

Town of Bourne Zoning Board of Appeals

Meeting Minutes

Virtual Hearing via Zoom

October 6, 2021

Meeting ID: 857 4841 4042

2021 DEC 15 PM 3:30
TOWN CLERK BOURNE

RECEIVED

1. Call to order

Chair Jim Beyer called to order the meeting of the Zoning Board of Appeals at 7:00 PM on October 6, 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 from the Bourne Enterprise indicated he was recording.

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

Members Excused – None.

Also Present: Ken Murphy.

Agenda Items

- 1. Approval of meeting minutes for hearings August 11, 2021. Mr. Keene made a motion to approve the minutes for hearing date August 11, 2021. Mr. O'Brien second the motion. Roll call vote: Mr. Pine- Yes, Mr. Keene- yes, Ms. Nemeth- yes, Mr. Spilhaus- Yes. Approval of meeting minutes for hearing August 4, 2021. Mr. Pine made a motion. Mr. Keene second the motion. Roll call vote: Mr. Pine- Yes, Mr. Keene- yes, Ms. Nemeth- yes, Mr. Spilhaus- Yes.**
- 2. 4 Cunningham Rd.; Request for Special Permit Kennel (2021-SP21) to house 4 dogs on their residential property.**

Materials: Application for Special Permit for a kennel, Town of Bourne Department of Natural Resources Kennel Inspection Report, Assessors Card, Abutters Map, Driving Directions, Abutters List.

Christine O'Neil, owner, is present for the hearing. She reviewed the request explaining her adult children have moved back into her home and have brought their pet dogs. They household now has four (4) dogs total.

Mr. Beyer clarified the bylaw.

Mr. Pine asked what breed the dogs are. Ms. O'Neil replied they are all mixed breeds and ages.

Mr. Beyer asked if there were any questions or comments from the public. 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. Roll call vote: Mr. Pine- Yes, Mr. Kalick- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.

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

Mr. Beyer Entertained a motion to approve 4 Cunningham Rd.; Request for Special Permit Kennel (2021-SP21) to house 4 dogs on their residential property. **Mr. Pine made a motion. Mr. Kalick seconded the motion. Roll call vote: Mr. Pine- Yes, Mr. Kalick- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.**

Mr. Pine will be writing this decision.

- 3. 93 Cedar Point Dr.; Request for Supportive Finding (2021-SP23) for the reconstruction and expansion of a pre-existing non-conforming garage located with the rear yard setback.**

Materials: Application for Special Permit, Abutters List, GFA worksheet, Project Narrative, Abutters Map, driving directions, Existing vs. Proposed Floor Plan, Building Plans, Site Plan, WPA Form 5- Order of Conditions.

Mr. Beyer stated they will be discussing both agenda item #3 and the agenda item #4 together as they are for the same address.

4. 93 Cedar Point Dr; Request for Special Permit (2021-SP18) in accordance with Sect. 2457 of the bylaw for a departure of 279 s.f. over the allowed max gross floor area. (continued from 08.18.21)

Materials: Application for Special Permit, Abutters List, GFA worksheet, Project Narrative, Abutters Map, driving directions, Existing vs. Proposed Floor Plan, Building Plans, Site Plan, GFA worksheet signed by Assistant Town Planner 7.9.21. Comments from Fire Dept.

Mr. Basinski shared his screen to review the project requesting to modify garage adding second story. He explained the property is in an AE flood zone which is the hardship.

Mr. Beyer clarified where the garage expansion will be located in relation to the façade.

Alex Randall, homeowner, clarified the addition will go about 1 ft past the false wall.

There was a discussion about the septic system and bedroom count between Board Members, homeowner, and Mr. Basinski.

Mr. Beyer asked if there were any questions or comments from the public. There were none.

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

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

Mr. Beyer Entertained a motion to approve 93 Cedar Point Dr.; Request for Supportive Finding (2021-SP23) for the reconstruction and expansion of a pre-existing non-conforming garage located with the rear yard setback. **Mr. Pine made a motion. Mr. Keene seconded the motion. Roll call vote: Mr. Pine- Yes, Mr. Kalick- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.**

Mr. Beyer Entertained a motion to approve 93 Cedar Point Dr; Request for Special Permit (2021-SP18) in accordance with Sect. 2457 of the bylaw for a departure of 279 s.f. over the allowed max gross floor area. **Mr. O'Brien made a motion. Mr. Keene seconded the motion. Roll call vote: Mr. Pine- Yes, Mr. Kalick- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.**

Mr. Beyer 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. (Continued from 09.15.21)

Materials: Response to Peer Review Comments letter with attachments, Revised Cape View Way Permitting Plans, Revised Stormwater Report, including the Operation and Maintenance Plan, Revised Zoning Bylaw waivers list, Revised Subdivision Regulation waivers list, Peer Review of the second submittal of Civil Engineering Design/Septic Design.

Mr. Beyer defined what the Board was hoping to get out of this hearing;

1. Review of Stormwater management plan peer review and septic comments
2. Tenor of the Board on this application.

Mr. Beyer asked if there are any questions or comments from the applicant.

Peter Freeman, Attorney for Freeman Law Group, representing the applicant, agrees with Mr. Beyer's intentions for the hearing. He stated there will be a presentation from Mr. Kuchar. Mr. Freeman also stated he had sent the draft decision to Mr. Beyer.

Mr. Beyer shared that he would like to discuss the draft decision at a later time.

Brian Kuchar, Horsley Whitten Group, Registered Landscape Architect and Civil Engineer; stated he has an updated site renderings and feels they have addressed the peer review comments from the original letter, submitted plans and Stormwater report and an updated waiver list. He also shared they have been working with Mr. Houston on the most recent comments. There is a new hydrant flow test showing sufficient flow. They are scheduled to have a meeting with North Sagamore Water District. They have changed their systems to Title 5 due to comments from MassDEP and peer review and they will submit revised plans to the Health Department. They have been working with abutters on the screening issues and updated rendered site plan will be reviewed.

Ms. Nemeth reiterated the letter from the Health Agenda and their requests which have not been met at this time.

Tom Houston, Professional Services Corporation, PC; Peer Reviewer; reviewed the comments submitted in the peer review of the second submittal o the Civil Engineering/ Septic Design Memorandum.

There was a discussion between Board members and Mr. Houston on how to interpret front, side, and back property lines.

Mr. Houston stated he will provide written comment in regards to this to clarify.

Ms. Nemeth asked for clarification on the ownership of lots. Ms. Houston reiterated his comments in the memorandum.

Mr. Freeman stated all of the locust for the proposed project is controlled by the applicant and owned by the Bourne Housing Authority.

Mr. Kalick questioned if the original subdivision was legally recorded. Mr. Freeman replied that it was.

Mr. Kalick questioned the validity of the right of way. Mr. Freeman detailed the history of the ownership.

Mr. Beyer asked if there were any questions or comments from the public.

Eileen Fitzpatrick, 6 Homestead Rd Ext.; Asked about Mr. Houston's comment about parking on the access road and sought clarification to which road he is referencing. Mr. Houston clarified it is the road for the subdivision itself.

Charles Sabbot, Attorney representing Tudor Hill Association LLC, abutter; stated Mr. Freeman mentioned they had been discussing submitting a condition to the Board and feels they are close to an agreement. He wanted to clarify if the hearing was to be close tonight. Mr. Beyer replied it will not be closed tonight.

No further comments from the public.

Mr. Beyer stated he feels the Board has received a substantial complete application. He asked the Board members to discuss the merits of the application in a tenor of the Board.

Mr. Pine shared he takes the intent of a 40B seriously and the need for affordable housing is present. He feels the application is admirable and has no further questions. He feels the updated changes are progressing. He stated the following as concerns; the requested waivers for setbacks, issues brought up by abutters and the zoning requirements are significant where it relates to the building height, setbacks and subdivision rights. He suggested gaining Town Council in this area.

Ms. Nemeth stated she feels this project is too big for the site. She shared there is no compatibility with the neighborhood. She stated there is too much mass and density on this site. She suggested removing the 3rd floor, 2 units on floors 1 and 2, reducing the overall project to 28 units total resulting in less total parking and increased open space.

Mr. Kalick agrees with Mr. Pine and Ms. Nemeth and reiterated the feeling that the project is too big. He expressed concerns with limited parking and access to the rear of the building for emergency vehicles.

Mr. Keene stated the project is too big, he suggested it be only 40 units to reduce parking. He feels the setbacks are not good and would like to see fencing and screening. He had questions about whether pets are allowed and if there will be relief areas designated. He also mentioned wanting more information on trash pickup, maintenance, landscaping, and location of bike racks.

Mr. O'Brien would like to have someone narrow down the exceptions that are still requested. He has concerns with families comfort with a project of this size.

Mr. Spilhaus concurs with Ms. Nemeth and Mr. Kalick.

Mr. Beyer understands and supports 40B. He feels the abutters purchased their homes with an understanding it is a R40 district and would expect any future projects would adhere to the restrictions of that district. Thus the setbacks and lot coverage are a concern along with open space and parking. He stated the project is too big for the site. He stated this project would not be a benefit to the neighborhood or an asset to the community. He asked if the applicant would come back with a design that meets the setbacks and bulk requirements for an R40 neighborhood.

Mr. Freeman stated it would be hard to redesign to the extent suggested. He feels these suggestions would be overturned in courts and would rather work it out in these hearings.

Mr. Beyer Entertained a motion to continue Cape View Way 40B, Comprehensive Permit (#2021-CP06) to construct and operate 51 affordable rental units on 2.94 acres to November 3, 2021. **Mr. O'Brien made a motion. Mr. Pine seconded the motion. Roll call vote: Mr. Pine- Yes, Mr. Kalick- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.**

6. 230 Sandwich Rd, Chase Estates, Request to amend the Comprehensive Permit No. 08-18. (Continued 09.15.21)

Materials: Notice of Project Change (July 2021)

Mr. Beyer stated he feels this is a complete application but is confused by all the versions of the comprehensive permit.

Drew Hoyt, Attorney, replied that the current version is exhibit 8 of the packet.

Mr. Beyer requested the applicant articulate in more detail, the architectural character of the development. He quoted the December 12, 2020 decision along with the comments made by the Town planner submitted October 30, 2019 in regards to the architectural character.

Mr. Beyer recommended Mr. Houston complete a peer review of the new site drawings and updated the Stormwater and site drainage analysis comments. He also noted there was never a final peer review of the traffic impact assessment as this was never provided. He also asked that the Town Department Heads reconsider their comments in light of the new application.

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

Ms. Nemeth stated this new application has not stated substantially the same as the previous application. She would like further detail on where they are looking for relief on the hillside cut and slope standards. She asked for a markup that shows percentages in excess of recommended standards of the Town. She identified 3 problems with this project and would like to see a response;

1. Traffic backup at ingress and egress being so close to Sandwich Rd roundabout.
2. Cul-de-sac is longer than the standard with no garages and concern with street parking.
3. Grading of property.

Ms. Nemeth continued to say she would like to understand the logic behind increasing the project size and the issues for safety.

Attorney Hoyt replied he would like to hear all the Board Members concerns instead of responding individually but shared the units will have garages.

Mr. Pine agrees with Ms. Nemeth's concerns. He asked if there needs to be a quote from the peer reviewer to move forward.

Mr. Beyer asked Mr. Houston if he has a good understanding of what needs to be done. Mr. Houston stated he would have to review the contract and what is currently before the Board. They agreed this would be completed.

Mr. Kalick had no comment at this time.

Mr. Keene had no comment at this time.

Mr. Obrien had no comment at this time.

Mr. Beyer asked if there were any questions or comments from the public.

Roger Forget, Superintendent at Upper Cape Technical School, abutter; shared he is curious about the current road, proposed road and the abandoned existing foundation.

Mr. Beyer replied that from the proposed plans it shows the foundation will be removed, curb cut is close to the existing road but there will be adjustments. Attorney Hoyt agreed.

Mr. Beyer stated he has not seen any plans that show a connection of this current road to any others. Attorney Hoyt confirmed and explained there will be a fence between this development and the neighborhood to the rear.

Gary Ruffino, 9 Weatherdeck Rd, abutter; enquired about a connection between Weatherdeck Rd. and the road for the development. Attorney Hoyt said there are no current or proposed plans to connect the road to Weatherdeck Rd or the Port of Call neighborhood and again shared there will be a fence.

Brian Jensen, 10 Bosuns Ln, states there is currently a connection between Port of Call neighborhood and the Chase Estates cul-de-sac which trucks and construction vehicles use to access this project frequently and as recent as earlier this day.

Mr. Murphy confirmed there is a road that has been closed in and it should not have been as it is illegal.

Attorney Hoyt acknowledged this is a concern that has been raised often. He again addressed the fence which is proposed in that area. He stated the abutters concerns about the existing conditions of the property will be alleviated with the development of this project.

Thomas Pappas, Applicant and owner; stated there is nothing illegal and he uses that road to access his properties and he feels it is his right to do so.

Attorney Hoyt requested the hearing focus on the approval of the proposed plans and not the current site conditions.

Mr. Beyer suggested that through condition of approval the Board could prohibit through access between Port of Call and Chase Estates.

Gary Ruffino, 9 Weatherdeck Rd, abutter; continued to share concerns about vehicles accessing both developments via a connecting road.

Mr. Beyer reiterated there will be no access and this can be prohibited by condition of approval.

No further public comment.

Ms. Nemeth requested access to the site. Mr. Pappas agreed.

Jim Pavlock of Outback Engineering, suggested a site visit be arranged. All parties agreed.

Attorney Hoyt and Mr. Beyer discussed a timeline of what to expect.

Mr. Beyer asked for 3 things

1. The addition of architectural character.
2. Response to concerns about the side raise markup of slope cut and fill.
3. Would like to have the peer review proposal within a week.

Mr. Beyer asked Mr. Murphy to contact the other Town Departments for updated comments. Mr. Murphy agreed.

Ms. Nemeth requested a site visit be arranged.

Mr. Beyer Entertained a motion to continue 230 Sandwich Rd, Chase Estates, Request to amend the Comprehensive Permit No. 08-18 to October 20, 2021. **Ms. Nemeth made a motion. Mr. Keene seconded the motion. Roll call vote: Mr. Pine- Yes, Mr. Kalick- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.**

Old Business – None.

New Business – None.

Public Comment – None.

Adjournment –

Mr. Beyer entertained a motion to adjourn the hearing. Mr. Pine moved, Mr. O'Brien seconded to adjourn the meeting. Roll call vote: Roll call vote: Mr. Pine- Yes, Mr. Keene- yes, Ms. Nemeth- yes, Mr. Spilhaus- Yes. The meeting adjourned at 9:26pm.

Respectfully submitted,
Cassie Hammond