

**Town of Bourne
Zoning Board of Appeals
Meeting Minutes
October 12th, 2022**

PRESENT: Chairman James Beyer, Vice Chairperson Chris Pine, John O'Brien, Harold Kalick, Wade Keene, Karl Spilhaus (Associate).

ABSENT: None

STAFF: Ken Murphy

PUBLIC: Zachary Brzezinski, Drew Hoyt, Jim Pavlick

Chairman Beyer called the meeting to order via Zoom at 7:00pm.

Approval of Minutes: 8.3.22, 8.17.22, 9.21.22

Mr. Keene makes a Motion to Approve the Minutes. Mr. Pine seconds the motion.

Roll Call Vote as Follows: Mr. O'Brien – YES. Mr. Keene – YES. Mr. Pine – YES. Mr. Spilhaus – YES. Chairman Beyer – YES.

The Motion Passes.

Public Hearing for Special Permit No. 2022-SP14: *24 Winston Ave. Kathleen Daddona. Attached Accessory dwelling unit for family member.*

Zach Brzezinski of Bracken Engineering introduces himself as representative of the project. Mr. Brzezinski shares his screen with the audience via Zoom. He states that he is speaking on behalf of the Daddonas. The accessory dwelling would be for their daughter who was injured in a car accident by a drunk driver in January 2022. In the weeks after this, there was a fire loss at the Daddona's daughter's apartment.

Mr. Brzezinski shares a blueprint of the proposed accessory dwelling. It is a one-bedroom unit, off the side of the existing house. It will be ADA wheelchair compliant. The project complies with all existing setbacks and meets lot coverage requirements. A Title 5 inspection was done, and the septic failed. Therefore, a new septic must be installed.

Chm. Beyer asks if the new septic has been designed. Mr. Brzezinski replies that it has and that it is on the plans sent to the Health Department for approval. It has not been approved yet but there has been a preliminary review.

Mr. Brzezinski continues that there is parking on site and all setbacks are met. It is in harmony with the rest of the neighborhood and it is a small addition to the house. The intent is to turn this accessory dwelling into a garage once it is no longer needed.

Mr. O'Brien states that they will need the name of the person moving into the accessory dwelling. Mr. Brzezinski names Emily Dadonna as the individual.

Chm. Beyer relates that there will be a three-year limit on the accessory dwelling, after which it must be reapproved for accessory dwelling use. It would also be under the condition of the septic being approved. The board members agree that the septic is not approved yet.

Mr. Keene makes a Motion to Close the Public Hearing for Special Permit No. 2022-SP14. Mr. O'Brien seconds the Motion.

Roll Call vote as follows: Mr. Kalick – YES. Mr. O'Brien – YES. Mr. Keene – YES. Mr. Pine – YES. Chm. Beyer – YES.

The Motion Passes.

Chm. Beyer states that he will write the item.

Mr. Pine makes a Motion to Approve Special Permit #2022-SP14 subject to the following conditions:

- approval of the septic system with the Board of Health
- three-year time limitation

Mr. Keene seconds the Motion.

Roll Call Vote as follows: Mr. Pine – YES. Mr. Keene – YES. Mr. O'Brien – YES. Mr. Kalick – YES. Chm. Beyer – YES.

The Motion Passes.

Public Hearing for Amendment to Comprehensive Permit No. 08-18: *Cont'd from 9.21.22.*
230 Sandwich Rd. Chase Estates.

Attorney Drew Hoyt greets the board and informs them that Jim Pavlick is present as well.

Chm. Beyer states that they have their comments from the Town Counsel. Chm. Beyer says that they have sent some comments back to him. Next, the Town Counsel will be reaching out to Atty. Hoyt. He confirms that he has not yet spoken to the Town Counsel. Chm. Beyer states that the Town Counsel is authorized to speak directly with Atty. Hoyt, and the board will instruct the Town Counsel to do so in the next few days. The goal is for Atty. Hoyt and the Town Counsel to work through each other's comments.

Chm. Beyer says that a continuation would have to happen because the board cannot vote tonight. He asks Mr. Spilhaus when he will be returning from his travels abroad. Mr. Spilhaus states that he will be back November 5th. Chm. Beyer states that they would normally have a meeting on November 2nd and 16th. Chm. Beyer advises Atty. Hoyt to consider a continuation on November 16th, and they could get a vote on that date. Chm. Beyer asks the board if they have any comments regarding Chase Estates.

Mr. Kalick suggests a performance bond for this property. He states that it has been an eyesore and incomplete for quite some time. If this project starts, there should be an assurance that it will be completed. Mr. Kalick suggests that there should be a time-limit on the project as well. Chm. Beyer states that there is a three-year limitation in the permit from the time of board approval.

Chm. Beyer agrees that there should be a performance bond as well. He states that they will ask for that to be written into the permit draft.

Atty. Hoyt states that the previous permit had financial assurance and a performance bond as well, so it is no surprise.

Chm. Beyer begins to list his questions regarding the permit draft. He states that as it is written now, they are each asked to vote separately on twenty-six different waivers of conditions. Chm. Beyer says that he does not want to do that. Instead, he suggests they go through each waiver like a block and vote on them. He asks for any objections, and there are none.

Chm. Beyer then states that he thought that the board had seen a project eligibility letter from Atty. Hoyt. He asks if there was one in the notebook he submitted.

Atty. Hoyt answers that they are here on an amendment to a project that was approved under a project eligibility letter a long time ago for thirty-two units. Chm. Beyer states that they will want to refer to that letter, but he cannot find it. Atty Hoyt says that they can obtain a copy of that letter for the record.

Mr. Kalick asks for clarification regarding the twenty-six waivers. Chm. Beyer clarifies that they will go through the waivers one by one and see if there are any objections. Once that is done, they will either solve the objections or vote on it.

Mr. Pine suggests that after all are gone through, they could decide if they will vote on them like a block or vote individually. Chm. Beyer agrees.

Chm. Beyer describes the voting process the board used for a comparable project. He says they voted on them like a block after discussing each item.

Chm. Beyer says they need to get Chris Heath in for a performance bond. There were some questions regarding blasting, but Chm. Beyer does not believe that any blasting will be done, so that may or may not be relevant. There was also a question about how many occupancy permits units could be issued prior to the sale of a certain amount of units. Chm. Beyer suggests that Atty. Hoyt and Chris figure out. He believes it is about verifying that enough of the infrastructure is constructed and that people would have beneficial use of the units which already have the occupancy permits.

Mr. Kalick brings up another project from the past in which affordable housing units were not constructed until the end, and then asked to reduce the total number of affordable housing units. Chm. Beyer states that there is language in the comprehensive permit that addresses Mr. Kalick's point. Chm. Beyer asks what percentage of the units will be affordable housing. Atty. Hoyt answers 25% through the New England Fund.

Atty. Hoyt asks for clarification on procedure going forward. He recaps that he will have some conversations with the Town Counsel, and then have a draft ready by the November 16th meeting. Atty. Hoyt asks if the vote could happen at this meeting. Chm. Beyer states that he hopes the board can vote on it then. Atty. Hoyt recaps that the vote may be in block fashion after some discussion. Chm. Beyer confirms that they will go through the waivers and conditions item-by-item.

Chm. Beyer says it will be a long meeting. Mr. Kalick asks if they can refrain from scheduling anything else that day. Chm. Beyer says he will talk to Ann about that.

Chm. Beyer suggests a continuance. Atty. Hoyt agrees.

Mr. O'Brien makes a Motion to Continue the Public Hearing for Amendment to Comprehensive Permit No. 08-18 on November 16th, 2022. Mr. Kalick seconds the Motion.

Roll Call Vote as Follows: Mr. Pine – YES, Mr. Keene – YES, Mr. O'Brien – YES, Mr. Spilhaus – YES, Chm. Beyer – YES.

The Motion Passes.

New Business:

Mr. O'Brien inquires regarding Chm. Beyer's knee replacement. Chm. Beyer informs him that he is doing well. Mr. O'Brien asks if they will be doing the 26th for the next meeting. Chm. Beyer states that there is nothing on the agenda for the 26th so it is unlikely they will be meeting.

Old Business:

Chm. Beyer shares his screen and shows a letter regarding an accessory dwelling at 6 Wolf Rd. Chm. Beyer wrote the decision on it. He states it was turned back by the Town Clerk. It was turned back for what the Town Clerk said was wrong information on the decision. First, the applicant's name was spelled wrong, which Chm. Beyer takes responsibility for. Second, the LC number is wrong, and third the parcel number is wrong. Chm. Beyer states that he checked all these things against the original application and the information on the application is wrong. Chm. Beyer states that Ann asked him to change the decision, note that it was an amendment and send it back. Chm. Beyer asks the board if anyone has a problem with him changing the decision and then resubmitting it with the correct information. No one objects.

Mr. Kalick brings up a letter that they received today from Chm. Beyer. Chm. Beyer states that they voted against an addition on Hawes Rd in the past. It was an addition that was like a greenhouse to their back deck, and it was going to be a couple feet off the property-line and they voted it down. The applicants have appealed that decision and approached the Town Counsel. They have asked if the board would consider an alternate proposal from them. The Town Counsel states that he has seen a plan that moves the addition to the back of the house so it wouldn't infringe on the setbacks. The Town Counsel suggests that they meet in executive session to review the new proposal. They would not be able to vote on it then, however once it was reviewed they could reopen the hearing on it and vote to approve it. Chm. Beyer expects that it would be at 6pm either on the 2nd or the 16th of November.

Mr. Kalick states that the applicants are threatening a lawsuit, and the town does not want to defend it. Mr. Kalick says that this has happened in the past, and he finds it offensive that the board voted it down and because of a lawsuit the town lets them do what they want. Once something is voted down, you're supposed to wait two years, and if everyone decides to sue the town when the board makes a decision, there is no point to having a board.

Mr. Pine says that it could be an assumption that the town would prefer not to defend it, and that this is now a new proposal.

Mr. Kalick states that they voted it down because it was only a couple feet away from the lot line. They are supposed to wait two years.

Mr. Pine states that the lot coverage is fine but the new proposal has an addition that meets an existing non-conforming setback.

Chm. Beyer states that they should have Ken meet with the Town Counsel to see if this is a fully conforming proposal that only requires a building permit.

Mr. Spilhaus states that it is wrong that someone will threaten to sue the town as a form of intimidation. Mr. Murphy states that these threats are a normal practice and he gets these threats every week.

Mr. O'Brien points out that at the beginning of every meeting, Chm. Beyer informs the applicants how they can follow up, but a lawsuit is not the way. Many of people have disagreed with the board in the past. If they don't like the decision, they can turn it over to the land court or district court. Mr. Pine states that in the executive session they should be able to get some of these questions answered by the town attorney.

Mr. Kalick says that at the last executive session, the selectmen were present and made the decision for the ZBA. Chm. Beyer says that it will not be like this time because there will not be any assemblymen there. The board will discuss now if they want to have the executive session. Chm. Beyer states that if it was the same proposal, he would not want to have an executive session. However if the new proposal is acceptable, they have nothing to lose.

Chm. Beyer suggests that they sent the proposal to Ken to see if a permit can be pulled and then decide if they must have an executive session or not.

Adjournment

Mr. Kalick makes a Motion to Adjourn, seconded by Mr. Keene.

Roll call vote as follows:

Mr. Pine – YES, Mr. Keene – YES, Mr. O'Brien – YES, Mr. Kalick – YES, Chm. Beyer – YES.
The Motion Passes.

With no further business before the Board, the meeting was adjourned at 7:45PM.

Respectfully Submitted,
Ina Sullivan