

Town of Bourne Zoning Board of Appeals

Meeting Minutes

Virtual Hearing via Zoom

March 3, 2021

Meeting ID: 921 3756 7821

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TOWN CLERK BOB RILEY

1. Call to order

Chair Jim Beyer called to order the meeting of the Zoning Board of Appeals at 7:00 PM on March 3, 2021. Mr. Beyer 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.

Mr. Beyer announced the meeting was being recorded and some attendees are participating by video conference. He explained the ground rules associated with conducting the remote meeting, he confirmed the members of the board who were present, identified the building inspector and verified a representative was present for each filing listed on the agenda.

Members Present: Jim Beyer, Chris Pine, John O'Brien, Wade Keene, Harold Kalick and Associate Member Pat Nemeth.

Members Excused – None.

Also Present: Ken Murphy, Mr. and Mrs. Reno, Zac Basinski, Adam A. Moring, Don Bracken, and James McLaughlin.

Agenda Items

- 2. Approval of Minutes** – Mr. Beyer entertained a motion to approve the minutes of the January 27, 2021 meeting. **Mr. Kalick moved to approve, Ms. Nemeth seconded to approving the minutes of the January 27, 2021 meeting. Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. Kalick, yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.**
- 3. 24F Hideaway Rd, Hideaway Village, Public Hearing for Special Permit (2021-SP02) for a 5' x 5' mudroom enclosed over existing deck.**

Materials: Application packet, Abutters list from the Assessing Department, Approval letter from Hideaway Village Condominium Association, and Plot Plan.

Mr. and Mrs. Reno were present for the hearing. Mr. Reno reviewed his application and request.

My Beyer asked if the mudroom will be accessible from the outside or from within the home. Mr. Reno replied it will be accessible via both.

There was discussion on whether this project had approval from the hideaway village condominium association, it does.

Mr. Beyer asked if there are any members of the public with questions or comments. There were none.

Mr. Beyer entertained a motion to close the public hearing. Ms. Nemeth made a motion to close the public hearing. Mr. Pine Seconded. Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. Keene- yes, Mr. Kalick-yes, Mr. O'Brien- yes, and Mr. Beyer- yes.

Mr. Beyer asked if there are any comments or discussion from the Board.

There was discussion between the applicant and the board and Mr. Murphy on the process once the application is approved.

Mr. Beyer Entertained a motion to approve the a Special Permit (2021-SP02) for 24F Hideaway Rd, Hideaway Village, for a 5' x 5' mudroom enclosed over existing deck. Mr. O'Brien made the motion. Mr. O'Brien made the motion. Mr. Kalick seconded the motion. Roll call vote: Mr. Pine- yes, Mr. Kalick-yes, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- yes.

Mr. Beyer will be writing this decision.

4. 11 Shawmut Rd, Public Hearing for Special Permit (2021-SP03) for an increase in allowable maximum gross floor area to support a proposed addition.

Materials: Application packet, property map, driving directions, Floor plan, Site Plan.

Mr. Zac Basinski of Bracken Engineering Inc was there to represent the homeowners. He reviewed the application and the history of the project.

Mr. O'Brien questioned if the third story was in the original plan. Mr. Basinski confirmed it was. Mr. Beyer stated it is already built.

Mr. Beyer asked why question "g" on page 21 of the application was left blank; "What is the "good and sufficient cause" such that the failure to grant the increase/departure from the Table would result in exceptional hardship to the applicant, or what is the conflict

with existing laws.”. Mr. Beyer clarified the ZBA is allowed to grant up to a 10% excess for the coverage but this only can be done for good and sufficient cause and failure to grant the increase/departure from the Table would result in exceptional hardship to the applicant, or what is the conflict with existing laws and asked what that hardship would be?

Mr. Basinski shared his screen to reference the item in question. Mr. Basinski stated the proposed project will not be detrimental to the neighborhood. Mr. Beyer responded by questioning what the exceptional hardship would be?

Mr. Adam A. Moring, representing the homeowners, explained the house is a small bungalow with no garage and as they age in place they looked to get a two car garage for protection from the elements. They have reduced the size of the second floor to accommodate a smaller project.

Mr. Beyer stated there is a garage on site. Mr. Moring confirmed there is a small garage but it is on the street and is far from the house to walk, including stairs. It is part of the original house and does not accommodate the size of cars today.

Mr. Kalick asked if the existing garage will be removed. Mr. Moring said no. There was a discussion of the size of garage on the GFA worksheet between Mr. Moring, Mr. Basinski and the Board Members.

Mr. Burns, homeowner, remarked that they cannot park cars in the current garage as it is not large enough to house a vehicle.

Mr. Kalick requested Mr. Murphy make a comments. Mr. Murphy commented that the proposed garage is of normal size and if the Planning Department did not include the old garage in the calculations that is ok. Mr. Kalick replied that when a shed is of considerable size it is included in the GFA and questioned why this existing garage was not included. Mr. Murphy said he would discuss this with the Planning Department.

Mr. Beyer commented that he cannot support this project as he did not feel there was a hardship.

Mr. Beyer asked if there are any Board members with questions or comments.

Mr. Pine stated in the past they have looked at grading and steep elevation changes as the justification for the hardship and the nature of the site would be challenging to get around that to obtain the garage on the same level to accommodate aging in place.

Ms. Nemeth requested the applicant speak on the increase of square footage and the functional needs outside the garage.

Mr. Beyer stated that the issue is the overall square footage and the garage is part of that. He is reluctant to support an application that does not demonstrate the hardship that not having this increase in area would provide.

Mr. Basinski shared his screen to show the floor plans.

Mr. Morning reviewed the floor plan, expand the dinning, and enlarge the garage. He discussed the landscape as being hilly and rocky. They need increased storage and more room for dining. He reviewed that this project is a few hundred square feet under what was previously approved. No addition to the second floor.

Mr. Basinski did state the project meets all setbacks and the abutting neighbor did write a letter in support.

Mr. Beyer asked if the hardship is for the family to age in place.

Ms. Nemeth stated there is no adequate dining space in the current layout.

Mr. Beyer asked if there are any members of the public with questions or comments. There were none.

Mr. Beyer entertained a motion to close the public hearing. Mr. Keene made a motion to close the public hearing. Mr. Kalick Seconded.

Mr. Pine asked who will be writing the decision, and he asked if there were any neighbors present and questioned if anyone on the Board had seen this letter of support from the abutters.

Mr. Basinski said he could share the letter via screen share.

Mr. Beyer stated Mr. Keene will be writing this decision.

Mr. Beyer than asked if Mr. Pine will second the motion. Mr. Pine agreed.

Mr. Kalick questioned the total square footage of the existing house at 3,709SF vs proposed at 4,691SF. Mr. Kalick stated he believes they are allowed a 10% increase over what is allowed. Mr. Basinski confirmed it was approved previously at a larger scale. This discussion continued between the Board members, Mr. Moring and Mr. Basinski to clarify what is allowed and what is requested

Roll call vote: Mr. Pine- yes, Mr. Kalick- yes, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- yes.

Mr. Beyer asked if there are any Board members with questions or comments. There were none.

Mr. Beyer Entertained a motion to approve the Special Permit at 11 Shawmut Rd (2021-SP03) for an increase in allowable maximum gross floor area to support a proposed addition. Mr. Pine made the motion. Mr. O'Brien seconded the motion. Roll call vote: Mr. Pine- yes, Mr. Kalick-yes, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- no.

Mr. Keene will be writing this decision.

- 5. 85 Waterhouse Rd, Public Hearing for Special Permit for an accessory dwelling (2021-SP04) for an accessory dwelling to construct two identical units, each with one garage and each to be owner occupied.**

Materials: Application packet, driving directions, property map, Floor plan, Site Plan.

Mr. Don Bracken is representing the applicant. The property owner is also present.

Mr. Bracken reviewed the property and project details. Within his review he detailed that the units will be for age 55 and older to offer housing for the older community. Mr. Bracken also reviewed they are proposing the units could be owned separately or together but if they are owned separately then can be condominiumized.

Me. Beyer asked if there are any questions for the Board.

Ms. Nemeth asked how this meets the owner occupied requirements and asked Mr. Murphy to respond and reviewed the code for an accessory dwelling, the second dwelling to a first that is owner occupied.

Mr. Murphy turned the question over to Mr. Bracken.

Mr. Bracken said he intent was to make this into a condominium. He had discussed this with the Town Planner. He stated the by law stated that either the principle or accessory unit must be owner occupied except for temporary absences. Mr. Bracken pointed out this does not say both units could not be owner occupied.

Mr. Keene asked if the ownership would be put in one person's name for both dwellings for it to be right. You can have two separate ownerships and it cannot be a townhouse or a condo. He related this to having an in-law apartment in a residential home, and how it is not allowed to be rented and can only be used for family members.

Mr. Bracken agreed that was the basis of the bylaw and the intent but feels the way the bylaw was written does not prohibit this type of situation.

Ms. Nemeth stated this looks like a mirrored version of the two units that are served by the same access road. Ms. Nemeth questioned how they were permitted.

Mr. Bracken responded those units were permitted by right as a duplex because it has 80,000SF of lot area.

Mr. Beyer asked why he did not request a variance for a duplex on a non-conforming lot.

Mr. Bracken stated it is not a variance it is a special permit and saw this as an avenue where it could be possible in those circumstances.

Mr. Pine expressed his support for the project but stated he is having a hard time interpreting the bylaws and feels it is a stretch. He asked if the property at 83 Waterhouse is owned by the same person as this project.

Mr. Bracken stated he owns the property at 83 Waterhouse Rd, one side is for his mother and one side is for his sister. The property at 85 Waterhouse Rd is owned by James McLaughlin.

Mr. Pine stated it is going to be for 55 years or older and questioned how that would be enforced. Mr. Bracken responded it would be deeded to be 55 years or older.

Mr. Pine questioned the requirements for Health Department and Mr. Bracken responded that he is unaware if the Health Department has made a comment on this packet and suggested it be a condition of approval.

Mr. O'Brien questioned if this is an accessory dwelling and asked Mr. Murphy to respond. Mr. Murphy said he was reviewing the definition and stated they will have a shared driveway, and verified with Mr. Bracken it will have two separate septic systems.

Mr. O'Brien stressed that the history of accessory dwellings will be approved knowing the owner will live there. He continued to stress his concern with someone buying these as condominiums.

Mr. Kalick asked if this is two lots or one. Mr. Bracken confirmed it is one lot for this application.

Mr. Beyer asked why Mr. Bracken had not applied for a variance for a duplex dwelling. Mr. Bracken explained he was unsure what the substantial hardship would be.

Mr. Kalick and Mr. Bracken discussed the project and if it is an accessory dwelling.

Ms. Nemeth stated she does not feel it is an accessory dwelling.

Mr. Pine stated if it is approved as an accessory dwelling the occupancy needs to be updated every three years with the Town.

Mr. Bracken stated he felt the special permit could be crafted in a way those requirements wouldn't have to be followed. As far as the roadway construction because it is not a subdivision the lots were approved under approval not required it would be like any other common driveway in town. It would be no different than the other multi families in the neighborhood.

Mr. Keene reviewed some other projects approved historically.

Mr. Kalick questioned if this project needs to go before the planning board. Mr. Murphy confirmed The Planning Board only reviews commercial projects.

Mr. Pine questioned if there is a right of way between 83 Waterhouse Rd and 85 Waterhouse Rd. Mr. Bracken confirmed and provided details.

Ms. Nemeth agreed that due to the guard rail and the state highway they would only allow one entry to the lot.

There was a discussion between Mr. Bracken and the board in regards to the legal access to this lot. Mr. Bracken confirmed they have legal access from the town and Mass Highway Approval.

Mr. Bracken requested a withdrawal without prejudice.

Mr. James McLaughlin, property owner, stated he is in support of Mr. Brackens decision.

Mr. Beyer asked if there are any members of the public with questions or comments. There were none.

Mr. Beyer entertained a motion to close the public hearing. Mr. Keene made a motion to close the public hearing. Mr. Pine Seconded. Roll call vote: Mr. Pine- yes, Mr. Kalick- yes, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- yes.

Mr. Beyer entertained a motion to dismiss Special Permit for an accessory dwelling (2021-SP04) for an accessory dwelling to construct two identical units, each with one garage and each to be owner occupied.

Mr. O'Brien made the motion to accept the withdrawal for special permit 2021-SP04. Mr. Pine seconded the motion. Roll call vote: Mr. Pine- yes, Mr. Kalick- yes, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- yes.

Mr. Bracken will be contacted by Mr. Murphy to complete the paperwork for a withdrawal without prejudice.

Old Business – None.

New Business

- **Ms. Nemeth has revised the decision forms and this will be reviewed then discussed at the next hearing. Mr. Murphy will also consult legal counsel and the selectman's office. Ms. Nemeth explained her desire to standardize the forms and reviewed what they will look like. She also expressed the work on the 40B decision template. Mr. Beyer asked how this much work can be expressed to the applicants, and he would like there to be a definitive list of when is required. Mr. Murphy said he would research this and get back to the Zoning Board of Appeals.**
- **The Board review the procedure for 40B applications as the Zoning Board of Appeals office is expecting to receive a new application.**
- **There was discussion between the Board Members about procedures and by-laws.**

Public Comment – None.

Adjournment –

Mr. Beyer entertained a motion to adjourn the hearing. Mr. Kalick moved, Mr. O'Brien seconded to adjourn the meeting. Roll call vote: Mr. Pine- yes, Mr. Kalick- yes, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- yes. The meeting adjourned at 8:35pm.

Respectfully submitted,
Cassie Hammond