonwealth Avenue and lot 3 is

located at 55 State Hwy. He explained that the Ferretti family owned this property and divided it into its current configuration. Prior to the zoning changing to 40,000 sq. ft., the Ferrettis deeded lot 3 to the Ferretti Family Trust.

Mr. Stusse stated the board needs to decide whether or not the lot was in common ownership subsequent to the zoning change which would make them contiguous lots in common ownership. If that answer is no, then the board doesn't need to go further. If that answer is yes, the next issue is whether or not the lots merged for zoning purposes. Mr. Stusse feels the question of common control is answered by providing the Trust and the affidavit; which are attached in the filing.

Mr. Stusse feels the board would be doing a disservice to the community by expanding the commercial lot into the Residential District; whereas, allowing Mr. Jason to build his home on a 26,000 sq. ft. lot, would not cause harm to the residential community.

Mr. Stusse asked if the board was unable to reach a decision tonight, would they refer the matter to Town Counsel.

Mr. Laporte offered clarification as to why he made his initial decision. After reviewing all of the material Mr. Stusse has submitted, he is convinced that they are separate lots. Ms. Kullar agreed. After a brief discussion, the board was in agreement that the lots are separate. They thanked Mr. Laporte for the clarification.

Public Comment – None.

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

Ms. Kullar entertained a motion on the matter. **Mr. O' Brien moved to grant the request by the petitioner of 0 Commonwealth Avenue, to reverse the Building Inspector's Decision that the lot has not merged and is a separate buildable lot. Mr. Keene seconded.** With no discussion, the motion carried. 5-0-0.

**4. Old Business** – None.

**5. New Business** – Mr. Kalick opened a brief discussion with regard to rescheduling meetings when only one hearing is scheduled.

Ms. Kullar stated she emailed members a schedule for Decision writing.

The next meeting is tentatively scheduled to be held on December 21, 2016.

**6. Public Comment** – None.

**V. Adjournment** –

**Mr. O' Brien moved to adjourn the meeting. Ms. Kullar seconded.** With no further discussion, the motion carried 5-0-0. The meeting adjourned at 7:48 PM.

Minutes Submitted By: Carol Mitchell