

Town of Bourne Zoning Board of Appeals

Meeting Minutes

Town Hall Lower Conference Room
24 Perry Ave., Buzzards Bay, MA 02532

June 5, 2019

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TOWN CLERK BOURNE

I. Call to order

Chair Amy Kullar called to order the meeting of the Zoning Board of Appeals at 9:00 P on June 5, 2019. Ms. Kullar 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.

Ms. Kullar announced the meeting was being recorded and asked if anyone in the audience was recording the meeting to please acknowledge such to the board. She noted Carol Mitchell was recording the meeting.

Members Present: Amy Kullar, John O'Brien, Wade Keene, Tim Sawyer, Harold Kalick and Associate Members, Deb Bryant and Chris Pine.

Members Excused: Associate Member, Kat Brennan.

Also Present: Roger Laporte, Carol Mitchell, Robert Buckley, Randy Collette, Patricia Duggan, John Duggan, Zachary Basinski, Kristofer Ketch, Megan Ketch, Michelle Reynolds, Maureen Bradley and Elise Drew.

Amy Kullar will be writing the Decisions.

II. Agenda Items

1. Approval of Minutes – Ms. Kullar entertained a motion to approve the minutes of the May 15, 2019 meeting. **Mr. Keene moved, Mr. Sawyer seconded to approve the minutes of the May 15, 2019 meeting.** With no discussion, the motion carried. 5-0-0.

Sitting on the hearings; Amy Kullar, Tim Sawyer, Wade Keene, John O'Brien and Harold Kalick.

2. 1 Long Boat Road, Special Permit Accessory Dwelling SP08-2019– Requesting a Special Permit M.G.L., Ch. 40A, Sec. 9 and the Bourne Zoning Bylaw from Sections 1330 and 4120 for a preexisting single-story accessory dwelling.

Materials – Application for Special Permit, Letter from William Moran, Purchase and Sale Agreement, Google Directions to Property, Gross Floor Area Calculation Worksheet, Town of Bourne Building Permit and Related Documents from 1989 filing, 2019 Assessor's Data Card, 2012 Assessor's Data Card, 2012 Assessor's Data Card and Property Appraisal.

Megan Ketch addressed the members explaining that she, her husband and her mother are under contract to purchase the property at 1 Long Boat Road. She stated the home has an existing, attached in-law apartment which her mother will occupy after the unexpected passing of her father last summer.

Mr. Laporte explained an illegal apartment was previously constructed on the property and because the property is being sold, the new owners must obtain a Special Permit for the accessory dwelling.

Board Comment – Ms. Kullar questioned whether the construction within the apartment meets the Building Code. Mr. Laporte stated it does.

Mr. O'Brien asked if the Special Permit is necessary since the occupant of apartment will also co-own the property. Mr. Laporte stated because the apartment is illegal, a Special Permit is still required; regardless of who's occupying it.

Mr. Keene made note that the assessor included the apartment as part of the property's assessment. Mr. Laporte stated the assessment is based on what the assessor sees during their inspection. They don't enforce zoning.

Ms. Kullar referred to the appraisal which lists six street parking spaces. She asked whether six vehicles will be parked on the street. Mrs. Ketch clarified that there are six off street parking spaces but they don't own six vehicles.

A brief discussion transpired regarding the town's requirements for an accessory dwelling. Ms. Kullar advised the applicant that the apartment may never be rented and only her mother may reside in the accessory dwelling. Another requirement is the applicant must contact the Building Department every three years to provide an occupancy update. Mr. Laporte added that the applicant must also notify the board if/when the occupant vacates the accessory dwelling. Mrs. Ketch agreed.

Ms. Bryant asked if the home will be used seasonally. Mrs. Ketch stated the current property owners use the home seasonally; however, they intend to occupy the dwelling year round.

Public Comment – None.

Ms. Kullar entertained a motion to close the public hearing. **Mr. O'Brien moved, Mr. Sawyer seconded to close the public hearing.** The motion carried. 5-0-0.

Ms. Kullar entertained a motion. **Mr. Sawyer moved, Mr. Keene seconded to grant Special Permit SP08-2019, with Michelle Reynolds as the approved occupant.** The motion carried. 5-0-0. Roll Call Vote: Ms. Kullar – yes, Mr. Keene – yes, Mr. Kalick – yes, Mr. O'Brien – yes, Mr. Sawyer – yes.

3. 10 Samoset Road – Appeal Building Inspector's Decision **A09-2019** – Request to appeal the Building Inspector's decision under M.G.L., Ch. 40A, Sec. 8; the Bourne Zoning Bylaw Sections 1210 and 2400. The applicant is appealing the Building Inspector's decision on the buildability of a non-conforming lot.

Materials – Public Meeting Notice, Notice of Appeal of Building Inspector's Decision, Letter from Elise Drew, Bourne Assessor's Data Card, Letter from Roger Laporte to Elise Drew, Letter to Building Inspector from Ethan Schaff, Esq., Interdepartmental Advisory Form, Letter from Building Inspector to Ethan Schaff, Affidavit of Ownership, Assessor's Map, Google Directions, Letter and Exhibits 1-3 from Attorney Randy Collette.

Elise Drew addressed the members and explained the lot located behind her home was deemed as an unbuildable lot. However, the lot was deemed buildable on January 2, 2019, after it was purchased by John Duggan. Ms. Drew is questioned why, after many of years of it being deemed unbuildable, it is now considered buildable.

Attorney Randy Collette addressed the members noting M.G.L. Ch. 40A, Sec. 15; requires appeals be filed within 30 of the decision. He stated it's been 105 days; therefore, due to the statute of limitations, the appeal should not be considered.

Ms. Drew argued that she did not notification that the lot had been changed to buildable. She stated only two out of four abutters were notified.

Ms. Kullar asked Mr. Collette how notification was sent. Mr. Collette stated letters were sent Certified Mail, return receipt requested. Ms. Kullar confirmed the applicant's mailing address, then showed her a photocopy of a return receipt card with a signature on it. Ms. Drew stated the signature on the card is not hers and she is the only person living in the house who would sign it.

Board Comment – Mr. Keene opened a brief discussion regarding the abutter notification that would have been sent. Ms. Kullar asked whether it's a requirement to notify abutters when a lot has been reclassified. Mr. Laporte stated it is not a requirement; however, it's a safeguard because of the 30 day appeal rights.

Mr. Laporte spoke on the merits of the lot being buildable and discussed the process that was involved in determining this as a buildable lot.

A brief discussion transpired regarding contiguous lots and the practice of land checkerboarding.

Mr. Kalick opened a brief discussion regarding a submitted property tax bill that deems the lot as unbuildable.

Mr. Kalick referred to documentation showing the lot was sold by the Town of Bourne after it was taken for nonpayment of taxes. A discussion ensued.

Ms. Drew commented on the low dollar amount the property sold for. She feels if the lot is buildable, it should have been sold at a higher amount, considering its locale.

Public Comment – Maureen Bradley, whose property abuts this parcel, stated her husband attended an auction with the intention of purchasing this lot when it was auctioned as a non-buildable lot in 2012. She stated the lot ended up selling for a higher amount than was expected back to a member of the Harold family, who also owns adjoining lots. She questioned why the lot was advertised for the auction as a non-buildable lot but is now classified as buildable.

Mr. Kalick opened a brief discussion regarding the Interdepartmental Advisory Form.

Ms. Kullar decided that although the merits of how and when the lot was sold are important; the matter before the board is whether they can even hear the matter. She stated the board has evidence from the United States Postal Service showing the letter was delivered to Ms. Drew and notice tolls the day it's received. The 30 days have elapsed. Mr. Kalick requested that Ms. Kullar ask town counsel for his opinion. He thinks the matter Should be continued. Mr. O'Brien agreed.

Robert Buckley questioned why abutters are notified when it isn't a requirement. Mr. Laporte explained that although there's no legal requirement to notify abutters; often times they are notified, because of the high costs associated with developing a lot. Mr. Buckley stated he was one of the four abutters who did not receive notice of the change in the lot's status.

Ms. Drew asked whether a permit is required before trees can be removed on a lot. Mr. Laporte stated a property owner has the right to clear up to 10,000 sq. ft. of their land without a permit. Clearing over 10,000 sq. ft. requires either a Building Permit or a permit from the Planning Board.

Mr. Sawyer and Mr. Keene were in agreement with seeking town counsel's opinion. After a brief discussion, it was decided to continue the matter to June 19, 2019.

Ms. Kullar entertained a motion to continue the matter to June 19, 2019. **Mr. O'Brien moved, Mr. Kalick seconded to continue A09-2019, to June 19, 2019.** The motion carried. 5-0-0.

Old Business – A brief discussion transpired regarding the 165 Jefferson Road filing.

New Business – Ms. Kullar stated Cape Cod Aggregates will appear before the board at the next meeting to provide an update on the progress of their restoration.

Public Comment – None.

Ms. Kullar reminded the members that she and Mr. Kalick will not be present at the July 17, 2019 meeting.

III. Adjournment –

Mr. O'Brien moved, Mr. Kalick seconded to adjourn the meeting. With no discussion, the motion carried 5-0-0. The meeting adjourned at 7:45 PM.

Minutes Submitted by: Carol Mitchell