

Town of Bourne
Zoning Board of Appeals
Meeting Minutes
August 17th, 2022

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

STAFF: Ken Murphy

PUBLIC: Mark Bartlett, Drew Hoyt, Jim Pavlick, Tom Pappas, Bob Crawford, Zachary Brzezinski, Dwight Looth, Greg MacPherson, Caroline MacPherson, Christopher Ellis

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

Public Hearing for Amendment to Comprehensive Permit No. 08-18: *Cont'd from 8.3.22. 230 Sandwich Rd. Chase Estates.*

Attorney Drew Hoyt introduces himself as representative of the project.

Chm. Beyer begins the hearing with a discussion of the responses related to the peer review. He states that they received a response from the peer reviewers at PSC to address the five unresolved issues. Three of these issues has to do with expanding the traffic study to contain summer driving conditions on Sandwich Rd. One issue pertains to parking on either side of the entry road of the proposed development. The final issue pertains to the engagement of a geotechnical engineer to design the riprap slope prior to construction.

Chm. Beyer asks for the status of the expanded traffic analysis. Atty. Hoyt replies that the traffic study is still in progress and hopes that it should be done in about a week. He estimates that they will need a month's time for the traffic study to be completed, peer reviewed, and then reviewed by the board. Chm. Beyer states that because Mr. Spilhaus has been at all of Chase Estates' hearings and Mr. Kalick has not, he will be one of the members required for a unanimous vote. However, Mr. Spilhaus will be away from September 2nd to September 21st. Chm. Beyer advises Atty. Hoyt to consider when he wants the vote to occur. Atty. Hoyt states that he will get back to the board about this issue.

Next, they discuss the riprap slope. Chm. Beyer and Atty. Hoyt quickly come to an agreement that they will not need to engage the geotechnical engineer until it is time to construct the riprap slope.

Chm. Beyer asks Mark Bartlett to address the issue on parking on the entry road of the development. Mr. Bartlett believes that no parking on either side is the best and safest way to go. However, he states it is up to the ZBA to make that decision. Mr. Bartlett relays that the fire department believes that if there was parking on only one side, the access would be

adequate. However, if there was parking on one side and there happened to be an accident, there would be a blockage, which is something that the fire department and the police cannot anticipate.

Atty. Hoyt states that it is foreseeable that occasionally, residents of the neighborhood will have guests over that outnumber their number of parking spots, even though each unit has a number of parking spots between either garage or driveway. When that happens, with no guidance regarding where to park, guests may park on either side of the road. However, there will be guest parking by the pool and in other locations. Atty. Hoyt believes that directing guests to park on one side of the road is a safer option.

Mr. Bartlett agrees that it is inevitable that there will be parties and events. He asks if there will be a homeowner's association, and Atty. Hoyt states that it will be a condominium association, so there will be the ability for the association to have rules and procedures. Mr. Bartlett suggests that if the board decides that parking on one side is acceptable, then the condominium association post signs and strictly enforce the rule. Mr. Bartlett also suggests that perhaps if guests have more than 20 cars for an event, the police and fire department must be made aware. He believes that the condo association is helpful because they can enforce rules and ensure compliance.

Chm. Beyer suggests that parking could be permitted on one side of the road for an event, but that parking would have to be approved by the condo association. If police presence was deemed necessary, the condo association could also make that happen.

Mr. Kalick states that it is the fire department who will make the final decision on whether or not there can be parking on the street. He also questions if there is any turn around at the top of the street for a fire engine. Finally he asks if there is enough room to back out of a driveway with cars parked on one side.

Chm. Beyer states that the fire department has reviewed the entry street. Atty. Hoyt states that the applicant submitted a plan to the fire department to determine if their largest vehicle could navigate the site. This plan was submitted with parking on the uphill side, or the right-hand side.

Chm. Beyer asks if the applicant has submitted these plans with the houses moved to the top of the hill. Jim Pavlick responds yes, and confirms that in the latest set of plans there was the fire truck turning movement. He states that some time ago he met with the Tim Leyden, the Town Engineer to discuss the road alignment and geometry. He states that Mr. Leyden agreed that the roadway, as it was designed, would be appropriate for parking on one side. He states that they also had discussions with the fire department regarding this matter, which is how they came up with the idea of parking on only one side of the street.

Atty. Hoyt discusses how the condo association could be involved. He suggests there could only be parking on one side of the street for events that receive permission from the condo association. Chm. Beyer asks if anyone has any objections to this.

Mr. O'Brien states that this could only be a recommendation to the condo association, but there is no way they can enforce it. He states that if they required no parking signs on one side, then the building inspector could enforce this. Chm. Beyer agrees. Mr. Pavlick states that if parking on the road becomes a nuisance, then the condo association can tow cars, which is a form of policing/enforcing this rule. Atty. Hoyt puts forth that sometimes having a condition in a permit is what allows the association to enforce rules.

Chm. Beyer states that the Town Counsel will have their review of the comprehensive permit complete by the beginning of next week. Chm. Beyer asks Mr. Pine to make sure that there is something pertaining to this issue in the comprehensive permit as a condition.

Mr. Kalick suggests that they get something in writing from the fire department regarding what they want. Chm. Beyer states that they already have the plans approved from the fire department. Mr. Pavlick asks if the plans Chm. Beyer is looking at include the parking spots occupied on the uphill side. Chm. Beyer states that it shows "No Parking" signs on the southern side. Mr. Pavlick asks if the travel path for the emergency vehicles is going into a parking zone. Chm. Beyer replies no, the emergency vehicles will be taking the right hand side up. Mr. Pavlick then asks if they have something in writing the fire department has approved it. Chm. Beyer replies that he believes they do, but he will check on it. He states that he remembers the approval, but he isn't sure if it references the drawing they are referencing.

Mr. Pine states that there are comments posted from the Fire Department dated October 19th, 2021. Chm. Beyer replies that he believes the problem with those comments are they are from the old plan. Chm. Beyer then recommends to Mr. Pavlick to take the current plans to the fire department and have them sign off on them, specifically with respect to the parking issue.

Mr. Keene asks if anyone knows if they added more parking at the entrance, for example when people drop off their kids at the busses or if they only going to use that one lane designated for parking. Chm. Beyer states that there is no additional parking shown at the bottom of the road. Atty. Hoyt replies that the space is constrained by the storm basin, so there was no room to add additional parking spaces. However, people could use the designated side of the street to park.

Mr. Keene asks if there was any way to widen the street at the entrance. Mr. Pavlick responds that the road entrance on to Sandwich Rd. is 24ft. The first 250ft of the street is 24ft wide, and then narrows to 20ft. Chm. Beyer states that it shouldn't be that hard to put a vehicle pull-aside lane on the north side of the street. Atty. Hoyt states that the constraint is the basin. Mr. Pine questions whether or not there was a provision made at the entrance for a pull-off area with reinforced pavement. Mr. Kalick adds that there was an original requirement of a spot for the post boxes and the postal worker's vehicle, because the postal service did not want to go up the hill. Tom Pappas states that the post office goes up the hill for all the surrounding neighborhoods and for the school and wonders why this development should be any different. Mr. Kalick states that if this in the permit, then he

would not want to be in violation of it. Mr. Pappas confirms that he will look into it. Chm. Beyer said that this is something they will note when they speak to the attorneys. Mr. Pavlick asks if every house will have its own mailbox. Mr. Pappas states that this was the intention and hopes to give each house their own mailbox if possible.

The board and Atty. Hoyt discuss when their next meeting will be. Because Mr. Spilhaus is returning from a trip on September 21st, the same night as the hearing, they are not sure that they will be able to vote. However, they will be able to go over the comprehensive permit draft and the traffic study.

Bob Crawford of the Bourne Water District asks to speak. He states that Chase Estates does not yet have approval from the Board of Water Commission for a water hookup. Chm. Beyer asks if there is any hang-up. Mr. Pappas replies that the hang-up is that he just spent a lot of money testing the water per Mr. Crawford. Mr. Pappas states that he hired a water testing company and had Mr. Crawford on the phone in order to make sure that they did everything that he required. Mr. Pappas states that he hired a water engineer and paid him to do a design. The engineer talked to Mr. Crawford and Mr. Crawford stated that he was not the engineer on record and his design wouldn't be considered. Then, Mr. Pappas states, the Water Commission requested more testing that the original testing didn't take into consideration. Mr. Pappas says that he was dumbfounded by the whole process.

Mr. Crawford responds that he is not going to get into an argument with Mr. Pappas over this. He states that the purpose of the fire flow test is to find out what the pressure drop is at Bosuns Lane if there is a fire on Sandwich Rd, because Bosuns Lane is the lower of the two pressures. Under the fire flow test conducted on behalf of Mr. Pappas, they took the pressure at the top of Bosuns Lane and flowed two hydrants at Bosuns Lane. Mr. Crawford states that Mr. Pappas' engineer based his decision on that drop, which was four pounds. Then, Mr. Crawford states they estimated the rise of the hill at 5ft from Sandwich Rd. to Bosuns Lane. Mr. Crawford states that it is common knowledge that the rise of that hill is not 5ft. He states that whatever Mr. Pappas' hired contractors did was not under Mr. Crawford's guidance and was obviously inappropriate. Finally, Mr. Crawford states that Mr. Pappas has a letter from the Board of the Water Commission stating exactly what they need, and if he doesn't want to produce it that's fine but he will never get a water hookup until it is completed.

Atty. Hoyt replies that the permit draft states that the project needs a hookup approval from the Water District, so there are certain things that need to be done. Chm. Beyer states that they will not get in the way of the Water District and that is a technical detail that they will work out.

Mr. O'Brien makes a Motion to Continue the Public Hearing for Amendment to Special Permit No. 08-18 on September 21st, 2022, seconded by Mr. Pine.

Roll call vote as follows:

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

The Motion Passes.

Public Hearing for Supportive Finding No. 2022-SF05: *Cont'd from 8.3.22. 4 Kennebec Ave, Pocasset. Christina Winterfeldt. Request to raze and rebuild a flood compliant dwelling in approximately the same area and decrease existing non-conforming GFA.*

Zachary Brzezinski of Bracken Engineering introduces himself as representative of the project. Mr. Brzezinski shares his screen via Zoom and recaps the details shared at the last meeting regarding the property and structure. The existing structure was built in 1929 on an undersized lot, and the owners are looking to rebuild due to the flood plain.

At the last meeting, the board asked for several things. The first was to show the existing structure's footprint in relation to proposed structure's footprint. Mr. Brzezinski shows this on his screen in a contrast of red and black lines. Mr. Brzezinski also states that they received a signed GFA sheet from the Town Planner. In the first meeting, the proposed structure was only 4ft from the abutters at 531 Circuit Ave, due to an existing structure at that location. In the revised plans, the proposed structure has been moved up 5ft closer to Kennebec Ave. He states that they moved the structure up as far as possible, but it started to impact the sight lines down Kennebec Ave.

As for the sight or shade impacts to 531 Circuit Ave discussed in the last hearing, Mr. Brzezinski states that they believe there will be none because there is existing growth that blocks that view. He restates a point from the previous hearing that the height of the proposed structure is due to flood requirements.

Regarding the special permit criteria, Mr. Brzezinski puts forth that the project is a vast improvement to vehicular and pedestrian flow because the current property as designed does not have any on-site parking and the new design will. There is no impact on utilities, there is a vast improvement on the natural environment through a new nitrogen reducing septic system. The proposed structure will have two bedrooms instead of three per the Board of Health. The proposed structure is also flood compliant and should withstand a flood event, therefore reducing impacts on the town and neighborhood. All the setbacks on the property are improved or maintained: 4ft to 9ft from the north, 0ft to 2ft on the side, and the remainder maintained. This proposed structure also reduces existing GFA and lot coverage. He states that they believe that they have met the criteria for the special permit.

Dwight Looth of 8 Kennebec Ave speaks. He states that his property is to the immediate left of 4 Kennebec Ave and declares that he is totally opposed to moving the house forward 5ft. He states that the sight line down Kennebec Ave would be completely disrupted with the rest of the neighborhood and there would be no front yard on this property.

Mr. Brzezinski shares his screen again. He states that they did have a conversation with the homeowners regarding this. Moving the house forward required them to rotate the front steps. Currently, the owners of 8 Kennebec have a view of Hen Cove through 4 Kennebec's

porch. Therefore, moving the house forward would increase the house massing in that view corridor. As a concession for this, the applicants proposed that they would remove the proposed stairs, measuring about 5ftx5ft. Without these stairs, the massing of the house would stay in the same approximate location as the current structure, which would allow the owners of 8 Kennebec to still have the same view of Hen Cove.

Chm. Beyer asks to see an image again. Mr. Brzezinski states that the proposed structure would be moved forward approximately 1.5 to 2ft in comparison to the current structure. Without the stairs, there is almost 7ft of no interference with the view corridor. In fact, it would improve the sightline down Kennebec.

The abutters at 8 Kennebec Ave ask to see where the front wall of the house would be. Chm. Beyer suggests that Mr. Brzezinski show the property line. With a visual, Mr. Brzezinski explains what the proposed structure would look like from the abutters' property with and without the stairs. Mr. Brzezinski also restates in a conversation with the abutters that the front porch would only be moved up about two feet. Mr. Looth questions why the property must be moved forward, and Mr. Brzezinski explains the complaint from another abutter with an existing setback of 4ft. In order to appease that complaint, they were forced to redesign the whole septic system through the back of the house. Mr. Looth states that they accept.

Greg and Caroline MacPherson, the abutters at 531 Circuit Ave speak. They state that they appreciate the changes that were made, but the setback of 9ft does not meet the required 12ft. Mrs. MacPherson claims that the shed at 4ft does not run the whole property, it is just a small shed. She suggests that they make some concessions on the size of the house. Mr. Brzezinski states that the size of the house is in harmony with the rest of the neighborhood, and with raising the house to be flood compliant, there are additional steps and internal equipment which is all taken into consideration. He points out that they have also reduced the house from a three-bedroom to a two-bedroom house. Mr. Brzezinski states that they are dealing with an undersized lot that was created prior to zoning, so they are asking for a supportive finding.

Mrs. MacPherson states that the homeowners do not seem to be making many concessions considering they just have a small lot and should try to build something that fits that lot and existing setback rules. Chm. Beyer states that the applicants have the right to bring this matter before the board, and the board will vote accordingly.

Mr. O'Brien asks what the current setback is. Mr. Brzezinski states that it is 16ft from the current structure, but the shed is 4ft. Mrs. MacPherson adds that the shed is 7ft tall and maybe 10ft long. Mr. O'Brien asks if it has an effect on them, and Mrs. MacPherson responds that it does not because it is short and does not obstruct their view in any way. Mr. MacPherson states that they have a porch on the front of the house, and they like to sit on the porch and look at the water from the right. The new structure will extend out further and be taller, so it will impact their enjoyment of their house. Mr. O'Brien states that it will

be taller because of flood requirements. Mr. MacPherson answers that if it is set back further, then there is more of a view.

Mr. Keene makes a Motion to Close the Public Hearing for Supportive Finding No. 2022-SF05, seconded by Mr. Pine.

Roll call vote as follows:

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

The Motion Passes.

The board discusses further. Mr. Spilhaus states that he believes that these neighborhoods are being ruined by cheek-by-jowl construction. The town made these laws with setbacks for a reason, to protect the overall character and neighbors. Mr. Spilhaus believes that the more they approve construction like this, the more the board is contributing to the destruction of that character. He states that if he was voting, he would oppose it.

Mr. Pine states that the way the zoning bylaws are written now, as a non-conforming pre-existing structure, there are certain rights that the property owners have.

Mr. Kalick states that he always interpreted the law that homeowners could do whatever they wanted as long as it met the same footprint.

Chm. Beyer states that the burden of that decision weighs upon the board. There are precedents to consider, like if the presence of the new structure will be more intrusive than the current structure. He goes on to say that they do not need to be bound by precedent, because it is not a written precedent.

Mr. Pine makes a Motion to Approve the Request for Supportive Finding No. 2022-SF05, seconded by Mr. Keene.

Roll call vote as follows:

Vice Chairperson Pine – YES, Mr. Kalick – YES, Mr. Keene – YES,
Mr. O'Brien – YES, Chairman Beyer – NO.

The Motion Passes.

Public Hearing for Special Permit #2022-SP11: *Cont'd from 8.3.22. 7 Alpine Circle, Sagamore Beach. Christopher Ellis. Request for an attached Accessory Dwelling with storage above for the parents of the owners.*

Chris Ellis identifies himself as the representative of the project. In the last meeting, he states they spoke about adding an accessory dwelling in law apartment so the homeowners' parents can age in place. He proposes to add 584ft of finished space and 584ft of unfinished

space on the second floor. The GFA paperwork has also been certified by the Town Planner. Chm. Beyer confirms that they have the paperwork.

Mr. Pine states that they will need the names of the parents who will be living there. Mr. Ellis states that it is John and Barbara Souza.

Chm. Beyer explains that this must be approved with a condition in which these two occupants are the sole occupants of the accessory dwelling for a term of three years. If the occupants change or the three years expire, the owner will have to apply for a new occupancy permit.

Mr. Ellis states that they will need to upgrade their septic once this is approved.

Mr. Keene makes a Motion to Close the Public Hearing for Special Permit No. 2022-SP11, seconded by Mr. O'Brien.

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.

Mr. Keene makes a Motion to Approve the Request for Special Permit No. 2022-SP11, seconded by Mr. Kalick.

Roll call vote as follows:

Vice Chairperson Pine – YES, Mr. Kalick – YES, Mr. Keene – YES,
Mr. O'Brien – YES, Chairman Beyer – YES.
The Motion Passes.

New Business:

None.

Old Business:

None.

Adjournment

Mr. O'Brien makes a Motion to Adjourn, seconded by Mr. Pine.

Roll call vote as follows:

Vice Chairperson Pine – YES, Mr. Kalick – YES, Mr. Keene – YES,
Mr. O'Brien – YES, Chairman Beyer – YES.
The Motion Passes.

With no further business before the Board, the meeting was adjourned at 8:11PM.

Respectfully Submitted,
Ina Sullivan