

**Town of Bourne
Zoning Board of Appeals
Meeting Minutes
April 6, 2022**

PRESENT; James Beyer, Chris Pine, Wade Keene, John O'Brien, Pat Nemeth, Karl Spilhaus (Associate)

STAFF; Ken Murphy

PUBLIC; Drew Hoyt, Jim Pavlik, Roger Forget, Robert Dewar, Jay Herther, Dianne Herther, Doug Troyer, Tarja McGrail, Dan Doucette, Elmer Clegg

Chairman Beyer called the meeting to order via Zoom at 7:00pm.

MINUTES:

Ms. Pat Nemeth made a motion to approve the minutes from 2/16/2022, 3/2/2022, and 3/16/2022. Vice Chairperson Pine seconded the motion.

Roll Call Vote as follows; Vice Chairperson Pine- YES, Ms. Nemeth- YES, Mr. O'Brien- YES, Mr. Keene- YES, and Chairperson Beyer- YES. Motion to approve the minutes from 2/16/2022, 3/2/2022, and 3/16/2022.

Public Hearing for Variance #2021-V27:

Cont'd from 3.2.22. 55 Pasture Rd. Theodore Lee. Request for 2 feet, 3 inches from the side yard setback requirement for a carriage house that has been constructed on the property in reliance of a surveyed plan which turned out to be incorrect.

Vice Chairperson Pine voiced his objection to a continuation due to a prolonged time period, and that he would prefer to deny this project without prejudice so that the applicant can return when they are ready. Chairman Beyer and Ms. Nemeth agree.

Vice Chairperson Pine makes a motion to dismiss the application for Variance #2021-V27 without prejudice for 55 Pasture Road for a Request for 2 feet, 3 inches from the side yard setback requirement for a carriage house that has been constructed on the property in reliance of a surveyed plan which turned out to be incorrect. Mr. Keene seconds the motion.

Roll Call Vote as follows; Ms. Nemeth- YES, Mr. O'Brien- YES, Mr. Keene- YES, Vice Chairperson Pine- YES, Chairperson Beyer- YES. The motion to dismiss the application for Variance #2021-V27 without prejudice passes.

Chairperson Beyer states that he will write the decision.

Public Hearing for Amendment to Comprehensive Permit No. 08-18:

Cont'd from 3.16.22. 230 Sandwich Rd. Chase Estates.

Mr. Drew Hoyt introduces himself, and states that he viewed the peer review proposal. He stated that Mr. Houston found that there was money still in escrow. However, Chairperson Beyer stated that Mr. Murphy had discussed with Mr. Pappas how there was no money left in escrow and that it had been expended.

Chairperson Beyer questioned the scope of the peer review, and the lack of an erosion control focus. Mr. Hoyt stated that he was under the impression that that fell under the scope of the Town Engineer (Tim Lydon). Chairperson Beyer stated that from the letter from Mr. Lyndon, that there should be an erosion control specialist assigned to the review. Ms. Nemeth said that she believes the hill on the property has moved prior, and that she will vote against the peer review proposal as it is currently written because there is a lack of an erosion control review.

Jim Pavlik noted that in his discussion with Mr. Lyndon, they agreed that a condition of approval would be that an erosion control monitor would need to be present during construction. Ms. Nemeth said that the proposals are for soft control of the slopes, and that erosion control analysis would highlight any possible needs for hard control. Chairperson Beyer said that it is up to the peer reviewer to analyze the necessity of hard control measures. Vice Chairperson Pine added that he would like to strike the references to "including road grade and layout", and that it would be related to the erosion control plan, but that he would prefer to address it with reference to that study.

Mr. Robert Forget, Superintendent of Upper Cape Cod Regional Technical High School, brought up that UCT as an abutter would disagree with the peer review in the current state as there is over 70 feet of grade increase from base to top of wall, and that there needs to be a hardscape plan so that the peer reviewer can truly conceptualize that. He said as a representative of UCT, he would like the review to be sent back. Chairperson Beyer asked for clarification on "hardscape", and if it is in relation to hard erosion control. Mr. Forget confirms, and would like a plan of hard retainage for erosion control on the site, and Chairperson Beyer said that the peer reviewer should focus on the necessity for hard erosion control. Mr. Forget wanted to emphasize that the review should be adequate and encompasses the need for hard erosion control.

Chairperson Beyer questioned Vice Chairperson Pine's question on the road grade and layout, and that he wants to remove as an exclusion so that it can be addressed in other areas of the proposal. Ms. Nemeth agrees. Chairperson Beyer states that they can look at conditionally approving the peer review, subject to the striking of the road grading and layout as an exclusion, and subject to the peer reviewer looking at the advisability of hard erosion control in lieu of soft erosion control. Ms. Nemeth states they would move items C and D under exclusions into the scope of services, and Vice Chairperson Pine states they could move D into the scope of services, and "agrees to improve road grade and layout" stricken from C, that could work.

Vice Chairperson Pine makes a motion to improve the peer review submitted by Tom Houston dated April 5, 2022, as presented, except for removing the exclusion D and including it in the

services outline, and changing exclusion C to strike “including road grade and layout” as it is presented. Ms. Nemeth seconds it, and states that the peer reviewer needs an opportunity to amend the cost to reflect the new scope. Vice Chairperson Pine adds to his motion that the additional cost would be built at the rates at the fee structure that would be included in the proposal. Ms. Nemeth seconds the motion.

Roll Call Vote; Mr. O’Brien- YES, Vice Chairperson Pine- YES, Ms. Nemeth-YES, Mr. Keene- YES, and Chairperson Beyer- YES. Motion to improve the peer review submitted by Tom Houston dated April 5, 2022, as presented, except for removing the exclusion D and including it in the services outline, and changing exclusion C to strike “including road grade and layout” as it is presented, and that the additional cost would be built at the rates at the fee structure that would be included in the proposal, passes.

Bourne Building Commissioner, Ken Murphy, recommends that the discussion be continued until the May 5th meeting, so that the peer reviewer has adequate time to prepare. Jim Pavlick requests clarification on the expectations for Mr. Houston’s review, and if his team is expected to analyze this and provide comments and a response to the review. Chairperson Beyer said yes, and said that if the reviewer takes two weeks, then Mr. Pavlick’s team would have two weeks to formulate a response. Mr. Pavlick said that that would not be a sufficient amount of time, and that the May 18th meeting would be better.

Mr. O’Brien made a motion to continue the hearing at the May 18th, 2022 ZBA meeting. Vice Chairperson Pine seconded the motion.

Roll Call Vote as follows; Ms. Nemeth- YES, Vice Chairperson Pine- YES, Mr. Keene-YES, Mr. O’Brien- YES, Chairperson Beyer- YES. The motion to continue the hearing for Amendment to Comprehensive Permit No. 08-18 until May 18th, 2022, passed.

Public Hearing for Supportive Finding #2022-SF02:

80 Circuit Ave. Jay and Dianne Herther. Request for a second floor addition, raze portion of shed, modify rear porch to remove the roof.

Chairperson Beyer requested that Mr. Keene write the decision for this property.

Robert Dewar of Bracken Engineering introduced himself as a representative on behalf of Jay and Dianne Herther for the project. He states that the dwelling is a 5,354 sq. ft., 3 bedroom home, and that per the non-conforming lot coverage worksheet, it allows a maximum of GFA and lot coverage that is 25% each. They are at maxed out on 32.6% GFA at 1,745 sq. ft. and under lot coverage at 1,211 sq. ft. He states that they want to add an 83sq ft. addition on the second floor that is partially above an existing first floor porch. To meet the GFA, they want to remove a portion of a shed, and remove a portion of the porch, which would remove 85 sq. ft., and there would be a net decrease of 2 sq. ft. for GFA, and a net decrease of 50 ft. for lot coverage. He said they have a letter of support from their direct abutter, 76 Circuit.

Mr. O'Brien said that looking at the figures, that if they did nothing, that it would not be detrimental to the neighborhood. He said after viewing the property, he sees nothing detrimental. Chairperson Beyer and Ms. Nemeth agreed, however Ms. Nemeth asked Mr. Dewar for clarification on the second floor plan. Mr. Dewar stated that it is a "dormer" for the grandchildren, and that the size is smaller than the other bedrooms, which are already not very large. Ms. Nemeth questioned if the plans accounted for closets, and Jay Herther stated that there were none. Mr. O'Brien looked for clarification on if they are or are not adding a bedroom, to which Mr. Dewar said that they are not adding a bedroom, but that they are rearranging the walls to create more of the office "nook", so that the septic flow would not be changing.

Mr. O'Brien made a motion to approve a Supportive Finding #2022-SF02 at 80 Circuit Avenue for a request for a second floor addition, raze portion of shed, modify rear porch to remove the roof. Ms. Nemeth seconded the motion.

Roll Call Vote; Vice Chairperson Pine- YES, Mr. Keene- YES, Mr. O'Brien- YES, Ms. Nemeth- YES, and Chairperson Beyer- YES. Motion to approve a Supportive Finding #2022-SF02 at 80 Circuit Avenue for a request for a second floor addition, raze portion of shed, modify rear porch to remove the roof, passed.

Public Hearing for Variance #2022-V01:

4-6 MacArthur Blvd. Cumberland Farms Inc. Request from maximum building height requirement (35') for a new convenience store, restaurant.

Doug Troyer introduces himself as a representative from Cumberland Farms, and introduces Tarja McGrail, who works on engineering. He states that this application is seeking to modify the September 13, 2016 Variance that the board had previously granted, and that now Cumberland Farms is adding additional land, and has purchased additional properties. Initially, they requested a 13.5 ft. variance, and they would like to decrease this to 6 ft., so that the building height is 31 ft.

Chairman Beyer stated that the lack of elevation on the existing site pulls down the line of measurement for the top of the building, which causes the issue for measurements. Mr. Troyer states that they are looking to raise the elevation from 67.4 to 82.0. Chairman Beyer asked for clarification, and Mr. Troyer stated that at post-construction if measured, there would be no bylaws broken, but since it is measured pre-construction, it will violate the bylaws. Ms. Nemeth stated that she sees no problems with this, and that since they are making extensive architectural revisions, have worked with The Planning Board, and is asking for less than they were granted prior. Mr. O'Brien states that he agrees. Mr. Murphy noted that the images look nice, and better than what was there prior. Dan Doucette, Chairman of The Planning Board noted that he agrees with the ZBA and Mr. Troyer's view on the property and the need for the variance. Elmer Clegg of The Planning Board states that he was the reviewer of this project, and that he sees this project being beneficial to the town.

Vice Chairperson Pine made a motion to close the Public Hearing for Variance #2022-V01 at 4-6 MacArthur Blvd, Cumberland Farms Inc. for a request from maximum building height requirement (35') for a new convenience store, restaurant. Mr. Keene seconded the motion.

Roll Call Vote as follows, Mr. O'Brien- YES, Ms. Nemeth- YES, Vice Chairperson Pine- YES, Mr. Keene- YES, and Chairperson Beyer- YES. The motion passes.

Ms. Nemeth asked for clarification on who is writing the decision, and Chairperson Beyer said that he would.

Ms. Nemeth made a motion to approve of Variance #2022-V01 for 4-6 MacArthur Blvd, Cumberland Farms Inc. for a request from maximum building height requirement (35') for a new convenience store, restaurant. Mr. O'Brien seconded the motion. Ms. Nemeth amended her motion for a Variance #2022-V01 for 4-6 MacArthur Blvd, Cumberland Farms Inc. for a request for a 6.6 ft. variance, making the building no higher than 33.2 feet for a request for the building to be no higher than 33.6 ft. Mr. O'Brien seconded the motion.

Roll Call Vote as follows: Mr. O'Brien- YES, Ms. Nemeth- YES, Vice Chairperson Pine-YES, Mr. Keene- YES, and Chairperson Beyer- YES. The motion passes.

New Business:

Chairperson Beyer brought up how they wanted to handle the writing for Chase Estates in lieu of Ms. Nemeth's upcoming Planning Board election. Ms. Nemeth said that she would entertain the idea to stay on ZBA to finish writing the decision, but it seems that Chase Estates will extend past when she will stay. She said she is willing to share the information she has made. Chairperson Beyer suggested that Vice Chairperson Pine take the decision on, and that Ms. Nemeth aid him in the process.

Old Business:

None.

Public Comment:

None.

Adjournment:

Vice Chairperson Pine made a motion to adjourn the April 6, 2022 meeting. Mr. Keene seconded the motion.

Roll Call Vote as follows: Mr. O'Brien- YES, Ms. Nemeth- YES, Vice Chairperson Pine- YES, Mr. Keene- YES, and Chairperson Beyer- YES. The motion passes.