

# ***Town of Bourne Zoning Board of Appeals***

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

February 7, 2018

### **I. Call to order**

Chair Amy Kullar called to order the meeting of the Zoning Board of Appeals at 7:00 PM on February 7, 2018. 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.

### **II. Members Present:** Amy Kullar, Wade Keene, Timothy Sawyer, John O'Brien Harold Kalick and Associate Member, Deb Bryant.

**Members Excused:** Associate Member, Kat Brennan.

**Also Present:** Roger Laporte, Carol Mitchell, Brian Paulsen, Karen Paulsen, Barbara Cain, Joanne Walsh, Randy Walsh, Katarina Kumbatiadis, Randy Collette, Mark Melchionda, David Pelonzi, Maureen Pelonzi, Gianna Pelonzi, Karen Borden, Cheryl Perrault, Maryann Carroll and Alexander Joyce (7:30).

*Wade Keene will be writing the Decisions.*

### **III. Agenda Items**

- 1. Approval of Minutes** – Ms. Kullar entertained a motion to approve the minutes of the January 17, 2018 meeting. **Mr. O'Brien moved, Mr. Keene seconded to approve the minutes of the January 17, 2018 meeting.** With no discussion, the motion carried. 5-0-0.

*Sitting on the hearings; Wade Keene, Timothy Sawyer, Amy Kullar, John O'Brien and Harold Kalick.*

- 2. 10 Nor 'East Drive, Special Permit 2017-SP35**– Requesting Special Permit per section 4120-4123 of the Bourne Zoning Bylaw, under M.G.L., Ch. 40A, Sec. 9 to construct a 650 ± sq. ft. accessory dwelling in the unfinished basement of an existing single-family dwelling in a B-2 zone.

*Materials - Public Hearing Notice, Gross Floor Area Worksheet, Assessor's Card, Abutters List, Application for Special Permit, Plot Plan, Site Plan, Memorandum from Health agent, email from Conservation agent and Google directions.*

David Pelonzi, the property owner, addressed the board and discussed the proposed project; to build an in-law apartment in his unfinished basement. He explained the purpose for the in-law apartment is to have his parents, Kenneth and Claudia Pelonzi, reside in the accessory dwelling. Additionally, his daughter, Gianna Pelonzi, who is currently a minor, will eventually live in the dwelling.

Board Comment – Ms. Kullar questioned whether the parking will be affected. Mr. Pelonzi stated it will not; he has an existing two-car garage and a large driveway.

Ms. Kullar asked if he is aware that the accessory dwelling may never be rented. Mr. Pelonzi stated he is.

Public Comment – Abutter, Karen Borden, addressed the board stating she supports the application.

Board Comment – None.

**Mr. O'Brien moved, Mr. Kalick seconded to close the public hearing.** With no discussion, the motion carried. 5-0-0.

Ms. Kullar entertained a motion. **Mr. Sawyer moved, Mr. O'Brien seconded to grant the Special Permit under 2017-SP35, per sections 4120-4123 of the Bourne Zoning Bylaw, under M.G.L., Ch. 40A, Sec. 9 to construct a 650 ± sq. ft. accessory dwelling in the unfinished basement of an existing single-family dwelling in a B-2 zone, for David Pelonzi's parents, Kenneth and Claudia Pelonzi and in the far future his daughter, Gianna, to reside in. Pursuant to the plans submitted dated 7/13/2017.** With no discussion, the motion carried. 5-0-0.

**3. 2 Worcester Ave, Special Permit, 2017-SP33, Requesting Special Permit under M.G.L., Ch. 40A, Sec. 9, and the Bourne Zoning Bylaw Sections; 1331, 2320, 2450, 2453, 2454, 2500: Supportive Finding for the alteration of an existing single-family structure by constructing a new non-conforming two-story, single-family structure on a smaller footprint not to be substantially more detrimental than the original structure to the neighborhood.**

**(Continued from January 17, 2018)**

*Materials - Public Hearing Notice, Assessor's Card, Application for Supportive Finding/Special Permit, Abutters List, Directions, Site Plan, letter from the board of Health and Gross Floor Area worksheet.*

The property owner, Katarina Kumbatiadis, addressed the board and asked for a continuance.

Ms. Kullar entertained a motion. **Mr. O'Brien moved, Mr. Keene seconded to continue Special Permit 2017-SP33 to February 21, 2018.** With no discussion, the motion carried. 5-0-0.

**4. 7 Laura Lane, Variance, 2017-V31,** Requesting Variance under M.G.L., Ch. 40A, Sec. 9, from the following sections of the Bourne Zoning Bylaw; Sections 2454; 2456: to exceed maximum lot coverage (required 21%) by constructing a 36.5'x 14' single-story addition for an accessory dwelling on the east side of the property (proposed 26.2%) a 5.2% lot coverage variance. Section 2500: to exceed front setback (30' required) by 18.2 feet. Proposed addition would have a final setback of 11.8 feet.

*Materials - Public Hearing Notice, Assessor's Card, Application for Special Permit Accessory Dwelling, Supportive Finding Application, Proposed Floor Plan, Site Photographs, Site Plan Google Map, Lot Coverage Worksheet, letter from Kathryn Fuller, Abutters List and Petition for Variance.*

**(Continued from January 3, 2018)**

Randy Collette, on behalf of Attorney Ford O'Connor, requested Variance 2017-V31, be withdrawn without prejudice.

Board Comment – None.

Ms. Kullar entertained a motion. **Mr. O'Brien moved, Mr. Keene seconded to grant the request to withdraw without prejudice Variance, 2017-V31, at 7 Laura Lane.** With no discussion, the motion carried. 5-0-0.

*Ms. Kullar changed the order of the agenda.*

**6. 7 Laura Lane, Special Permit 2017-SP29,** Requesting Special Permits under M.G.L., Ch. 40A, Sec. 9 and the Bourne Zoning Bylaw: Sections; 1331; 2320; 2450 Supportive Finding that the proposed alteration to a pre-existing, non-conforming structure and use shall not be substantially more detrimental than the existing structure and use to the neighborhood.

*Materials - Public Hearing Notice, Assessor's Card, Application for Special Permit Accessory Dwelling, Supportive Finding Application, Proposed Floor Plan, Site Photographs, Site Plan Google Map, Lot Coverage Worksheet, letter from Kathryn Fuller, Abutters List and Petition for Variance.*

**(Continued from January 3, 2018)**

Randy Collette, on behalf of Attorney Ford O'Connor, requested Special Permit **2017-SP29**, be withdrawn without prejudice.

Board Comment – None.

Ms. Kullar entertained a motion. **Mr. O'Brien moved, Mr. Keene seconded to grant the request to withdraw without prejudice Special Permit, 2017-SP29, at 7 Laura Lane.** With no discussion, the motion carried. 5-0-0.

**5. 7 Laura Lane**, Special Permit **2017-SP30**, Requesting Special Permit under M.G.L., Ch. 40A, Sec. 9 and the Bourne Zoning Bylaw: Sections 1331; 4120-4123: to construct a 36.5' x 14' single-story addition to contain an accessory dwelling.

**(Continued from January 3, 2018)**

*Materials - Public Hearing Notice, Assessor's Card, Application for Special Permit Accessory Dwelling, Supportive Finding Application, Revised Floor Plan, Site Photographs, Site Plan Google Map, Lot Coverage Worksheet, letter from Kathryn Fuller and Abutter List.*

Randy Collette addressed the board and explained the revised plan shows the property owner will use the existing footprint to install the accessory dwelling.

Board Comment – Ms. Kullar asked how the revised plan varies from the original plan that was submitted. Mr. Collette stated this plan varies because the accessory dwelling will now be installed within the same footprint vs. the proposed addition to the home.

Mr. Kalick asked for clarification because the original request was to construct a single-story addition. Mr. Collette stated the original plan has been modified. Mr. Laporte explained the request has been reduced. Mr. Paulsen, the property owner, explained the entire left-hand side of the house is being converted into the accessory dwelling.

Ms. Kullar asked if the septic system needs to be upgraded. Mr. Paulsen stated it does not because it's rated for four bedrooms and the home currently has three bedrooms.

A brief discussion transpired regarding the revised floor plan.

Ms. Kullar asked for the name of the person who will be residing in the accessory dwelling. Mr. Paulsen stated it will be Barbara Cain.

Ms. Kullar asked if the parking will be impacted. Mr. Paulsen stated it will not.

Ms. Kullar explained with an accessory dwelling under the Town's bylaw, the home must always be owner occupied and the accessory dwelling cannot be rented. Mr. Paulsen stated he understood.

Public Comment – None.

Board Comment – Mr. O'Brien asked if the home is a two-story building. Mr. Paulsen stated it's one-story. A brief discussion transpired regarding the location of the existing bedrooms. Mr. Collette referred to the original plan which shows the existing floor plan and described the location of the bedrooms.

Ms. Kullar entertained a motion to close the public hearing. **Mr. O'Brien moved, Mr. Keene seconded to close the public hearing.** With no discussion, the motion carried. 5-0-0.

Ms. Kullar entertained a motion. **Mr. Kalick moved, Mr. O'Brien seconded to grant the request for Special Permit 2017-SP30, 7 Laura Lane, Requesting Special Permit under M.G.L., Ch. 40A, Sec. 9 and the Bourne Zoning Bylaw: Sections 1331; 4120-4123: to construct a 36.5' x 14' addition of an accessory dwelling within the existing single-family dwelling pursuant to the submitted plans and specifications by Melissa Boynton, architect, dated 1/22/18.** With no discussion, the motion carried. 5-0-0.

**7. 6 Cape Cod Lane, Special Permit 2017-SP32**– Requesting Special Permit under M.G.L., Ch. 40A, Sec. 9 and per section 2457 of the Bourne Zoning Bylaw for a departure from the requirement of Table 2456 to construct a new two-story, single-family dwelling and such departure will be within the 10% allowable Gross Floor Area and Lot Coverage.

*Materials - Public Hearing Notice, Gross Floor Area Worksheet, Assessor's Card, Abutters List, Application for Supportive Finding/Special Permit, Revised Site Plan, Memorandum from Assistant Town Planner and Google directions.*

Ms. Kullar stated a Memorandum from the Assistant Town Planner was received stating the applicant originally thought that a Supportive Finding and a departure from the requirements of Table 2456 was necessary; however, they've revised the Gross Floor Area and Lot Coverage Worksheet. Given that both totals are under the maximum allowed, a departure from the requirements of Table 2456 is not required.

However, a Supportive Finding per section 2320 is required to determine if the alteration from an existing single-family dwelling and associated garage and the construction of a new, non-conforming, two-story, single-family dwelling, associated garage and a pool on a smaller footprint shall not be substantially more detrimental than the existing structure to the neighborhood.

Tim Santos of Holmes and McGrath addressed the board. He spoke on behalf of Attorneys Ford O'Connor and Alexander Joyce. He described the existing layout of the property.

Ms. Kullar asked what year the structure was built. Mr. Santos stated it was more than 75 years ago and the project must go before the Historical Commission. Ms. Kullar stated for her personally, she's concerned with making decisions that essentially bind the Historical Commission's hands; she'd rather base her decision on their findings. She explained that she's happy to hear the presentation; however, the ZBA has continued other matters that have come before them until they've received information from Historical.

Mr. Laporte stated this project is slightly different than some of the other projects that have come before the Board. He explained that the proposal is to demolish the existing building. To demo the building, the Historical Commission will want to see what's replacing it.

Mr. Santos continued describing the proposed project. He discussed the calculation sheet stating the project is under the 25% maximum lot coverage requirement, at 23%.

Ms. Kullar asked if the applicant owns two adjacent lots. Mr. Santos stated they do. He explained that the two lots have been combined.

Ms. Kullar asked what type of septic system is being installed. Mr. Santos stated it will be a new Title V septic system.

Ms. Kullar asked what exists on the second lot. Mr. Santos stated a garage exists on the second lot.

Attorney Joyce addressed the board and provided a brief history of the two lots. He referred to the plan and explained that the existing garage is accessible from the Wamsutta Ave side of the property while the existing dwelling is accessible from Cape Cod Lane. He stated the plan hasn't been put on record yet and suggested the Board condition the Finding under 2320 that the proposed alteration expansion is not more detrimental to the neighborhood than the existing structure.

Board Comment – Mr. Kalick expressed concern that the project does not meet frontage setback requirements. A discussion ensued.

Mr. Keene asked for architectural plans. The architect, Cheryl Perrault, provided a copy of the architectural plans to the Board. She discussed the location of the proposed retaining wall.

A brief discussion transpired regarding the height of the proposed structure.

Public Comment – Randy Walsh, the abutter across the street, addressed the Board and voiced concerns about the project. He explained that his property is located downhill and has existing drainage problems. He would like erosion control measures to be implemented to prevent storm water runoff from causing additional flooding of his property. Attorney Joyce offered to place hay bales on the site to alleviate Mr. Walsh's concerns.

Mr. Walsh explained that the existing road is not centered to the right of way and is ten feet from his property. He expressed concern that construction vehicles will access the construction site via Cape Cod Lane; disrupting his right to peaceful enjoyment. It was his understanding from the original plan, the positioning of the pavement would be moved seven feet over to be centered to the right of way. He questioned whether this could be performed prior to construction.

Ms. Kullar asked the representative if the plan is to construct the road prior to construction. Mr. O'Brien questioned whether there is any plan to construct the road. Attorney Joyce stated the road is a private road and is not included in this scope of work. He declined to comment further on the matter.

Mr. O'Brien explained that repositioning the road would require the entire road to be repaved. Mr. Walsh stated that's what he was told would happen which is why he supported the project.

Ms. Kullar explained matters pertaining to the road is beyond the Board's purview. Mr. Laporte provided clarification regarding the road layout. A discussion ensued.

Attorney Joyce stated it is not within the ZBA's purview to condition the layout of the road, nor can he, on behalf of his client, state the road layout will change. Such a project would require permission from everyone living on the street. He assured Mr. Walsh that all construction and equipment vehicles will enter through Wamsutta Ave and not Cape Cod Lane.

Mr. Walsh reiterated his position regarding the road layout. Mr. O'Brien stated the road layout is a matter to be brought before the Planning Board; not the ZBA.

Mr. Walsh expressed frustration with not being able to obtain a copy of the revised plan. Ms. Kullar stated the revised plan was submitted accordingly and offered to show him the Board's copy.

Mr. Kalick questioned whether the pre-existing, non-conforming structure will have to meet current regulations once it's demolished. Mr. Laporte stated no, in the Town of Bourne the zoning on the demolished building is grandfathered for two years. Mr. Kalick stated the footprint is being changed. Mr. Laporte explained that's the reason for the Supportive Finding request.

Mr. Kalick questioned the retaining wall that is noted on the plan. Mr. Santos explained the retaining wall retains the grade back. Mr. Kalick asked if the retaining wall will be located on the private way. Mr. Santos stated a portion of it will be on the private way. Mr. Kalick stated the right of way needs to be unobstructed. Mr. Santos agreed to cut back the retaining wall.

Mr. Walsh questioned the height of the proposed structure. Ms. Kullar explained the project meets the height requirement. She stated that is not the matter before them, explaining what needs to be determined is whether the project is substantially more detrimental to the neighborhood. Ms. Kullar thanked Mr. Walsh for his testimony.

Mr. Santos advised the Board that Wamsutta Ave is wide enough to accommodate the construction vehicles. A brief discussion ensued.

David Cruz, a direct abutter and the builder of the project addressed the board. He explained that Cape Cod Lane cannot accommodate equipment; therefore, all the equipment and deliveries will be made through Wamsutta Ave.

Mr. Cruz briefly discussed a second phase to the project which may include installing underground utilities and possibly addressing drainage issues on Cape Cod Lane; however, that is not before the Board this evening. He explained that he is before the Board for approval to construct this one house which he feels will be a betterment to the neighborhood. He then provided history of Cape Cod Lane.

Mr. Walsh opened a brief discussion regarding the revised plan.

Mr. Kalick opened a brief discussion regarding parking and the retaining wall. Mr. Kalick asked that the matter be continued so a complete set of plans could be submitted.

The property owner, Maryann Carroll, addressed the board. She stated there are existing retaining walls on the property and guaranteed the proposed retaining wall will



be an improvement. She stated the drainage issues will be dealt with and doesn't feel these issues should derail the project.

Mr. Joyce stated the concern expressed by Mr. Walsh regarding the road will be addressed with the future phase.

A discussion transpired regarding the proposed drainage.

Ms. Kullar asked the representative if the project will have to go before Conservation and Historical. Mr. Joyce stated only Historical.

Further discussion transpired regarding the submitted plan.

Ms. Kullar reminded the members that the only issue before them is whether the new structure will not be substantially more detrimental than the existing structure to the neighborhood.

With no further discussion, Ms. Kullar entertained a motion to close the public hearing. **Mr. Keene moved, Mr. Sawyer seconded to close the public hearing.** With no discussion, the motion carried. 5-0-0.

A brief discussion transpired regarding applying conditions to the decision.

Ms. Kullar entertained a motion. **Mr. Keene moved, Mr. Sawyer seconded to grant a Supportive Finding for Special Permit 2017-SP32, per Section 2320 that the alteration from an existing single-family dwelling and associated garage and the construction of a new, non-conforming, two-story, single-family dwelling, associated garage and a pool on a smaller footprint shall not be substantially more detrimental than the existing structure to the neighborhood pursuant to the plans as submitted that evening, pursuant to the architectural plan and pursuant to the Holmes and McGrath plan dated January 25, 2018, with the conditions that the Historical Commission approves the project, the retaining wall be moved off the right of way, an as-built is required and all construction related activity enters the premises and subject property through Wamsutta Ave, not through Cape Cod Lane.** With no discussion, the motion carried. 4-1-0. Mr. Kalick opposed.

**8. Old Business** – None.

**9. New Business** – None.

**10. Public Comment** – None.

**IV. Adjournment –**

**Mr. O'Brien moved, Ms. Kullar seconded to adjourn the meeting.** With no discussion, the motion carried 5-0-0. The meeting adjourned at 8:18 PM.

Minutes Submitted By: Carol Mitchell