

**Town of Bourne
Zoning Board of Appeals
Meeting Minutes
May 18, 2022**

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

STAFF: Ken Murphy

PUBLIC: Kevin Kieler, Michael Rausch, James Morrison, Peter Turowski, Drew Hoyt, Kevin Klauer, Jim Pavlik

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

Public Hearing for Special Permit No. 2022-SP07:

31 Buttermilk Way. Buzzards Bay. Turowski2 Architecture, Inc. For 10% above allowed GFA and Lot Coverage calculations.

Peter Turowski introduced himself and James "Jim" Morrison of Turowski2 Architecture Inc.

Chairman Beyer clarifies that the board has yet to receive the certified area calculation from The Planning Department, and therefore this permit cannot be voted on at the time. Chairman Beyer gives Peter Turowski the option to present at that time and wait for the vote to be continued, or that Peter can present at the meeting with voting. Peter Turowski proceeds to do the presentation.

Mr. Turowski presents the plot plan, and describes that this property is in Buzzards Bay near Mass Maritime Academy in an AE Flood Zone, is non flood compliant, and was built in the 1950's. Peter clarifies that the request is that the owner wants to raise the house to make it flood compliant. The project is in R40 at 7800sqft. He states that the zoning bylaw for non-compliant buildings allows 24% lot coverage which would be 1872sqft. They're asking for a 10% increase to 2059sqft. The current house is 2099sqft.

Chairman Beyer asks if the new dwelling will be the same area as the old dwelling, to which Peter Turowski responds saying it will be roughly the same GFA.

Mr. Turowski states that it will be in compliance with lot coverage substantially less than what allowed. They are reducing the footprint of the house. Since the property is elevated, Mr. Turowski states that there will be space below on the ground floor that they would like to enclose for parking, and leave a portion for an open porch. Mr. Turowski displays the blueprints and proceeded to finish his presentation.

Chairman Beyer proceeds to comment on the objection from a neighbor, James F Nee of 30 Buttermilk Bay due to the obstruction of view. Chairman Beyer's second comment was

regarding that they are not allowed an automatic 10% variance, and that they need to demonstrate need, and that he (Beyer) is confused regarding what the need is.

Mr. Turowski responds that the forced reduction in an attempt to make it flood compliant is the hardship, and that the nature of the request is to make the dwelling flood compliant.

Chairman Beyer proceeds to say that he understands that they are adding area because it is being raised. Mr. Turowski said that with the current zoning, through replicating the house, to follow the current bylaw they are forced to lose space. Chairman Beyer states that there is addition GFA required due to the raising of the house.

Vice Chairman Pine asked Mr. Turowski included the square footage of the basement level of the GFA. Mr. Turowski said that they presented the non occupable and the occupable space, and that that is not included in the latter. Mr. Turowski stated that in viewing other projects in the area, they did not seem to include that. Vice Chairman Pine stated that from his understanding, the garage and ground floor square footage would need to be included, and therefore that will push it significantly further than what is allowed. He also includes that there needs to be a supportive finding that the new dwelling will be less detrimental than what is there prior.

Chairman Beyer said that he, The Town Planner Jennifer Copeland, and the Building Commissioner Ken Murphy are in agreeance that the ground floor will need to be included. Mr. Turowski then highlighted other properties in the area that have been granted these variances. Chairman Beyer asks for clarification regarding the details of his property, and Turowski said he does not understand how other dwellings in the neighborhood have been granted this variance, and why his is counted as habitable space. Chairman Beyer clarifies that the job of the ZBA is to enforce the zoning laws as they are written and that they judge against the zoning regulations. Turowski said that he disagrees with how the planner said the space on the ground floor, not including the access point would be counted. Chairman Beyer states that they will need her certified area calculation to make a decision. John O'Brien made a motion to continue discussion until July 6 2022 for item #2022-SP-07. Vice Chairperson Pine seconded the motion, which passed with all in favor. The motion carried, and the hearing on 31 Buttermilk will be continued on July 6, 2022.

Public Hearing for Special Permit #2022-SP04:

Cont'd from 5.4.22. 15A Wales Dr., Pocasset. Diane and Chris Rocanello. To replace deck with sunroom on pre-existing, non-conforming lot.

Chairman Beyer states the reason for continuation, and that it was regarding a lack of a certified area plan from The Planning Department.

Kevin Kieler introduces himself as the Chief Designer of Brady Built Sunrooms. Mr. Kieler begins by apologizing for the lack of certification at the prior meeting, but that the Town Planner certified their area plan and that they are under on their lot coverage and FAR. Mr. Kieler also

apologized for the addition of a deck on the past plans, to which Chairman Beyer asked if there was a revised plan, to which Mr. Kieler said yes.

Mr. Kieler emphasized the need for this variance, and that there is a lack of disapproval from neighbors.

Vice Chairman Pine requested clarification on why the sunroom cannot be shifted further from the property line. Mr. Kieler stated that by shifting the sunroom, the entrance would have to be within the owner's bedroom, which would defeat the purpose of why they want to build it. He furthered this by emphasizing the size of the property and that there is a lack of space, and that the sunroom would extend this. Chairman Beyer stated that adhering to the prior size of the deck and staying under lot coverage and FAR are not automatic to gain approval and that the board needs to analyze potential detriments to the neighborhood. Mr. Kieler responded saying that it is not a detriment due to its size, how it will not be seen, the neighbors are in favor and that it improves the condition.

Mr. Keene asked why they cannot shift it to be parallel with the house, rather than the sunroom being 2 feet off. Mr. Kieler stated that they were utilizing the existing deck structure, and that there was a lot of effort and money put into this design. Mr. Keene asked how that would be affected if they are just shifting the sunroom, and Mr. Kieler responded saying how it will be blocking the bathroom window. Chairman Beyer stated that this was a risk that Mr. Kieler knew would happen. Chairman Beyer concurred with Mr. Keene that shifting the north wall to the edge of the house would be an improvement, but that it would still not comply with a setback. Mr. O'Brien stated that he believes that the 2 feet does not make a difference, since they are building it upon the same structure. Chairman Beyer identified the difference being between a deck, and an additional dwelling upon the house, but that changing it by the 2 feet would be meaningless. Mrs. Nemeth states that she does not think the project is detrimental to the neighborhood, and that they are not furthering any conditions in a negative way. She states that she does not think that it is an unreasonable request.

Ms. Nemeth made a motion to close the public hearing on this item, and Mr. O'Brien seconded, with all in favor.

Mr. O'Brien made a motion to approve Special Permit #2022-SP04 as submitted at 15A Wales Drive to replace a deck with a sunroom on a pre-existing, non-conforming lot. Mrs. Nemeth seconded the motion. Vice Chairman Pine voted no, Mr. Keene voted no, Mrs. Nemeth voted yes, Mr. O'Brien voted yes, and Chairperson Beyer voted no. Therefore, the motion failed.

Mr. Kieler inquired about an appeals process, and Chairperson Beyer informed Mr. Kieler that a formal decision will be filed with the Town Clerk within 2 weeks, which will contain instructions on the appeals process.

Public Hearing for Special Permit #2022-SP05:

Cont'd from 5.4.22. 70 Gilder Rd. Brian and Gail Kennedy. To construct an addition 6.3' from the property line to a non-conforming structure.

Kevin Klauer introduced himself as the representative of the applicant. Mr. Klauer discusses the revised certified area plan that he received from The Town Planner, but due to timing and his confusion, he requested to continue this project to allow time for correspondence with The Planning Department.

Mr. O'Brien makes a motion to continue this project on the July 6, 2022 meeting. Mrs. Nemeth seconds the motion, with all those in favor.

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

Cont'd from 4.6.22. 230 Sandwich Rd. Chase Estates.

Drew Hoyt joins as the representative and informs the board that they received the supplemental peer review from Mr. Houston. He said he understood the time constraint on the board since they only received a response that morning, but he would like to try to discuss the peer review.

Vice Chairman Pine stated that he did not have adequate time to review this, so he does not feel comfortable going over it in detail. Vice Chairman Pine highlights that the ZBA requested that the peer reviewer include an erosion control review in their scope of work, but that there was an absence of that in the report.

Ms. Nemeth agreed that she would have liked to see the erosion control report, and then also continued on to state that she agrees with Mr. Hoyt's request to not redo the traffic control study. She said that the erosion control review is critical to the board.

Bourne Building Commissioner, Ken Murphy, highlighted that he talked to the peer reviewer and that the erosion control report will be available by the July 6th meeting.

Chairman Beyer highlighted that in his review of Mr. Hoyt's comments, and he agrees that discussion on the review should be on the July 6th meeting because of the lack of an erosion control review. He also raised the issue of a performance bond, specifically regarding a promise to fulfill the project once started.

Vice Chairman Pine requested that Mr. Hoyt updated the list of requested waivers.

Mr. Keene asked how the value of the bond would be determined and what the scope would be. Mrs. Nemeth said it could not be determined based off of the cost of the project because the board cannot know the financial structure of a project. Jim Pavlik of Outback Engineering said that the Planning Board has a procedure for developing a performance bond and that it is typically set after the roadway is constructed to binder and the site is ready for the homes. Ms. Nemeth asked that since this is an Affordable Housing project, if they can refer to Town Counsel

for a price estimate. Chairman Beyer said that to proceed with that idea, they need to discuss with The Planning Department and Town Counsel.

Mr. Hoyt and Chairman Beyer agreed that Jim Pavlick and the peer reviewer should cooperate to form a reconciled version of comments and agreed-to actions.

Per Mrs. Nemeth's request, Mr. Hoyt will make an account of changes for the board.

Mrs. Nemeth made a motion to continue the hearing on for Amendment to Comprehensive Permit No. 08-18. Mr. Keene seconded the motion, with all in favor.

New Business

Mrs. Nemeth discusses that she will be resigning from the ZBA and be sworn in to join the Planning Board.

Old Business

Chairman Beyer states that he will write the decision on 15A Wales Drive.

Adjournment

Vice Chairman Pine makes a motion to adjourn the May 18, 2022 meeting. Mrs. Nemeth seconds the motion, with all in favor.

Respectfully submitted,

Viveca Stucke