

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

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

November 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 November 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.

Ms. Kullar announced the meeting was being recorded and asked if anyone in the audience was recording the meeting to please acknowledge such to the board. She noted Carol Mitchell was recording the meeting.

**Members Present:** Amy Kullar, Harold Kalick, Tim Sawyer, John O'Brien and Associate Members, Kat Brennan and Deb Bryant.

**Members Excused:** Wade Keene, and Associate Member Chris Pine.

**Also Present:** Roger Laporte, Carol Mitchell, Christopher Kirrane, Esq., Kevin Kirrane, Brian Ferreira, Paul Bettencourt, Doug Troyer, James Coull, Donald Duberger, Jeanne Holland, Susan Ferreira, Jim Kass, Alexander Joyce, Aaron Tobey Jr., Jeff Lau, Ingrid Hammond, Bradley Bertolo and Jim Mulvey.

*Harold Kalick will be writing the Decisions.*

### **II. Agenda Items**

1. Approval of Minutes – Ms. Kullar entertained a motion to approve the minutes of the October 3, 2018 meeting. **Ms. Bryant moved, Ms. Brennan seconded to approve the minutes of the October 3, 2018 meeting.** With no discussion, the motion carried. 5-0-0.

*Sitting on the hearings; Amy Kullar, Harold Kalick, Tim Sawyer and John O'Brien. Kat Brennan and Deb Bryant will alternate.*

Ms. Kullar announced she received correspondence from the attorney pertaining to Special Permit 2018-SP18 to withdraw their application. She entertained a motion to change the order of the agenda to hear that matter first.

**Mr. O'Brien moved, Mr. Sawyer seconded to proceed out of order with Special Permit 2018-SP18.** The motion carried. 5-0-0.

*Sitting on this hearing; Amy Kullar, Harold Kalick, Tim Sawyer, John O'Brien and Kat Brennan.*

**7. 165 Jefferson Road, Special Permit 2018 SP18,** Requesting Special Permit under M.G.L. Ch. 40A, Sec. 9 and the Bourne Zoning Bylaw: Sections 1330; 2320; 2450, 2500: Supportive Finding that the alteration of an existing single-family structure and construction of a new non-conforming single-family structure is not substantially more detrimental than the original structure to the neighborhood; Section 2457: for a departure from the requirement of table 2456 to construct a single-family dwelling and such departure will be within the 10% allowable Gross Floor Area and Lot Coverage.

*Materials – Lau/Hammond letter to ZBA, Lau/Hammond addendum to primary letter.*

Attorney Kevin Kirrane addressed the members and clarified he is requesting a postponement not a withdrawal. He stated he was informed by the Planning Department the previous Friday that there is attic square footage that must be added to the Gross Floor Area. The additional square footage will necessitate either the filing for a Variance, because it exceeds the 10% buffer allowed under the bylaw or a redesign of the building.

Mr. Laporte asked how much time the representative will need. Attorney Kirrane stated he should have new plans available by the December 5<sup>th</sup> meeting.

Board Comment – None.

Attorney Joyce addressed the members and said if the request for a Variance is filed, the notice will be deficient. Ms. Kullar agreed that a Variance would require a new application; however, it was her understanding from Attorney Kirrane that between last Friday and tonight's meeting, there wasn't enough time to determine what is needed. Attorney Joyce feels the application should be rejected with prejudice. He expressed frustration with the number of times the matter has been continued or withdrawn since the original filing. Additionally, he expressed frustration by the lack of notice given for the continuance and feels at the very least he should be afforded leeway in filing responses for additional information submitted by the applicant. He asked that if a continuance is granted, the board requires all pertinent material be submitted at least seven days prior to the hearing. Ms. Kullar agreed and advised Attorney Kirrane that the board would like to wrap this matter up at the next hearing.

Mr. Laporte asked when the revised information will be available for the board and the opposition to review. Attorney Kirrane stated the revised plans will be available by

November 28<sup>th</sup>. Mr. Laporte suggested continuing the matter to December 19<sup>th</sup> vs. the 5<sup>th</sup>. Attorney Kirrane was in agreement.

Mr. O'Brien asked how they will determine whether a Variance or a Special Permit will be needed. Attorney Kirrane said he advised the applicants they should revise the plan to avoid the need for a Variance.

Attorney Joyce announced his clients are not available to attend the December 19<sup>th</sup> hearing. After a brief discussion it was decided the matter will be continued to December 5<sup>th</sup>.

Ms. Kullar entertained a motion to continue the matter to December 5<sup>th</sup>. **Ms. Brennan moved, Mr. Sawyer seconded to grant a continuance to December 5, 2018.** With no further discussion, the motion carried. 5-0-0.

*Sitting on this hearing; Amy Kullar, Harold Kalick, Tim Sawyer, John O'Brien and Kat Brennan.*

**2. 4 & 6 MacArthur Blvd, Variance 2016-V21** – Requesting an Extension of a Variance per section 2500 of the Bourne Zoning Bylaw, under M.G.L., Ch. 40A, Sec. 9 to permit the construction of a convenience store more than thirty-five (35') feet in height for a post-construction height of thirty-eight and one half (38.5') feet.

*Materials – Public Hearing Notice, Extension request letter and Variance Final Decision.*

Attorney Doug Troyer addressed the board and discussed the reason for the six-month extension request.

Ms. Kullar stated it is her understanding in order to preserve the Variance, the board should grant the extension. Mr. Troyer agreed.

Board Comment – Ms. Brennan opened a brief discussion regarding the reason the Variance was originally granted.

Public Comment – None.

**Mr. O'Brien moved, Mr. Sawyer seconded to grant a six-month extension from the expiration date of November 6, 2018.** After a brief discussion, the motion carried. 5-0-0.

*Sitting on this hearing; Amy Kullar, Harold Kalick, Tim Sawyer, John O'Brien and Deb Bryant.*

**3. 26 Shore Road, Special Permit 2018-12** – Requesting Special Permit per sections 4120-4123 of the Bourne Zoning Bylaw, under M.G.L., Ch. 40A, Sec. 9 to construct a two-bedroom accessory dwelling above a detached garage in an R-40 Zone.

**(Continued from September 19, 2018)**

*Materials – Public Hearing Notice, Assessor's Field Card, Site Plan, Special Permit Application, Abutters List, Board of Health Memo and Gross Floor Area Worksheet.*

Ms. Kullar made note no one was present to discuss the matter. She stated this is the second time that the applicant has failed to attend. She then read a memo from the Board of Health which states the existing septic system is not adequate for adding two additional bedrooms.

Board Comment – Mr. O'Brien mentioned that in the past, the board has been unable to grant a Special Permit without acceptability of septic from the Health Department and feels the request should be denied. Ms. Kullar agreed.

Ms. Bryant asked if the project will also have to be approved by the Conservation Commission. Ms. Kullar stated the project will have to go before the Conservation Commission and the Board of Health.

Ms. Kullar made note, if the board denies this request, the applicant can not reapply for two years.

Public Comment – None.

Mr. Kalick feels the applicants should be given another opportunity to be heard on the matter. Ms. Kullar argued that the applicants have not appeared before the Board of Health, nor is the matter scheduled on their next agenda. Mr. O'Brien commented that the board has continued the matter twice and the applicant has not communicated at all with the board. Ms. Bryant and Mr. Sawyer agreed with Mr. O'Brien.

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

**Mr. Kalick moved, Ms. Bryant seconded to deny Special Permit 2018-12 per sections 4120-4123 of the Bourne Zoning Bylaw, under M.G.L., Ch. 40A, Sec. 9 to construct a two-bedroom accessory dwelling above a detached garage in an R-40 Zone.** With no further discussion, the motion carried. 5-0-0.

*Sitting on this hearing; Amy Kullar, Harold Kalick, Tim Sawyer, John O'Brien and Kat Brennan.*

**4. 101 & 105 Williams Avenue, Special Permit 2018-SP15-** A Supportive Finding Under M.G.L., Ch. 40A, Sec. 9 and the Bourne Zoning Bylaw Sections 1330, 2300, 2400, and 2500 to extend and alter pre-existing, non-conforming land by adjusting the property line to increase the frontage of 101 Williams Avenue (Lot 26A) from 83.52' to 91.52' and reduce the frontage of 105 Williams Avenue (Lot 27A) from 80' to 72'; and to decrease the lot size of 101 Williams Avenue (Lot 26A) from 7,400  $\pm$  square-feet (SF) to 7,000  $\pm$  and to increase the lot size of 105 Williams Avenue (Lot 27A) from 9,100  $\pm$  SF to 9,600  $\pm$  SF.

*Materials – Public Hearing Notice, Assessor's Field Card, Site Plan, Special Permit Application, Abutters List, Board of Health Memo, Directions to the property and Gross Floor Area Worksheet.*

James Coull was present to discuss the matter.

Ms. Kullar read a memorandum from the Board of Health which stated the office of the health agent is going to require a Title V inspection be conducted for each parcel. This will determine the location of the existing subsurface sewage disposal components and whether they are passing systems. Should these septic system components be located beyond the parcel for which the system serves, the owner will be required to upgrade said system or to apply for appropriate easements. It is recommended that any approvals relative to this matter be contingent upon satisfactory documentation of the adequacy of the existing septic systems and they be submitted to the office of the Board of Health.

Ms. Kullar asked Mr. Coull if he is willing to comply with that. Mr. Coull stated all he is looking to do is straighten out the property line, which is currently angled. He said he doesn't understand why the septic system is being factored in.

Mr. Laporte explained the Building Department was notified by the Conservation agent that a new shed is being built on the property. Mr. Coull stated the existing shed was taken down and a new one is being constructed. Mr. Laporte said a permit has not been issued for the new construction and there are several other concerns that need to be addressed; i.e., the matter will need to be heard by the Conservation Commission because

the proposed work falls under the Conservation Commission's jurisdiction and Board of Health requirements have to be met. A discussion ensued.

Mr. O'Brien explained the Zoning Board of Appeals cannot grant exceptions to the Zoning Bylaws if issues need to be addressed with other Town boards.

Ms. Kullar suggested the applicant request a continuance which will allow him time to be heard by the Board of Health and the Conservation Commission. Mr. Coull agreed.

Public Comment – None.

After a brief discussion, **Ms. Brennan moved, Mr. Sawyer seconded to continue the matter to December 19, 2018.** With no further discussion, the motion carried. 5-0-0.

*Sitting on this hearing; Amy Kullar, Harold Kalick, Tim Sawyer, John O'Brien and Kat Brennan.*

**5. 2 Sir Lancelot Drive, Special Permit 2018-SP16** - Requesting Special Permit under M.G.L., Ch. 40A, Sec. 9 and the Bourne Zoning Bylaw sections 1330 and 4120 to construct a 420 ± square-foot, single-story addition to contain and accessory dwelling.

*Materials – Public Hearing Notice, Assessor's Field Card, Site Plan, Special Permit Application, Abutters List, Board of Health Memo, Directions to the property and Gross Floor Area Worksheet.*

The contractor, Paul Bettencourt, was present to be heard on the matter. Ms. Kullar read aloud part of the Board of Health memo which states insufficient information was submitted to determine the adequacy of the existing sewage disposal system. The office of the Board of Health is requiring a Title V inspection be conducted and witnessed by an agent of the Board of Health. Mr. Bettencourt said an inspection was performed. Ms. Kullar asked if there was an agent present. Susan Ferreira, the property owner, said there was not. Ms. Kullar explained the memorandum is dated October 24, 2018. The board cannot render a decision until they receive updated information from the health agent stating the septic system is adequate.

After a brief discussion, it was decided to continue the matter to December 5, 2018. This will allow the applicant time to resolve any issues with the Board of Health.

Mr. Kalick asked that a complete set of plans be submitted to show the second floor of the house. Mr. Bettencourt agreed to submit a full set of plans.

Public Comment – None.

**Ms. O'Brien moved, Mr. Kalick seconded to continue the matter to December 5, 2018.** With no discussion, the motion carried. 5-0-0.

*Sitting on this hearing; Amy Kullar, Harold Kalick, Tim Sawyer, John O'Brien and Kat Brennan.*

**7. 424 Barlows Landing Road, Variance 2018-V17** - Requesting a Variance 2018- V17 under M.G.L., Ch. 40A, Sec. 9, from the Bourne Zoning Bylaw Section 2500 to exceed side setback (15' required) by 3.85 feet. Proposed addition would have a final setback of 11.15 feet.

*Materials – Public Hearing Notice, Assessor's Field Card, Site Plan, Plot Plan, Special Permit Application, Abutters List and Directions to the property.*

Builder, Don Duberger, addressed the members and discussed the proposed project.

Ms. Kullar pointed out how close in proximity the houses in the neighborhood are to each other. The builder agreed stating this is one of the only houses in the neighborhood that fully complies with setback requirements.

Mr. Duberger explained there are two bathrooms in the home. One on the first floor and one on the second floor; both are only four feet wide. Now that the property owners are aging, they are finding it difficult to utilize the existing bathrooms. They would like to install a handicapped accessible shower. Ms. Kullar explained Massachusetts has strict requirements and the board needs to determine that all criteria are met before granting a Variance.

Ms. Kullar asked why this parcel is unique and why the topography of the parcel requires a Variance be issued. Mr. Duberger discussed the shape of the lot which is angled which he said is unique to this parcel.

Ms. Kullar asked how a substantial hardship would occur if the board enforced the Zoning Bylaw in this matter. Mr. Duberger said they would not be able to fit a handicapped shower in the existing space; preventing the applicants to age in in place.

Ms. Kullar asked if the board grants the relief that is requested, will it be a detriment to the public good. Mr. Duberger stated it will not be a detriment. In fact, the public good will be served by allowing elderly members of the community to age in place.

Board Comment – None.

Public Comment – None.

Ms. Kullar asked for board member input. She stated she does not have an issue with granting the Variance. Mr. Sawyer agreed.

Mr. O'Brien mentioned that none of the abutters objected to the proposal.

Mr. Kalick questioned whether the proposal requires approval from the Historical Commission. Mr. Duberger stated it does. Mr. Kalick feels the builder can be creative and find an alternate location for the addition without having to encroach on the side yard. He feels this is a substantial request for a Variance on such a closely settled lot.

Ms. Kullar asked whether any other locations were considered on the site for a new bathroom and if so, why were they adequate or inadequate. Mr. Duberger said other locations were considered. Mr. Kalick reiterated his opposition to allowing construction so close to the lot line.

Mr. Laporte feels this is the only acceptable location for the addition because of the location of the existing plumbing. Mr. Kalick suggested converting the existing closet into the accessible shower. Mr. Duberger said that was considered; however, that is the only closet on the first floor. He argued that the project is not more detrimental to the neighborhood and the abutting neighbor doesn't object. He feels it is a reasonable request and hopes the board will support it.

After a brief discussion, it was decided to continue the matter to December 5, 2018, pending approval by the Historical Commission.

**Ms. Bryant moved, Mr. Sawyer seconded to continue the matter to December 5, 2018.** With no further discussion, the motion carried. 5-0-0.

**Old Business** – None.

**New Business** – None.

**Public Comment** – None.

### **III. Adjournment –**

**Mr. O'Brien moved, Ms. Bryant seconded to adjourn the meeting.** With no discussion, the motion carried 5-0-0. The meeting adjourned at 8:15 PM.