

RECEIVED

2024 JAN 12 AM 11:43

TOWN CLERK BOURNE

## **Town of Bourne**

### **Planning Board**

### **Meeting Minutes**

**November 9th, 2023**

**PRESENT:** Chairman Daniel Doucette, Liz Brown (Vice Chair), David O'Connor (Clerk), Christopher Farrell, Catherine Walton, John Duggan, Jeanne Azarovitz, James Robinson Jr, Amanda Wing.

**EXCUSED:** None.

**STAFF:** Jen Copeland, Julia Gillis, Maurica Miller.

**ALSO PRESENT:** Thomas Pappas, Nolan Leroy, Tim Lizzote, Timothy Cornu, Steven Ellis, Beth Agrillo, Lois Carol, Craig Frost, Scott Marra, David Uitti, Tom LeClair, Amy Ingemi, Jim Cochran.

---

This meeting took place at Bourne Veterans Memorial Community Building, 239 Main Street, Buzzards Bay and also virtually via Zoom. Chairman Doucette called this meeting to order in open session at 7:03pm.

#### **1. Meeting Minutes: 6.8.23**

Mr. O'Connor Makes a Motion to Approve the Minutes as Drafted. Ms. Brown Seconds the Motion.

Roll Call Vote as Follows:

Mr. Duggan – YES. Mr. Robinson – YES. Ms. Wing – YES. Ms. Brown – YES. Mr. Farrell – YES. Ms. Walton – YES. Mr. O'Connor – YES. Chm. Doucette – YES.

The Motion Passes.

#### **2. Approval Not Required Plan MGL Chapter 47 Section 81P:**

431-451,-461 Scenic Highway. Map and Parcels 20-43, 20-34, 21-5. To create four new residential lots from the three-lot configuration plan.

Thomas Pappas introduces himself as the applicant. He plans on doing a residential house on this lot.

Ms. Copeland states that this property is on the scenic highway. It did receive a special permit for the shared driveway for three of the lots. Mr. Pappas is proposing to create a fourth lot. It meets all the requirements for an ANR. She believes that he is planning on putting two drives in: one to access the lot and one to access lots three and four. Chm. Doucette asks if this would come back with an amended special permit. Ms. Copeland responds that this is one of his options through a minor modification to add lot four, but that is up to the applicant. Mr. Pappas responds that he would appreciate this very much. Ms. Brown asks where the driveway originates from, and Mr. Pappas responds that it is right on the scenic highway and has been approved by MassDOT. Chm. Doucette adds that anything that they approve can be denied by MassDOT.

Mr. Farrell states he certainly would never approve a subdivision with a driveway or road on the scenic highway. He adds that this is on a curve and people drive very fast here. He is against the project.

Chm. Doucette states that since the ANR meets requirements, what is before them is the ANR. If Mr. Pappas creates the second driveway, he is risking approval or denial from the MassDOT. Chm. Doucette says that right now Mr. Pappas has permission for three lots, three driveways, tying into one access on the scenic highway. He is looking to add a fourth, and would like to do two into one for two curb cuts on the scenic highway. Right now he would have three driveways into one and looking for a fourth. This is up to the MassDOT.

Mr. O'Connor Makes a Motion that the Approval Not Required Plan is Accepted.  
Mr. Robinson Seconds the Motion.

Roll Call Vote As Follows:

Mr. Duggan – YES. Mr. Robinson – YES. Ms. Wing – YES. Ms. Brown – YES.  
Mr. Farrell – NO. Ms. Walton – YES. Mr. O'Connor – YES. Ms. Azarovitz – YES.  
Chm. Doucette – YES.

The Motion Passes.

### **3. Application for Special Permit #05-2023:**

220 Sandwich Rd, Map: 25.0 Parcel: 1, Upper Cape Technical School.  
Special Permit application to clear greater than 10,000 s.f. of natural cover per section 357 for two athletic fields.

Nolan Leroy introduces himself as representative of this project. He states that they are looking to revive their athletic area. Currently they only have one athletic field and two practice fields. Tim Lizzote oversees the athletic programs. Mr. Lizzote states that they have had a recent exponential growth in student athletes, and do not

have the fields necessary to accommodate this growth. They are looking to avoid a Title 9 issue.

Ms. Copeland states that this is post facto because it appears that the land has already been cleared. Mr. Leroy responds that four acres have been cleared, and a bulk of that was cleared in the 1990s. He states that his understanding is that the Town cleared close to two acres, and they have maintained that clearing and expanded that clearing in the last few years. Ms. Brown responds that it looks like a pit.

Ms. Copeland states that if there is a site disturbance of greater than two acres, it could potentially be referred to as a DRI to the Cape Cod Commission. She states that the CCC wants more information. She adds they might need to reach out to the state for Natural Heritage.

Chm. Doucette suggests a Continuation till December 14<sup>th</sup>. Mr. Leroy states that they cleared the two acres without knowledge of permits and regulations, and they were looking at it as under the Dover amendment act. Mr. O'Connor wishes to know who approved this, and Mr. Leroy responds that it was the School Committee. Mr. O'Connor, Ms. Walton, and Mr. Farrell express their dismay.

Mr. Farrell Makes a Motion to Continue to December 14<sup>th</sup>, 2023. Ms. Walton Seconds the Motion.

Roll Call Vote as Follows:

Mr. Duggan – YES. Mr. Robinson – YES. Ms. Wing – YES. Ms. Brown – YES. Mr. Farrell – YES. Ms. Walton – YES. Mr. O'Connor – YES. Ms. Azarovitz – YES. Chm. Doucette – YES.

The Motion Passes.

#### **4. Application for Site Plan Review/Special Permit: 04-2010A:**

440 Shore Rd, Map 30.4 Parcel 290.

Applicant proposes to enclose the end wings of the pre-existing structure. The project is located in a Water Resource District.

Because this is a pre-existing, non-conforming lot, a supportive finding will be needed to maintain the non-conformity or expand beyond, which was never filed for. They must do this before the public hearing is opened, so they will continue this until December 14<sup>th</sup>. The applicant needs to provide plans that show property lines and setbacks, and they need a permission letter from MassCoastal. Ms. Copeland clarifies that this project is in the right of way of the railroad.



Timothy Cornu, the applicant, wishes to state that they are just trying to have two storage sheds on the ends of the building, not open a storage center.

Several members of the public ask questions regarding the zoning/permitting process. Ms. Copeland goes over the definition of a supportive finding for the board and the public's benefit.

Mr. Farrell Makes a Motion to Continue to December 14<sup>th</sup>. Ms. Walton Seconds the Motion.

Roll Call Vote as Follows:

Mr. Duggan – YES. Mr. Robinson – YES. Ms. Wing – YES. Ms. Brown -- YES. Mr. Farrell – YES. Ms. Walton – YES. Mr. O'Connor – YES. Ms. Azarovitz – YES. Chm. Doucette – YES.

The Motion Passes.

**5. Enforcement: Ocean Pines Development – Wildwood Lane:** *(Continued from 10/26/23)*

Town Counsel, Maurica Miller, believes that this is a zoning enforcement issue, and any appeals would go to the Zoning Board of Appeals, not the Planning Board. Mr. Farrell summarizes for the public that the Building Inspector enforces permits granted by the Planning Board. Atty. Miller adds that a complaint was filed with the Building Inspector on November 3<sup>rd</sup>, and then the Building Inspector can investigate and order a cease and desist, or determine that there is no violation and take no action. At that point, any aggrieved individual can take their appeal to the Zoning Board of Appeals.

Scott Marra confirms that they have made a complaint with the Building Inspector, but disagrees with Town Counsel and believe that the Planning Board does have the authority to make amendments and take enforcement actions as to some outstanding permits.

Atty. Marra states that the Planning Board ordered the open space parcels to be conveyed to an entity. He says that an entity is trust. The trustee is a developer entity, and the beneficiaries are the condominium association, and the other should have been a homeowners association owning lots 31-60 on the plan. He states that two separate entities cannot be conflated.

Atty. Marra goes over his requests from the last hearing. He states that Lot 61 and 66 must be governed by current law, even though this permit was issued many years ago. He asks again that permits 38 and 38A be rescinded or restrained. He states

that the driveway and walkway issues of lots 62 and 66 must be remediated. Also, the roadway bond must be increased to repair and extend Wildwood Lane. They ask for an approved stormwater management plan be put into place, no further building permits be issued that fail to conform to the originally improved development plan, and no new certificates of occupancy until the Planning Board determines that the development meets the drainage requirements of the zoning bylaw.

In the last few days, Atty. Marra claims that the developer executed a separate master deed of Ocean Pines II Condominiums, to essentially cleave Lot 61 from the entire development. Atty. Marra goes over numerous concerns with this issue, and asks the Planning Board to instruct the Building Inspector to restrict the pouring of foundations until these issues are resolved. They also ask for the Building Inspector to review the building heights on Lot 61.

Atty. Marra believes that the Planning Board has the authority to request the application for amendment to Special Permit #38 considering the altered development plan. He states that the developer must seek an amendment and approval from the Planning Board regarding the special permit because of applicable case law. The case law in question is Barlow vs. Wayland, 2005. Because of the clear mandate of the Barlow case, Atty. Marra expects a clear mandate from the Planning Board to halt further construction.

Atty. Miller responds that she respectfully disagrees with Atty. Marra. She says that Lot 61 may be subject to current stormwater bylaws, but this is a zoning enforcement. The Building Inspector can then order a cease and desist, and the developer can apply for a stormwater permit. In terms of the Planning Board's authority in this issue, Atty. Miller states that section 1230 of the bylaw specifically cites that it is applicable to commercial, industrial, retail and/or mixed use structure and development.

The board decides that they will await findings from the Building Inspector. Atty. Marra states that the refusal to act will be an exhaustion of their administrative remedies as to the Planning Board. Chm. Doucette responds that he will take the advice of the counsel.

David Uitti introduces himself as representative of the developer. He submitted a letter to the board that day and states that their position is that they want to work very closely with the town on this project. He says that lots 61-65 are the common area, not the open space parcels. The open space parcels belong to the HOA trust, and there is no funny business going on here. He adds that most of the drainage issues are happening on common area, and all unit owners bought into this issue when they purchased their units. The condominium trust has a duty to take care of these issues. Atty. Uitti adds that Lot 61 is not part of the condominium, it is just a lot in the development. Back in September, his client arranged for a new



condominium association to take care of Lot 61, which is common, within the developer's rights, and not nefarious.

Ms. Brown asks if the HOA trust is in limbo, and Atty. Uitti responds that it is not, but developers often control the HOA trust until a certain triggering point, such as 75% of units sold. After that triggering point, control of the HOA trust goes to the beneficiaries to elect their own trustees. Atty. Uitti says that they disagree that the whole project has to be built up to current code, because the law as they see it gives separate and discreet phases of a build out. In other words, infrastructure that was built long ago should not have to be brought up to current code. Atty. Uitti agrees that this issue should go before the zoning enforcement official.

Mr. O'Connor inquiries regarding the Lot 61 issue. Atty. Uitti states that the developer currently owns Lot 61, and decided to create a condominium association for this lot, and there is nothing illegal about this. He says that this condominium association will take care of its own common areas. Mr. O'Connor asks where the drain water will go. Atty. Uitti responds that this is up to the developer to decide. Mr. O'Connor and Ms. Walton wish to know where the drain water will go. Atty. Uitti responds that this is an engineering question, and they do not believe that there is a drainage issue on site. He suggests that they let engineers, the Building Inspector, and Town Counsel decide if there is an issue on site. Mr. Farrell believes that the original plans of this development have changed, and they need staff and Town Counsel to determine whether changes have been made. Chm. Doucette says that he would like to hand this over to the code enforcement officer to decide what is needed.

Craig Frost of 17 Ocean Pines Drive makes a public comment. He states that in his deed, there is no mention of a homeowner's association, percentage ownership of the open space.

Tom LeClair of 7 Alpine Circle makes a public comment. He states that whether it is 1987 or 2023, best management practices should stand in place according to the bylaw. He states that they did not have any flooding until 2021, and they started to build the condos in 2016. Mr. LeClair wonders if the new condo association should have new permits.

Ms. Walton asks if this cannot be resolved by the December hearing, if there is something else they could do. Town Counsel responds that Mr. Murphy can issue a cease-and-desist order very quickly.

Amy Ingemi makes a public comment. She states her case for hastening the process. Mr. Farrell reiterates that they must get the building inspector out there as soon as possible.

Atty. Marra states that he does not understand how developments of lots 1-30, being commercial lots, does not bring this in the purview of the Planning Board. Chm.

Doucette responds that the commercial component came up tonight, and they would like the opportunity to research this. Atty. Marra states that they did their due diligence, briefed the Planning Board in a timely fashion, and would like the record to be clear on these points.

## **6. Adjourn**

Mr. Farrell Makes a Motion to Adjourn. Mr. Robinson Seconds the Motion, with all in favor.

With no further business before the board, the meeting is adjourned at approximately 8:50 PM

Respectfully Submitted,  
Ina Sullivan

