

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

## **Meeting Minutes**

Virtual Hearing via Zoom

April 7, 2021

Meeting ID: 972 0480 3475

RECEIVED

2021 JUN -4 AM 9:16

TOWN CLERK BOURNE

### **1. Call to order**

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

Michael Rausch is also recording.

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, Sean McGinness, Don Bracken, Peter Freeman, Meenah Jacob, Madalana Tran, David Quinn, Michelle Waldon, Gemma Kite, Brian Kuchar, and Ilana Quirk.

### **Agenda Items**

- 2. Approval of Minutes** – Mr. Beyer entertained a motion to approve the minutes of the March 03, 2021 meeting. **Mr. Keene moved to approve, Mr. Pine seconded to approving the minutes of the March 03, 2021 meeting. Roll call vote: Mr. Pine- yes, Mr. Keene- Yes, Mr. O'Brien- Yes, Mr. Beyer- yes and Ms. Nemeth- yes.**
- 3. 54D Overlook Rd, Public Hearing for Special Permit (2021-SP05) to frame 12x14' deck to existing deck attached to house.**

*Materials: Application packet, Abutters list from the Assessing Department, Approval letter from Hideaway Village Condominium Association, Hand drawn structural plans, Driving directions and Plot Plan.*

Mr. Sean McGinness, homeowner, was present for the hearing. Mr. McGinness reviewed his project application.

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

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

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

**Mr. Beyer Entertained a motion to approve the special permit for 54D Overlook Rd. Permit (2021-SP05) to frame 12x14' deck to existing deck attached to house. Mr. O'Brien made the motion. Mr. Keene seconded the motion. Roll call vote: Mr. Pine-yes, Mr. Kalick-yes, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- yes.**

*Mr. Kalick will be writing this decision.*

- 4. 85 Waterhouse Rd, Public Hearing for variance (2021-V07) to construct a two-family dwelling on a lot area of 63,241SF rather than 80,000SF required per section 2500 (f) of Zoning By-law.**

*Materials: Application packet, property map, driving directions, Proposed House Plans, Proposed Plot Plan and abutters list.*

Mr. Don Bracken, of Bracken Engineering, representing the applicant is present for the hearing. He reviewed the history of the project and the current request for a variance to lot area for a 2 family dwelling. Per section 2500 requires 80,000SF and the subject property has 63,241SF. Mr. Bracken stated He explained this dwelling will be on town water, not in zone 2, no endangered species and no flood zone, already located in an area that is densely developed by the town with Bourne Housing Authority 5 properties around it. They feel another duplex in this area will be in harmony with this area. The lot next to it is under construction for a duplex and this property will share a common

driveway with the next lot. Common driveway is needed due to the steep grade of the property. This duplex will be restricted to one of the units being for age 55+.

Mr. Beyer asked if any Board Members have any questions.

Mr. O'Brien and Mr. Bracken discussed the approval being contingent on Fire Dept. review and approval.

Mr. Kalick questioned why the applicant had not gone before the Planning Board as he did with the first duplex. Mr. Bracken reviewed the bylaw as it relates to shared driveways and he stressed the Planning Board does not need to review. There was a discussion about frontage.

Ms. Nemeth stated she feels there is not enough square footage for a duplex.

Mr. Beyer asked what the hardship is. Mr. Bracken responded that if you look at an aerial view of the area this lot cannot utilize the property the same as the other surrounding lots could.

Mr. Kalick asked if the Town had given permission to have a common driveway. Mr. Bracken stated the lots were created under the approval not required process under the subdivision rules and regulations. It required that the Planning Board make a decision that the lots that we show to be created did not constitute a subdivision because each lot had frontage on a road. It is a state road and they had to get a curb cut and they show an access easement.

Mr. Keene questioned the ability to have driveways on the individual lots.

Mr. Bracken asked to share his screen to show the plan for reference.

Ms. Nemeth commented that Mr. Bracken's statements are not a compelling argument. Mr. Beyer agreed.

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. O'Brien made a motion to close the public hearing. Mr. Kalick Seconded.**

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

Mr. Beyer stated he would reluctantly support this variance. He stated this does have some merits but does not see the hardship.

Mr. Pine stated he can support the variance. He stressed the concern for safety and would want it to be conditional with fire department approval of access. He feels the structures are appropriate and the need for this housing is present in the community.

Mr. Beyer asked if there was an opinion on the condition for 55 years or older on the unit. There were none.

Mr. Keene stressed that young families also need housing and does not support the age limit of 55 plus.

Mr. Kalick stated this will not be affordable housing. He stated the board needs to take variances more serious. Has a right to single family but not a duplex.

**Mr. Beyer entertained a motion to approve the Variance for 85 Waterhouse Rd, Public Hearing for variance (2021-V07) to construct a two-family dwelling on a lot area of 63,241SF rather than 80,000SF required per section 2500 (f) of Zoning By-law, this approval would be contingent upon Fire Department approval. Mr. Pine made the motion. Mr. Keene seconded the motion. Roll call vote: Mr. Pine- yes, Mr. Kalick-no, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- no. This motion did not carry.**

*Mr. O'Brien will be writing this decision.*

**5. Cape View Way 40B, Comprehensive Permit (#2021-CP06) to construct and operate 51 affordable rental units on 2.94 acres.**

*Materials: Comprehensive Permit Application packet, Schematic Design, Existing Conditions, Permitting Plans, Stormwater Report, Notice of time constraint waiver, Regulatory comments from the Town Planner, Cape Cod Commission, Fire Dept., health Dept., North Sagamore Water Dist., Police Dept., Conservation Dept., and comments submitted from abutters to be read in at hearing.*

Mr. Beyer reviewed some ground rules for this hearing as there were many members of the public present.

Peter Freeman is the attorney from Freeman Law Group is present for the hearing. He is representing the applicants of Preservation of Affordable Housing, Inc. ("POAH") and Housing Assistance Corporation ("HAC"). Meenah Jacob and Madalana Tran will be representing POAH, and David Quinn is representing HAC. Icon Architect has Michelle Waldon. From Horsley Whitten Group Engineering team has Gemma Kite and Brian Kuchar. Ilana Quirk is also a colleague from Freeman Law Group and is present.

Mr. Freeman reviewed the history of the site. The site had been taken by the Town and had deeded it to the Bourne Housing Authority for the development affordable housing.

Mr. Freeman reviewed the requirements for 40B and the documents provided in the application packet.

Mr. David Quinn, Director of Housing Development at Housing Assistance Corporation at 460 West Main St. in Hyannis MA. He requested to share a presentation prepared by the team outlined above. They presented their slideshow.

Mr. Kalick asked if there is a proforma showing the rent structures and how they arrived at. Mr. Freeman stated they have done all that provided in the application the state DHCD for the project eligibility and it is public record but it is not normally submitted due to multiple factors. This was further discussed by Mr. Kalick and Mr. Freeman.

Mr. Kalick questioned that the architectural drawings shows a 5ft setback in the back of the property. Mr. Freeman suggested that the owner of that property speak during the public comments.

Ms. Keene questioned the septic system. Mr. Kuchar stated the plans had been submitted to the Health Department and directed the Board to review the plans as submitted.

Mr. Keene asked if they had gone before Cape Cod Commission. Mr. Freeman stated there are comments from Cape Cod Commission.

Mr. O'Brien commented on the vast amount of information he had received and feels he is not prepared to vote on this item this evening. He asked if there is a problem that the back of the building is 7.5ft from the property lines. Mr. Freeman replied this is one of the waivers they have applied for.

Mr. Kalick expressed concern about the ability for Fire response to turn around and access the building. Mr. Freeman replied they would ensure they would receive further comment from Fire Department.

Mr. Pine questioned the discussion between the applicant and the North Sagamore Water District and requested they elaborate. Mr. Freeman identified there is no issue with water supply but there was a mention to expand the water main in a certain area. Mr. Beyer discussed the waiver requests and stated the Zoning Board of Appeals will be reluctant to override the Water Departments jurisdiction. Mr. Freeman stated they were surprised to learn the water main would need to be replaced/enlarged. Mr. Kuchar reviewed they have been in contact with the North Sagamore Water District and will be requesting a meeting to discuss details and comments. Ms. Nemeth questioned if the water department does

not have the capacity for supply and requested a letter stating the level of capacity for this from the North Sagamore Water Department. Mr. Freeman agreed to this.

Mr. Pine asked about the request for waiver for filing for project notification for Historic Commission and the regulatory comments advising against this. Mr. Freeman stated the main reason is it is a requirement once they go forward must file that form and feels this is done later down the road.

Mr. Pine questioned the height of the structure and stated the building is a few feet over the maximum height of 35ft. He asked if there is the ability to keep the building under the maximum height. Ms. Waldon reviewed the plans and explained it is not an option to keep it under that max height.

Ms. Nemeth reviewed that the Health Department had indicated they are waiting on documents to be submitted and asked what those items are. Mr. Freeman stated the Health Department was waiting on the proposed deed restriction. Mr. Kuchar stated they have heard from the Health Agent and they are on the upcoming hearing before the Board of Health.

Ms. Nemeth stated she has some problems with the project. She feels she would not support a waiver for T5 and water district and has concerns with the setbacks to allow access around all 4 sides of the building.

Ms. Nemeth stated the Town Planner has recommended peer review for the Stormwater Management Plan and would like comment on that. She also reviewed the request for a waiver for landscaping. Mr. Freeman is compliant with peer review for Stormwater Management Plan. Mr. Kuchar explained the waiver is for the landscape requirements for the parking lots. One of the overall goals is to increase impervious cover by increasing green space.

Ms. Nemeth asked about the no use area in the FEMA flood zone and questioned if pedestrian access would be limited. Mr. Kuchar stated that working closely with Conservation Commission they will be restoring any buffer that is disturbed. Ms. Nemeth repeated the question if pedestrian access would be restricted. Mr. Kuchar said they would not be limiting foot traffic and will be proving a foot path.

Ms. Nemeth asked for an assessment of traffic. Mr. Freeman said they have not done this yet. Mr. Beyer stated this is needed. Ms. Nemeth agreed.

Ms. Nemeth questioned there being no personal outdoor space provide for tenants aside from 3 tables and a small play area in the back. She questioned if there was the ability for additional outdoor seating areas. Ms. Waldon said the scale of the recreation space is

consistent with a project with this size. There will be a play structure and patio provided in the back along with some greenspace. Mr. Kuchar stated they have looked into how to use the green space. He stated these are permitting plans and typically play stations and patios are often further developed as they get further along.

Mr. Beyer asked if they would be averse to binding the construction of this project. He cited a significant recent history of contractors defaulting on their projects. Mr. Freeman commented that understands the reasoning. Sometimes the subsidizing agency will require performance and completion bonds. Ms. Jacob commented it is required.

Mr. Beyer stated they will request a peer review.

Mr. Beyer asked if they have reviewed the staff (regulatory) comments and do they have any comments. Mr. Beyer cited specific comments as the following:

- Filing of project notification with Mass Historical Commission.
- The Cape Cod Commission has provided comments and the applicant has requested a waiver against their action.
- Asking for relief from certification from by Building Inspector and that has been recommended against.
- Water department issues.
- Subdivision waivers and they ask for specific table elucidated the subdivision waivers.

Mr. Beyer and Mr. Freeman agreed the applicant would pay for peer review.

Mr. Freeman commented that the Building Commission certifies that this project complies with all the Zoning laws and this project will not due to requesting the waiver.

Mr. Freeman responded to the question about the subdivision waivers to say they do not actually need waivers because there is no subdivision being proposed. They are asking for modification from the old never built right of way.

Mr. Beyer asked if the applicant if they can share the project schedule. Ms. Jacob confirmed they can.

Mr. Beyer asked if there are any additional waivers they will be requesting.

Mr. Freeman and Ms. Quirk said they will be requesting an additional lighting waiver.

Ms. Nemeth asked about the waiver for the Building Inspector to sign off on ZBA requirements. Mr. Beyer explained the building inspector is the ZBA enforcement agent. He stated the question is more about the language. Ms. Nemeth recommended they

perhaps modify the language in that waiver if there are in agreement that they do not need a waiver for the Building Inspector to sign off on ZBA requirements.

Mr. Murphy expressed his request to have a third party inspector to report back to him on the progress of the building as it is being build. Mr. Freeman said inspectors are required and suggested the reports can go to Mr. Murphy. Ms. Jacob shared they typically have a least an project manager or clerks of the works whom are on site frequently and monitor site progress and purchased and submit a monthly report to lenders and this can be shared to the Building Inspector as well. Ms. Waldon shared there are whole list of special inspections that are required by the mass building code which occur throughout the construction. Mr. Beyer stated Mr. Murphy is the only Building Inspector in town and due to this often times for a larger project a third party inspector can be hired by the lender/applicant/developer and they would report to Mr. Murphy. Mr. Freeman agreed to this statement.

Mr. Beyer asked if there are any further questions from the Board. There were none.

Mr. Beyer asked if there were any members of the public with questions or comments. He reviewed the outline of expectations for public comment.

Sandi LaCasse of 8 Homestead Rd Ext., abutter and real estate agent, commented that she supports low income housing but has some strong concerns. First concern is the demographic of the project with 51 units going in. Her second concern is a traffic study, she feels these local roads often back up and suggested a traffic light but has concerns with this impacting the Fire Department. She suggested a pedestrian study. She addressed the applicants mention of the High Meadow project and suggested attention be brought to the high number of police and fire response on a daily basis. This will put a large strain on the Bourne Police and Fire staff. She brought up the impact on the schools with the increase of residents. She shared pictures of box turtles and shared concerns with the impact of this project on these turtles habitat and requested the conservation commission look into this. She again stressed her concern for the amount of units to fit into the area indicated. She addressed the previous agenda item where a duplex was denied. She also again stressed the impact on the surrounding neighborhood, Police, Fire, Water, Conservation and so many levels.

Charles Sabbot, attorney representing Tutor Cherry Investors LLC whom is a direct abutter located at 117 Old Plymouth Rd. He stated they have two issues. They would like this incorporated into their decision. First they have a concern about lighting in the parking lots as they are directly abutting his clients property as much of the landscaping will be removed. They would like a condition in the decision that would restrict the lighting to be Ballard lighting at no more than 3ft in height. Second they are asking for the installation of a stockade fence that would run the perimeter between the properties to



confine the children of their residence for safety reasons and due to the lack of play areas provided children of the proposed Cape View Way project will be inclined to use the play areas of Tutor Cherry Investors LLC. The fence will also insulate against noise or headlights. This fence will also protect and ensure against potential liability for both parties.

Cassandra Sullivan, 7 Andrew Rd, closest abutter to the proposed project. Has concerns with the proximity to her property line. Feels the point of view slides were not accurate. Concerns about people on third floor being able to see into her property/home. Concerns with proximity to play area. Concerns with noise from HVAC units. Concerns with how her property taxes will be affected.

Tom Muldon, 10 Andrew Rd, abutter, stated he and his wife are active members of the community and feel they have not heard the need for affordable housing as mentioned throughout the presentation and feels this is a statement made up by people who want to build these projects and make money.

Kathy Harris, 11 Andrew Rd, abutter, referenced the previous agenda items denying the build of a duplex and feels the wording can be used for this project as well, as in substandard lot. She brought up concerns about the plants and wildlife. She feels the lot provides a noise buffer to the traffic. Concerns about the green area around the wetland. Concerns with the septic system proximity to property lines. Concerned about trying to fit a large project in a small space.

Mark Travis, 186 Williston Rd, feels this is far too large of a project for that size of a lot. Concerns with the amount of variances requested. Strain on resources- fire, police, and water. Concerns with parking at the beach. Concerns with the amount of traffic in summer.

James Fitzpatrick, 6 Homestead Rd Ext. Wife has a concerns with the statement that the applicant made that they were given this land and trying to make the project fit. She feels this project does not fit, it encroaching on the wetland, feels the conservation staff did a very informal, very subjective walkthrough. Too large of a structure and it does not blend with the neighborhood. Concerns with the traffic.

Maria, 9 Andrew Rd, abutter, agrees with previous comments. During rain season her property gets flooded. Concerned this will increase when the project is built. Concerns with traffic. Feels it will look like a commercial area and not a residential area.

Joe 12 Diandy Rd, will look at project through front door. Concern of noise. Will ruin aesthetics of the quiet neighborhood. Concerns for wildlife.

Eileen Fitzpatrick, 6 Homestead Rd Ext., this parcel of land was set aside for low income housing in the past for only 10-12 houses and feels this would make more sense and was never meant to hold 55.

Maria, 9 Andrew Rd, asked how many people are allowed to live at the property. Mr. Freeman responded it will be a mix of 1, 2, and 3 bedroom counts. Ms. Waldon reviewed the unit matrix and stated it is not restricted by number of people. Maria stated she feels it will be a large amount of people. Mr. Beyer said it will be roughly 90 bedrooms.

Cassandra Sullivan, 7 Andrew Rd, concerns with waiver for parking and the high number of people proposed to live on site. She stated 127ft from her back door to the building.

Mr. Beyer stated they are going to require a traffic impact assessment, including pedestrian circulation analysis, and information for access to public transportation and this will address the concerns raised this evening.

Sandi LaCasse questioned that the Conservation Agent look into her turtle concerns. Mr. Beyer referred her to the rare species impact statement. She has offered to photograph and timestamp the turtles, Eastern Box Turtle. Mr. Beyer stated the applicant has indicated it is not a mapped habitat and reviewed the request for a waiver against the filing of a rare species information form with the state. Ms. LaCasse feels there are many waivers being requested. Mr. Beyer stated this is the nature of a 40B permit.

Mr. Beyer chose to summarize what has been heard.

- Rental structure for the units.
- Rendering along the north rear wall with 7.83 setback
- Receive water department comments.
- Letter indicating water district ability to provide connection
- Still need health department comment after the upcoming hearing.
- Would like traffic impact assessment including pedestrian assessment and public trans access assess
- Construction schedule for the project
- Detailed subdivision table for variances required.
- Request for lighting plan
- Request for fire engine access plan
- Peer review of Stormwater management plan

- Would like to see what impacts to the design would be required to increase the setback, would like to see 15ft. effect of confirming setback.
- Reduce the overall height of the structure to achieve 35ft.
- Respond to Cape Cod Commission Mass mitigation letter.
- Inclusion of increased open space.
- Inclusion of an unload parking stall.

Mr. Kalick identified three areas of need; limited parking and guest parking, loading and unloading area, and a play area for children. Mr. Beyer stated he felt the traffic assessment would address the parking concerns.

There was a discussion between the Board, Applicant and Mr. Murphy on the process for peer review. Mr. Murphy confirmed he would reach out to the list of peer reviewers.

Mr. Beyer entertained a motion to authorize a peer review of the Stormwater management plan and the septic system design.

Mr. Beyer instructed Mr. Freeman to complete the continuation form located on the website. There was a discussion on when the hearing would be continued to.

**Mr. Beyer entertained a motion to continue the public hearing for Cape View Way 40B, Comprehensive Permit (#2021-CP06) to construct and operate 51 affordable rental units on 2.94 acres to May 19, 2021. Mr. O'Brien made a motion to continue 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.**

**Old Business** – Review of revised decision forms- this will be discussed at the next hearing.

**New Business** – None.

**Public Comment** – None.

Adjournment –

**Mr. Beyer entertained a motion to adjourn the hearing. Mr. O'Brien moved, Mr. Kalick 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 9:45pm.**

Respectfully submitted,  
Cassie Hammond