

**Zoning Board of Appeals  
Minutes of May 16, 2012  
Bourne Town Hall  
Buzzards Bay, MA 02532**

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Lee Berger, Chairman

John Priestley, Jr., Vice Chairman (excused)

Wade Keene

Tim Sawyer (excused)

Judith Riordan

John O'Brien

Harold Kalick

Tom Armstrong

Roger LaPorte, Inspector of Buildings

Member(s) of the Press: Diana Barth, Bourne Enterprise

List of Documents

- None

**Meeting called to order**

7:30 pm by Chairman Berger. Keene is writing decisions tonight.

**Approval of Minutes**

O'Brien MOVED and SECONDED by Riordan to approve minutes of 4/18/12 as amended. VOTE 4-0-2 (Berger and Keene abstained).

**#10-12 - Variance**

**George & Barbara Thibault. Location: 66 Sagamore Road, Sagamore Beach. Map 4.1, Lots 112B, 113, 113A in an R1 zoning district. Proposal: Applicant requests to construct a new one-car garage closer to the property line.**

Sitting for the Board: Lee Berger, Judith Riordan, Wade Keene, John O'Brien and Harold Kalick. Also present is Tom Armstrong.

Mr. Don Luoni representing applicant. Applicant looking to construct a one-story, one-car garage. Storage area above and bicycles stored in the rear.

Chm. Berger asked if representative received Conservation Commission approval. He did speak with Cindy Coffin from Board of Health (BOH) with regard to septic, but has yet to go before ConCom.

Applicant is looking to keep the vegetation in both the front and back. One tree will be removed for the garage.

Chm. Berger asked why applicant has to be 11 ft from property line, and if applicant would be willing to move 4 ft so that he would not need a side line set back. Representative responded by saying they need room to add a septic system which needs to be 12 ft. from any building, but doesn't believe it would be a problem to move over 4 ft.

Cindy Coffin, Board of Health (BOH) letter, states there should be no BOH issues if the new garage is going in the same general area as the existing garage. However, the "existing garage" was converted many years ago to become part of the house, and the "new" garage is proposed to be located on the opposite side of the lot. Mr. LaPorte said there is no lot coverage issue as it is a 20,000 sq ft lot.

Representative was told by Ms. Coffin that the board can approve contingent upon septic approval by the Board of Health.

Richard Havoy – 73 Sagamore Road and 65 Sagamore Road is opposed to the said project. Mr. Havoy is also speaking on behalf of his neighbor, also an abutter, Hank Goulet at 69 Sagamore Road. His issue is that he doesn't want any construction on the coastal bank and proposed project will affect the views for neighbors.

Lauren Creed – 14 Shawmut Road, which is the 2<sup>nd</sup> house from the beach parking lot. She is concerned about protecting the coast and feels building a garage where the family already had a garage which was converted is not appropriate. Also, she says the garage would block her view. She spoke with Mr. Sorenti, a direct abutter, who is also opposed to the project.

Kalick – concerned that the house to the right (Mr. Sorenti's) would be impacted by a side line variance, as the garage would be too close to the lot line.

Lauren Creed – the Sorentis are traveling and will not be able to attend tonight's meeting, but would put something together in opposition if necessary.

Mr. Havoy – added Mr. Goulet would also put something together in opposition if necessary.

Chm. Berger- asked what the hardship is to the land with regard to the shape, topography, or soil conditions. Representative said applicants don't have a place to keep their cars.

Mr. LaPorte - applicant is looking for a double variance for both the front and side line set backs.

O'Brien – if the septic moved and no longer have 15 ft issue on the right, applicant would still need variance from the road.

Kalick – the garage would be on the coastal bank which would be detrimental to the neighborhood.

#### Board Discussion

The consensus of the Board is that no hardship has been established.

Kalick suggested putting the garage back to its original use. O'Brien suggested the side set back variance would negatively affect the direct abutter. Keene would like to see applicant go before the ConCom before the ZBA votes. Chm. Berger doesn't see a legal rationale for a variance.

Representative requested permission to withdraw the application without prejudice.

O'Brien MOVED and SECONDED by Kalick to allow applicant to withdraw application without prejudice. VOTE 5-0.

Representative signed withdrawal slip to file with the Town Clerk.

**#08-18 - Comprehensive Permit, 40B... Continuance Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Foretop Road, Buzzards Bay, MA, 02532 to construct 32 residential units, 8 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called "Chase Estates" on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36.**

Applicant's attorney requested a continuance by email to August 1, 2012. Riordan MOVED and SECONDED by Keene to continue #08-08 Chase Estates Comprehensive Permit hearing to August 1, 2012 at 7:40 pm. UNANIMOUS VOTE.

**#11-12 - Special Permit - Kennel permit David Ricci. Location: 260 MacArthur Boulevard, Bourne. Map 31, Lot No. 37 in a B-4, R-40 zoning district. Proposal: Applicant requests kennel permit.**

Sitting on the Board: Lee Berger, Judith Riordan, Wade Keene, John O'Brien and Tom Armstrong. Also present is Harold Kalick.

Mr. David Ricci stated he was previously before the board. He is requesting permit for two specific locations. Location A is near MacArthur Boulevard and Location B is near the Brookside Club residents.

Cyndi Coffin, Board of Health letter, requests that if we approve the request it be conditioned upon a fecal waste management plan being submitted to the Board of Health, that waste is

properly picked up daily and disposed of, and no nuisance problems or odors are created by the operation, and that the approval is for an exercise area only area for campground dogs and that there is no overnight stay or long term housing of the animals.

Chm. Berger – applicant is seeking a special permit for a kennel, since the Board upheld the building inspector’s decision at a previous hearing to the effect that a dog park constitutes a kennel under the definition section in our zoning bylaws.

Sean Skahill – works with developer and has no issue with the first location. However, the second location is closer to future abutters (called “Lot 50”). If we grant the permit for the second location, he would like specific conditions: densely planted screen facing his side so to block his residents’ view; hours proposed beginning at 10:00 am and ending at dusk.

Mr. Ricci – met with Bill Bannon of the Brookside Condo Association who did not have a problem with the two locations. However, they did not discuss hours of operation. Previous dog park hours were 7:00 am – dusk, the same as their playground hours.

Kalick – asked if applicant would settle for the one location near the highway. Mr. Ricci said he would be okay with the one area.

Chm. Berger – doesn’t have an issue with both locations and suggested a 9:00 am – dusk hours timeframe. He stated the ZBA can grant “subject to review” since there will be additional condominium units built in the future in the area of the second location, so complaints should be anticipated.

Riordan – discussed planting additional trees and asked if applicant can move the fenced area for the dog park in the second location (location B) further down to the perimeter. Applicant said the white pine trees would be disturbed, and there really wasn’t room to move the area further away from the condominiums.

Mr. Skahill – the issue is when the dogs meet up with other dogs. He added if this second location were approved, could the board add a condition with limiting the number of animals at any given time.

Mr. Ricci – he could put up a sign, but it is up to the dog owners to adhere to the rules. Chm. Berger asked Mr. Skahill what is a good limit. Mr. Skahill didn’t know, but feels even with restrictions, the proposed dog area would affect the sale of future units. Applicant said with the old dog park, there have been a dozen or more dogs at one time. Both of the proposed areas are smaller than the original dog park.

Riordan – suggested a sign-up sheet for the dogs to limit the amount of dogs. Mr. Ricci had something similar for his tennis courts, but the issue is getting the report to him to be enforced.

Riordan pointed out he would be dealing with adults, not children, who would respect a sign-in sheet.

Mr. Ricci's daughter – suggested having a time limit to reduce the number of dogs using the park at any one time.

Keene – raised issue of dogs without leashes and people can get hurt if there are dog confrontations. He asked about considering excluding an aggressive breed. Mr. Ricci has not in the past, but has "kicked out" dogs due to their aggressive nature. His insurance carrier has no issues with aggressive dogs.

Mr. Mulvey – said the town permits kennels and asked if it has regulations for dog parks and asked who issues the permit. Chm. Berger said there is no specific town dog park regulation, only the definition of a kennel.

Mr. Ricci – if Location A is approved, he would monitor to see how many dogs use the park at any one time. He will keep Location B as a future dog park location if he works the "bugs" out of Dog Park A, if any.

Riordan MOVED and SECONDED by O'Brien to close the public hearing for #11-12. VOTE 5-0.

Riordan MOVED and SECONDED by Keene to approve Special Permit #11-12, for a kennel with reference to Location A only (McArthur Boulevard) and with the following conditions: that the Rules and Regulations of the Bay View Campground Leash Optional Dog Park rules attached to the application shall be enforced by either the owner or by the Building Inspector, if necessary; a fecal waste management plan must be submitted to the Board of Health; waste must be picked up daily and properly disposed of; no nuisance problems or odors shall be created by the operation; and that the approval is for an exercise area only area for campground dogs and that there is no overnight stay or long term housing of the animals; and that the Special Permit is subject to review and either additional conditions or revocation in the event there are valid complaints; and to further allow the applicant to withdraw without prejudice that part of its application which references a request for a second dog park at Location B. VOTE 5-0.

**#12-12 - Special Permit - Extension or alteration of a pre-existing non-conforming structure or use Lee & Donna Hackett c/o Bracken Engineering, Inc. Location: 25 Pequot Ave., Pocasset. Map 47.1, Section Number 39 in a R-40 zoning district. Proposal: Applicant requests Special Permit per section 2457 for departure from requirements of Table 2456 to increase the maximum gross floor area by 7% and maximum lot coverage by 3%. Also, a supportive finding by the Zoning Board of Appeals per section 2320 for alteration of a pre-existing non-conforming structure and use (two dwellings on one lot).**

Sitting on the Board: Lee Berger, Judith Riordan, Wade Keene, Harold Kalick and Tom Armstrong. Also present John O'Brien.

Zack Bazinski of Bracken Engineering on behalf of Mr. Don Bracken, for the applicant. Existing lot is a developed 10,000 sq ft lot with a 3-bedroom, single-family house. Applicant would like to raze and rebuild the existing house. Due to flood zone requirements and age of the dwelling, applicant will raze house, pushing the house back approximately 2 ½ ft, which will increase the side line setback from one foot to 3 ½ feet. Applicant's proposal would increase the gross floor area beyond that permitted by the bylaws by 7%, and would increase the lot coverage beyond that permitted by the bylaw by 3%. Mr. Bazinski believes this meets all requirements and the project isn't any more detrimental to the neighborhood.

There was no one to speak in opposition of the proposed project. Abutters spoke in favor.

#### Board Discussion

Chm. Berger – asked Mr. Bazinski what is good cause to grant application. Mr. Bazinski said applicant is increasing the side line setback and decreasing the total bedrooms on the lot. (There are currently 3 bedrooms in the main house, and the new house would only have two bedrooms.)

Chm. Berger – BOH letter notes that proper setbacks to the septic tank and leaching pit must be maintained and shown on any building permit application. Should the final building permit show an increase in habitable space, either bedroom or non-bedroom, at a minimum an inspection of the existing leaching pit will probably be required by the Board of Health. The BOH letter requests that any approvals be conditioned upon approval from the Board of Health.

No further Board comment.

Riordan MOVED and SECONDED by Kalick to close public hearing. Vote 5-0.

Riordan MOVED and SECONDED by Armstrong to approve Special Permit #12-12 with regard to property exceeding limits in Section 2457 to allow for a 3% increase in lot coverage over that allowed by the bylaws, and a 7% increase in gross floor area over that allowed by the bylaws, in accordance with the plans submitted, with the condition that the Board of Health approves the location, size, and design of the septic system; and that the Board find that the alteration of the existing structure is not more detrimental to the neighborhood than the existing non-conforming structure or use. VOTE 5-0.

#### **Old Business**

NStar was granted a waiver of Bourne zoning bylaws. Mr. LaPorte said NStar is adding a 365 kw line across the canal on mono poles which will replace existing line.

Chm. Berger – received the Buzzards Bay Grown Incentive Zone (GIZ). He will review and report back to the board at the next meeting.

Chm. Berger – five (5) copies of new zoning bylaws distributed tonight.

**New Business**

None.

**Public Comment**

None.

**Adjournment**

O'Brien MOVED and SECONDED by Kalick to adjourn meeting. Meeting adjourned at 9:10 pm.  
UNANIMOUS VOTE.