

Town of Bourne Zoning Board of Appeals

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

November 6, 2019

I. Call to order

Chair Amy Kullar called to order the meeting of the Zoning Board of Appeals at 7:00 PM on November 6, 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, Kat Brennan and Associate Members, Deb Bryant and Jim Beyer.

Members Excused – Harold Kalick and Associate Member Chris Pine.

Also Present: Roger Laporte, Ken Murphy, Carol Mitchell, Zachary Basinski, Tina Malloy, Stan Budrick, Newman Flanagan, Jonathan Fitch, Colin Gillis, Christina Stevens, Jacques Lapointe, Jonathan Bowden, Roger Forget, Sean Scully, Mathew Grosschedl, Drew Hoyt, Robert Dutch and Thomas Pappas.

Amy Kullar will be writing the Decisions.

II. Agenda Items

1. Approval of Minutes – Ms. Kullar entertained a motion to defer approving the minutes of the October 16, 2019 meeting. **Mr. Keene moved, Ms. Brennan seconded to defer approving the minutes of the October 16, 2019 meeting.** The motion carried. 5-0-0.

Sitting on the hearing; Amy Kullar, John O'Brien, Wade Keene, Kat Brennan and Deb Bryant.

2. 10 Harbor Way, Appeal 2017-A20, Remand to the Zoning Board of Appeals under M.G.L., Chapter 40A, Section 8 and Section 17, and the Bourne Zoning Bylaws, Sections

1210, 2420, 2450 and 3100 for further action from the Barnstable County Land Court decision on Case No. 18MISC000113.

Materials: *Email from Elizabeth Gillis, Public Hearing Notice and Formal Letter Request from Elizabeth Gillis.*

Zach Basinski of Bracken Engineering addressed the members and briefly explained why he is back before the board.

Ms. Kullar explained that the only matter before the board that evening is whether to accept the decision of the Land Court. All other matters regarding the issuance of a permit for building will be referred to the building inspector.

Ms. Kullar stated the members will not be litigating any matters heard in prior hearings but will allow public input.

Public Comment – Attorney Fitch stated the Land Court’s decision regarding the merger of the two lots has been answered. However, the question of the building inspector’s denial of issuing a building permit for other reasons remains unanswered. He feels it is appropriate for the Board to consider this matter because the denial may still be correct but not for the reason of merger.

Mr. Laporte explained his position on the matter and the reasons why the issuance of the permit was denied and that the Board may only appeal a decision that pertains to zoning. The zoning part of the decision pertained to the road. The court disagreed with that decision, so the previous argument regarding the road has been settled. The other building code issues are outside of the Zoning Board’s purview.

Ms. Kullar reiterated the Board’s decision that all other matters will be referred to the building inspector. Attorney Fitch also accepted the decision of the court but disagreed with the chair’s decision as he feels the other issues involved are covered in the Zoning Bylaw and are appropriate to be heard by the Board. He asked that his opinion be incorporated in the Decision. Ms. Kullar agreed.

Board Comment – None.

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

Ms. Kullar entertained a motion that the Board accept the decision of the court and refer any further matters on this issue and the issuance of a permit to the building inspector. **Mr. O’Brien moved to accept the ruling of the court in the matter pertaining to 10 Harbor Way, Appeal 2017-A20, and that the Board refer any further matters on**

this issue and the issuance of a building permit to the building inspector. Ms. Bryant seconded. The motion carried. 5-0-0. Roll Call Vote: Mr. Keene – Yes, Ms. Brennan – Yes, Ms. Kullar – Yes, Ms. Bryant – Yes and Mr. O’Brien – Yes.

3. 230 Sandwich Road, Special Permit #18-08-40B – Request to amend the Comprehensive Permit from 16 units to 20 units.

Materials: Public Hearing notice, Revised Plan, Layout of Fire Department turning motions, Water District Correspondence and Comments from the Bourne town planner.

(Continued from October 2, 2019)

Attorney Hoyt and Mathew Grosschedl of Outback Engineering was present to discuss the proposal. Ms. Kullar asked whether the representative has received input from other town departments. Attorney Hoyt stated they’ve received comments from several entities. He discussed some of their feedback and the changes that have been made in response to them.

Ms. Kullar explained she met with the town planner earlier that day and has current comments that she’ll share with the representative. Ms. Kullar also stated within the next two weeks, the Board will be entering into Executive Session with Town Counsel to hear the opinion of the special counsel.

Mr. Laporte asked whether any changes have been made to the plan since they were last before the Board. Mr. Grosschedl stated changes have been made based on the Board’s feedback. Mr. Hoyt added some of the changes relate to relocating the infiltration structures. Mr. Laporte asked the representative to point out the revisions during his presentation.

Mr. Grosschedl discussed the revisions made to the plan; i.e., the addition of a stockade fence along the bottom property line, changes made to the drainage layout, relocation of infiltration basins and addition of an access lane, based on MassDOT feedback.

Mr. Laporte asked whether the representatives have been before the Fire Department with regard to the hammerhead driveway. Mr. Grosschedl stated they have received feedback from the fire chief and have revised the plan accordingly.

Mr. Laporte asked that the feedback received from MassDOT be submitted for the Board to review. Mr. Grosschedl agreed.

Board Comment – Mr. Beyer asked for clarification of the revisions made to the plan based on fire department feedback. Mr. Grosschedl elaborated.

Ms. Kullar discussed the comments she received from the town planner, Ms. Moore. She said Ms. Moore isn't happy with the umbrella waivers that are stated on the plans. She feels they are too broad. Ms. Moore would also like to see a proforma, she would like to see a design of the proposed homes. Ms. Moore would like the applicant to consider how the affordable homeowners will afford HOA fees if a Homeowner's Association is established and how they'll afford maintaining the septic systems at the affordable units. She is also expressed concern over the lack of space in the development for children to play outside. She also asked which units will be deemed affordable, the height of the proposed retaining walls and would like a written response from the DPW regarding trash removal.

Ms. Kullar stated the board would like to receive a response to Ms. Moore's comments within thirty days. Ms. Moore asked that she be given at least ten business days to review the submission prior to making any comments.

Board Comment – Mr. Beyer feels the plan provides many of the details the town planner is asking for. He suggested the representative submit an architectural rendering; which will illustrate the way the structures will look after they've been completed.

Ms. Kullar asked the representative whether he had received correspondence from the Water District. She stated there is an outstanding balance owed to the Water District on this property. A discussion ensued.

Attorney Hoyt discussed the informal comment received from MassDOT. He will submit the preliminary plan for the curb cut with an invitation for comment from town departments directly to MassDOT regarding the intersection to be considered in their permitting process.

Mr. Laporte asked at what point the state road construction will occur. He asked that the applicant submit a time frame for that construction to the Board in writing in case they have input.

Attorney Hoyt would like to receive input from the Planning Board before they incur additional expense revising the plan again. Ms. Kullar said she understands and anticipates the Board will meet with Town Counsel within the next few weeks and will share pertinent information with the representative.

Mr. Keene asked whether the applicant went forward with the permitting process of the state road construction with MassDOT since they were previously approved for a 40B project. Attorney Hoyt stated no, because the original project was not economically feasible. Ms. Kullar said she is confused as to why the curb cut hasn't been done yet since they've had a Building Permit for years.

Ms. Kullar questioned whether construction will begin in the spring if the project is approved in December. Attorney Hoyt stated he will be prepared to answer the board's questions at the next meeting.

Ms. Brennan asked whether the Board can condition the start of construction. Ms. Kullar said she doesn't think that is permissible under a 40B project.

Mr. O'Brien commented on the amount of time it is taking DOT to finalize their report for the new police station being constructed and thinks this project could face a similar challenge. Mr. Hoyt remains optimistic that DOT's final report for this project will be quick since their preliminary report had minimal comments and the initial application was approved; this is simply an amendment to what was previously approved.

Mr. O'Brien asked whether the timetable is realistic since input from many of the town departments and special counsel is still needed. Ms. Kullar is hoping feedback from special counsel will be heard within the next several weeks.

Mr. O'Brien asked why the town planner is communicating with the chair rather than the applicant directly. Mr. Laporte explained under 40B, the town planner is required to communicate with the board of appeals directly. Ms. Kullar stated she will forward the town planner's full comments on the revised plan to everyone once she receives them.

Attorney Hoyt expressed skepticism over the pending feedback from the town's special counsel. He briefly discussed a prior appeal that was made to the Housing Appeals Committee when the applicant's amended plan to increase the number of previously approved units from sixteen to thirty-two was deemed a substantial change by the building inspector and upheld by the board of appeals.

Mr. Beyer thinks the most direct thing the board can do is provide the applicant with a unified set of comments from all town departments. He suggested the applicant wait for the comments, review them with the board and then revise the plan accordingly.

Public Comment – Sean Scully asked what the next steps will be. Mr. Laporte explained they will try to obtain comments from all departments and will meet with town counsel in Executive Session prior to the next presentation.

Mr. Scully asked where the proposed stockade fencing will be located. Mr. Grosschedl pinpointed the proposed location on the plan.

Mr. Keene asked what material the proposed fence will be. Mr. Pappas stated it will be wood.

Mr. Scully expressed concern that the road located at the rear of the property will continue to be used at a cut through to Port of Call. He asked that similar conditions be placed on this proposal as were placed on the previously approved project.

Ms. Brennan voiced concern over the amount of money the town has spent on legal costs associated with this project.

Robert Dutch asked whether the water will require a loop. Mr. Laporte stated he is unsure because that is a question for the Water Department. A discussion ensued.

Mr. Dutch opened a brief discussion regarding the proposed septic systems, erosion control methods and Ms. Moore's feedback regarding the proposed road's steep slope and grade of the property.

With no further discussion, Ms. Kullar entertained a motion to continue the matter. **Mr. O'Brien moved, Ms. Brennan seconded to continue the matter to December 4, 2019.** The motion carried. 5-0-0.

4. Vote on Revised Kennel Application – Prior to this meeting, Ms. Kullar sent an email to all members with suggested modifications to the existing Kennel Application. It was brought to the town clerk's attention by the Department of Natural Resources that the town currently does not have a requirement of an Animal Control Officer Report as submitted material; which is required in the bylaw. Therefore, it must be added to the application.

Board Comment – Mr. Keene asked whether future applications will contain this report. Ms. Kullar stated yes, an Animal Control Officer Report will be required to be submitted with a Kennel Application and the revised application will call for it.

Ms. Kullar entertained a motion to adopt the revised Kennel Application. **Ms. Bryant moved, Mr. Keene seconded to adopt the revised Kennel Application.** The motion carried. 5-0-0.

Old Business – Mr. Laporte stated he and Ken Murphy performed a site visit at Cape Cod Aggregates. He discussed the restoration progress being made.

New Business – None.

Public Comment – None.

III. Adjournment –

Ms. Brennan moved, Mr. O'Brien seconded to adjourn the meeting. The motion carried 5-0-0. The meeting adjourned at 8:03 PM.