

Town of Bourne
Zoning Board of Appeals
Meeting Minutes
July 6, 2022

PRESENT: James Beyer, Chris Pine, John O’Brien, Harold Kalick, Wade Keene, Karl Spilhaus (Associate)

STAFF: Ken Murphy, Pat Nemeth

PUBLIC: Peter Turowski, Drew Hoyt, Tom Pappas, Roger Forget, Kevin Klauer, Christopher Kirrane, Albert Shultz

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

Approval of Minutes: 4.6.22, 5.4.22, 5.18.22

Mr. Keene made a Motion to Approve all three, seconded by John O’Brien.

Roll call vote as follows: Vice Chairperson Pine – YES, Mr. Keene – YES, Mr. Kalick – RECUSED, Mr. O’Brien – YES, Chairman Beyer – YES.

The Motion Passes.

Public Hearing for Special Permit No. 2022-SP07:

Continued from 5.18.22. 31 Buttermilk Way, Buzzards Bay. Turowski2 Architecture, Inc. of 220 Union Street, New Bedford. For 10% above allowed GFA and Lot Coverage calculations.

Peter Turowski of Turowski2 Architecture introduces himself as the representative of the project. He states that during the last meeting, the ZBA had not received the GFA sheet from the Town Planner, so the application submitted in April could not be acted upon. The application submitted in April was for supportive finding for altering a pre-existing non-conforming structure and a special permit for over 10% of the max gross floor area.

Mr. Turowski states that his company had observed a number of projects in the neighborhood that had been permitted based on assessor’s records to not include the enclosed area below the main floor in a flood zone. Mr. Turowski states that his company requested permits for some of the aforementioned properties and the Town was unable to produce them. Mr. Turowski then met with the Town Planner Jennifer Copeland and reviewed 38 Buttermilk Way and found that it was approved under a variance. Mr. Turowski states that he now believes that his position is to withdraw his previous application and submit a variance application based on the new information provided.

The Board discusses the logistics of Mr. Turowski withdrawing his application for a special permit and applying as a variance, including that a new application would need to be readvertised.

Mr. Turowski inquires if the board could vote on the variance at the current meeting, but Mr. O'Brien states that this meeting was advertised as a special permit and not a variance. Chm. Beyer adds that if the board was to vote, he does not believe that they would be permitted to approve because it is in excess of the 10% under a special permit.

Mr. Turowski inquires if his application for supportive finding could be heard at this session, but Chm. Beyer informs him that the board will review his application for supportive finding and variance at the same time.

Chm. Beyer asks Mr. Turowski if he wishes to withdraw his application, and Mr. Turowski states yes, assuming that the special permit would not be approved given the Town Planner's calculation of the GFA, including the garage.

Chm. Beyer gives no representations of whether the board would approve the special permit or not and asks Mr. Turowski if he would like to withdraw his application.

Mr. Turowski asks if the board could give it some discussion before he makes his decision. Chm. Beyer states that the board is able to approve a maximum of 10% over the allowed area, and this is in far excess of that as the way it stands right now. Because of this, Chm. Beyer does not see a way they could approve a special permit. Mr. O'Brien echoes Chm. Beyer's point and reiterates that the board cannot exceed the 10%.

Mr. Turowski then states that the owner would like to withdraw the application.

Mr. O'Brien made a MOTION to Accept the Withdrawal of the Special Permit No. 2022-SP07, seconded by Mr. Pine.

Roll call vote as follows:

Vice Chairperson Pine – YES, Mr. Keene – YES, Mr. Kalick – YES,

Mr. O'Brien – YES, Chairman Beyer – YES.

The Motion Passes.

Public Hearing for Amendment to Comprehensive Permit No. 08-18:

Continued from 5.18.22. 230 Sandwich Rd. Chase Estates.

Attorney Drew Hoyt introduces himself as a representative of the applicant.

Chm. Beyer inquires about the status of a letter sent, which was a response to the peer review. Chm. Beyer's inquiry is in regards to whether the letter was withdrawn or not. Chm. Beyer states that Mr. Pappas wanted Atty. Hoyt to withdraw the letter. Atty. Hoyt states that he is unaware of this communication and believes that the letter still stands.

Atty. Hoyt updates the ZBA on what is being done in response to the peer view. The main recommendation of the peer reviewer involves the drainage report and calculation. In response to this, four test pits were conducted, and found that there was no ground water at any elevation that would be of concern. In addition to this, some other technical recommendations by the peer reviewer are being completed as well and will be submitted by 7/8/22.

Atty. Hoyt also informs the board that the engineer for the project is working on revisions to incorporate the most significant changes to the plan, which includes a pump that will be needed for this septic, and a generator so that this plumbing will work in a power outage. This is being added to the plans along with a zoning table.

Atty. Hoyt then discusses other matters in which they disagree with what the peer reviewer is recommending. The first item is to redo the traffic study based on summer traffic conditions. Atty. Hoyt claims that they do not think that this is warranted or would be helpful. The second item involves the requesting of details from the peer reviewer that Atty. Hoyt claims are construction level details, and not necessary for permits. Atty. Hoyt requests feedback from the board regarding this matter. Finally, Atty. Hoyt asks the board for clear on a pathway to a vote on this project.

Mr. Pine states that the board must rely heavily on the expertise of the peer reviewer, because the additional information he is recommending could be significantly relevant. Mr. Pine states that it would make him feel more comfortable to receive more information as recommended regarding the traffic study because Sandwich Rd. is a known area for traffic issues. Mr. Pine cites a citizen's petition for a traffic light in the area and snarled traffic in the summer including accidents.

Atty. Hoyt claims that when one reads through the peer reviewer's comments and the traffic study, it is clear that the development will not significantly increase or impact the traffic on Sandwich Rd. Atty. Hoyt states that the traffic study states that there won't be safety concerns due to the project. However, the peer reviewer does indicate that traffic on Sandwich Rd. is heavier in the summer, and because of this, the gaps in traffic will be smaller. Because of this, the peer reviewer speculates that this may cause residents of this

development to drive unsafely. Atty. Hoyt argues that the traffic study does not show this to be the case at nearby developments, and that safety rates from the area are better than average for the district. Because of this, Atty. Hoyt states that having the traffic study redone to show that the gaps will be smaller in the summer is not relevant to the project, and that the project will not make pre-existing traffic any worse. Atty. Hoyt states that the peer reviewer's comments are aimed at the driving conditions for future residents, and is not a basis to deny the project.

Chm. Beyer argues that it would be irresponsible of the board to approve a project that does not consider the full impact of traffic on Sandwich Rd., especially if there is an accident and summer traffic conditions were not part of the traffic study.

Tom Pappas then states that the traffic engineer picked the date and times of the traffic study because that was worst case scenario for accidents. Mr. Pappas argues that the traffic engineer specifically stated that when there is more traffic on the road, it is much safer.

Chm. Beyer argues that Mr. Pappas' point is not relevant. Chm. Beyer states that it is not unreasonable to ask what the impact will be when there are an additional 26-36 cars on the road, in an already very traffic heavy situation.

Mr. Pine states that Mr. Pappas and Atty. Hoyt's claim might be true, and what the board is trying to do is make sure that this is the right call. If the peer reviewer wanted that additional information, the board should rely on this expertise.

Roger Forget, Superintendent of Upper Cape Technical School, which is an abutter to this project, agrees with Chm. Beyer and Mr. Pine's calls to look more closely at this issue, citing numerous accidents as well as a fatality directly in the area.

As to the matter of the level of details in the plan, Chm. Beyer states that he feels strongly that the comprehensive permit stands as a basis of an agreement between the city and the developer. Anything that is raised in the review process should be included in the plans that are included with the comprehensive permit. However, Chm. Beyer states that he is willing to review details on an item-by-item basis, citing that some details requested may not be relevant. However, if the peer reviewer is highlighting certain details that need attention, it should be on the plans that are approved via the comprehensive permit.

Mr. Pine adds that the board has recently reviewed another project in which they required a lot of details to be finalized before the permit was issued, and that answered a lot of questions and concerns for the community and abutters. Mr. Pine states that many of these details will need to be finalized at some point, and it will make the board's decision to sign off the permit easier if done now. In addition to that, there are certain elements

such as a geotechnical review that Mr. Pine would feel more comfortable if these details are addressed before the permit is issued.

Atty. Hoyt addresses Mr. Pines concern of the geotechnical review being completed before the permit is issued, and states that the peer reviewer anticipates that the designs will be compatible with current plans and that the geotechnical report can be provided post decision and prior to construction. This is because the analysis must be based on soil borings once the site has been graded.

Mr. Pine questions what would happen if the geotechnical findings were that significant that it changed the project significantly.

Atty. Hoyt states that the houses' location have been moved to the top of the hill and are no longer located on the slope of the hill. Atty. Hoyt says that the stabilization methods proposed by the engineer are sufficient to hold the slope in place, and that the slope proposed is within limits set forth in towns subdivision regulation.

Chm. Beyer emphasizes that none of them present are engineers, and that the engineer hired is the person with the expertise they must rely upon. A discussion between Chm. Beyer, Atty. Hoyt, and Mr. Pappas continues in which frustrations about the progress of the project are expressed. Chm. Beyer reinforces that the board is asking for a complete set of plans, and if the peer reviewer expects to see something, the board will expect to see that in the plans that they approve. Chm. Beyer recommends that they do the additional traffic study and reiterates what he would like to be see in the details of the plan.

Mr. O'Brien, Chm. Beyer and Mr. Pine discuss the technicalities of the geotechnical study and all agree that it should be done post permit if that is what the peer reviewer advises.

Atty. Hoyt, Mr. Pappas, and Chm. Beyer discuss logistics and disagreements about the need for a summer traffic study. Chm. Beyer indicates that all they need is a few days of data from summer traffic along Sandwich Road, and they will attempt to get the peer reviewer to complete this in fewer than three months.

Mr. Kalick inquires regarding the DOT's involvement in this project, and Chm. Beyer explains that the DOT's only issue is the curb turning radius and left turn lane condition.

In conclusion, Chm. Beyer recaps the main outstanding issues: the traffic study and plan details. Mr. Pine states that the comprehensive permit draft should be ready by the next meeting. Chm. Beyer inquires about the plans that Atty. Hoyt spoke of at the beginning of the meeting that would be submitted by 7/8/22. Atty. Hoyt clarifies his comments and says that whatever they can submit to the peer reviewer by 7/8/22 will be ready in time

for the 7/20/22 meeting. However, because of the new plan details that the board is requesting, Mr. Hoyt expresses doubt that they will be ready to submit to the peer reviewer by the 7/8/22. The board and Atty. Hoyt then discuss whether they should meet at the 7/20/22 meeting or hold off until the 8/3/22 meeting when all the plan details are complete. Atty. Hoyt asks for clarification on how the details of the plan will be gone through item by item, and Chm. Beyer states that they will do that during the comprehensive permit review.

Vice Chairperson Pine makes a MOTION to Continue the Public Hearing for Amendment to Comprehensive Permit No. 08-18 until August 3rd, 2022. Mr. Keene seconds the motion.

Roll Call Vote as follows; Mr. Keene- YES, Mr. Kalick- YES, Mr. O'Brien- YES, Vice Chairperson Pine- YES, Chairman Beyer- YES.
Public Hearing Passes.

Public Hearing for Special Permit #2022-SP05: *Cont'd from 5.18.22. 70 Gilder Rd. Brian and Gail Kennedy. To construct an addition 6.3' from the property line to a non-conforming structure.*

Atty. Kevin Klauer introduces himself as a representative of the project. Atty. Klauer states that his party came before the ZBA previously and revised their plans following the last hearing. Atty. Klauer received the review back from the Town Planner that day (7/6/22), which had an open question in regards to an issue with the existing garage and a complaint from an interested party. Atty. Klauer states that because they just received word of these issues that day, they would like to request an additional continuance before the board renders a decision.

Mr. Pine poses a question regarding the GFA. It appears that the lot coverage changed within the 10% over the lot coverage allowance. Atty. Klauer states that the intent is for the lot coverage to be 21%, which does not dip into the 10% over GFA for a lot this size. Atty Klauer says that there has been some changes to the footprint but the footprint has reduced, not expanded, so he suspects there might have been a bad number provided in the calculations. Chm. Beyer asks for clarification if this application is for excess area in either GFA or lot coverage. Atty. Klauer confirms that it is not.

Mr. O'Brien and Atty. Klauer discuss when Atty. Klauer would like to come before the board and decide that the 8/3/22 hearing would be the best date to continue this hearing.

Mr. O'Brien makes a MOTION to Continue the Public Hearing for Amendment to Special Permit #2022-SP05 until August 3rd, 2022. Mr. Keene seconds the motion.

Roll Call Vote as follows; Vice Chairperson Pine- YES, Mr. Keene- YES, Mr. O'Brien- YES, Mr. Kalick- YES, Chairman Beyer- YES.

The Motion to Continue the Public Hearing Passes.

Public Hearing for Variance #2022-V02: 55 Pasture Rd. Bourne. Request for 2 feet, 3 inches from the side yard setback requirement for a carriage house that has been constructed on the property.

Attorney Christopher Kirrane introduces himself as representative of the applicant. Atty. Kirrane states that the applicants had a professional survey done of the property, received a building permit to locate where they thought was fifteen feet from the property line to build the carriage house, only to find that the survey was done incorrectly. At its closest point, the carriage house is 12.3' from the property line. At this point, the carriage house is about 99% completed. In consultation with the building department, a variance is being requested. Otherwise, the applicant would be presented with a hardship in having to move the two-story carriage house which would be very cost prohibitive.

Atty. Kirrane states that there is one direct abutter who is impacted by the carriage house in which they have been in negotiations for several months and have come to a resolution. The applicants will give the abutters privacy and screening to address any of their concerns. Atty. Kirrane states that the applicants have written a letter of support for the project, in addition to providing their own attorney to appear before the board that evening. Atty. Kirrane states his belief that the board should be able to pass the variance for the following reasons: the lot is a unique shape, there is a substantial hardship in moving the carriage house, there is no derivation from the intent of the bylaw, the nearest structure is 100ft away from the carriage house, and finally the applicants are providing privacy and screening from the direct abutters.

Chm. Beyer announces that he will write the decision in place of Mr. Pine.

Mr. O'Brien states that they received two letters that day. Chm. Beyer asks to hear from Mr. Shultz.

Atty. Albert Shultz introduces himself as representative of Rocky Shore LLC, the direct abutter at 59 Pasture Rd. Atty. Shultz states that he provided the board with a letter from Rocky Shore LLC supporting the application for a variance. Atty. Shultz commends the applicants for a job well done erecting a vegetative barrier along the common boundary line. Atty. Shultz believes that the request for a variance is de minimus, and that they have an agreement with the applicant to provide this screening and possible driveway relocation to lessen the impact on the applicant's property. Atty. Shultz states that they are in favor and hopes that the board will grant the variance.

Mr. Murphy states that he has been back and forth with both owners for the last eight months, and that the abutters of 55 Pasture Rd have been unhappy for some time. The abutters requested that a generator and a fence be moved, and at the time they still were not happy. Therefore, Mr. Murphy wants to make sure that the abutters are happy with only screening if the variance is approved.

Atty. Kirrane states that as Atty. Shultz stated, the abutters are happy. Atty. Kirane says that based on the original survey, his clients had put a shed and generator over the property line and both of these items have been moved so they are no longer encroaching.

Mr. O'Brien states that from his understanding of the letters provided tonight, there is some adjustment to the driveway. Atty. Kirrane answers that there may be some adjustment to the abutters driveway because of where the trees are located. As the trees grow, it may interfere with their driveway, so the applicants have agreed to compensate the abutters if they need to relocate their driveway.

Mr. Pine asks if there have been any comments from anyone else in the neighborhood of Pasture Rd. Atty. Kirrane states that no one else has been impacted by the carriage house.

Mr. O'Brien makes a MOTION to Close the Public Hearing for Variance #2022-V02.
Mr. Keene seconds the Motion.

Roll Call Vote as follows: Vice Chairperson Pine- YES, Mr. Keene- YES, Mr. O'Brien- YES, Mr. Kalick- RECUSED, Mr. Spilhaus- YES. Chairman Beyer- YES.
The Motion Passes.

Mr. Pine makes a MOTION to Approve Variance #2022-V02. Mr. Keene seconds the Motion.

Roll Call Vote as follows: Mr. O'Brien- YES. Mr. Spilhaus- YES. Mr. Keene- YES. Vice Chairperson Pine- YES, Chairman Beyer- YES.
The Motion Passes.

New Business

Mrs. Nemeth announces that the chairman of the Planning Board would like to work on some amendments to the zoning bylaws, and one of those involves accessory dwelling units. The chairman of the Planning Board asked for a subcommittee (three members of the Planning Board) to work on this issue. Mrs. Nemeth volunteered for this subcommittee and further asked for this item to be taken to the ZBA.

Mrs. Nemeth states that she began to wonder what adjacent towns are doing regarding this matter. In looking at Falmouth, Barnstable, and Sandwich, Mrs. Nemeth was interested to find that all these jurisdictions in 2021 amended their bylaws, and all became a little less restrictive in providing opportunities for affordable housing. In a handout provided to the ZBA, Mrs. Nemeth broke down a table into three characteristics: physical characteristics, use characteristics and the approval process.

Mrs. Nemeth states that the Town of Bourne has very few physical characteristics, limited to one unit per lot. Other towns are similar but other towns have more detailed standards. Sandwich has a process by right approval if the accessory unit is for a family member and not for rent. This is similar to what Bourne does, Mrs. Nemeth states, not by right, but by approval by of the ZBA.

The Town of Bourne limits the accessory unit to a family member, and after three years, it must be renewed.

Mrs. Nemeth then turns to the board to hear a discussion and initial thoughts on the matter.

Mr. Spilhaus asks Chm. Beyer if the ZBA has the authority to weigh in on this issue and if it is advisable. This is because the questions will come before the board and could be prejudicial to their decision-making down the line.

Mrs. Nemeth defers to whatever the ZBA wishes to say or do regarding this matter.

Mr. Pine expresses a similar concerns about the board's role. He does not think that this would be something under their purview. However, as just an interested individual who has learned a lot about the town's zoning bylaws, revising the bylaws on this topic is important. It is also something that the Cape Cod Commission has been pushing for, and it is common knowledge that affordable housing is now a real problem on the Cape. Mr. Pine states that this is a viable solution that can make at least a small difference. However, his only concern in these policies is that there should be some limits placed on individuals who own multiple dwellings that are renting them out as short-term rentals. Mr. Pine restates that this is just his personal opinion on the matter.

Mr. Spilhaus reiterates his concern that anything the board members say here may prejudice their decision-making in a subsequent issue that comes before them.

Chm. Beyer agrees with Mr. Spilhaus. He states that this is in the purview of the Planning Commission.

Mr. Spilhaus states that his comment on the matter is that he would encourage the Planning Board to write the rules strictly so there are not many issues that can come before the ZBA.

Mr. Murphy states that they are in the process of making a lot of adjustments to future zoning bylaws regarding accessory dwellings, GFA, zoning, and lot coverage. Mr. Murphy says that hopefully by the end of summer or fall they will be addressing several items.

Mr. O'Brien states that it seems to him that in other towns, accessory dwellings do not seem to fit the meaning anymore, because there is so much written on renting them out.

Mr. Murphy agrees with Mr. O'Brien, and states that as of right now, Bourne does not allow renting, even though it does happen, it is not in the bylaws. Mr. Murphy states that this will be addressed in the future.

Mr. Keene asks the question if the Planning Board is attempting to make more affordable housing through accessory dwellings.

Mrs. Nemeth states that she believes the intent is to remove the restriction that limits the accessory dwelling to a family member and remove the three-year limit.

Mr. Keene says that the problem with not keeping the three-year limit is there is no policing of the accessory dwelling, so the owner could get the permit and essentially do whatever they want. Mr. Keene states that these properties should be policed in some way because if they are affordable housing, they should be affordable rents, and some owners could try to charge whatever they want.

Mrs. Nemeth agrees and states that no other ordinances define this as affordable rents, and there's nothing that addresses what Mr. Keene just brought up.

Mr. Murphy states that with this situation comes rental density. There will be a yearly inspection to verify what's going on. Because the town technically does not have rentals, there is no one policing the rentals. But when this does come about, there will be rental density, and someone will do a yearly inspection of these properties.

Mr. Pine asks if the town has any allowance for addressing short term rentals, such as Airbnb. Mr. Murphy answers that they do not address it because they do not have anything to enforce it. Once the town has that available, they will be able to go from there.

Mr. Keene wonders if after all these permits have been issued and the bylaw changes, will these permits change or will they remain the same. Mr. Murphy answers that the permits will change and then there will be inspections. He states that their bylaws are outdated and they are only trying to bring it up to speed. Mr. Keene then asks if the current accessory dwelling permits that have the three-year terms will be grandfathered in once the new bylaws go in effect. Mr. Murphy states that he believes that they would eventually conform to the new bylaw. But it will also be a discussion with people of the town of Bourne, and they will vote what they want to keep and what they don't want to keep.

Mr. Kalick states that he believes this will open a can of worms, and he hopes that the Planning Board takes into consideration all the ramifications of seasonal rentals. Mr. Kalick is not sure that this will actually help affordable housing, saying that he can imagine people with accessory dwellings would not want affordable housing on their property.

Mrs. Nemeth states that although she does see the positives to this issue, she also sees the risks. She says that she does not believe that they should relax their requirements if it is going to deteriorate single family neighborhoods.

Mr. Murphy adds that this will be tough, but at least they are moving forward and will have a discussion.

Old Business

None.

Adjournment

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

Roll call vote as follows:

Vice Chairperson Pine- YES, Mr. Keene- YES, Mr. O'Brien- YES, Mr. Kalick- YES, Chairman Beyer- YES.

With no further business before the Board, the meeting was adjourned at 8:35pm.

Respectfully submitted,
Ina Sullivan