

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

## ***Meeting Minutes***

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

January 20, 2016

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

John O'Brien called to order the meeting of the Zoning Board of Appeals at 7:00 PM on January 20, 2016. Mr. O'Brien 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:** John O'Brien, Harold Kalick, Timothy Sawyer, Amy Kullar, Kat Brennan and Wade Keene.

**Members Excused:** Lee Berger

**Also Present:** Roger Laporte, Carol Mitchell, Architect, David Maclean, Clayton Jones, Selectman, Don Ellis, Terri Songer, Roger Zollo, Bob Ferrari and Regan Jason.

**Documents** – Agenda and packets pertaining to hearings for Special Permit # **2015-SP30**, Variance # **2015-V31**, and Ammendment of Comprehensive Permit #**22-12**.

A brief discussion transpired pertaining to the next meeting date. Mr. Laporte stated there will not be a meeting on February 3, 2016.

### **III. Agenda Items**

#### **1. Approval of Minutes -**

Due to a technical error on the part of the Recording Secretary, the committee members did not receive the minutes of the 1/6/16 meeting. The approval of those minutes was deferred.

Mr. O'Brien announced the first hearing.

#### **2. 45 Baxendale Raod** – Special Pemit #**2015-SP30**, Requesting a Special Permit per section 1330, 2320 and 2450 of the Bourne Zoning By-laws and M.G.L. Ch 40A, Sec 9 to rebuild an existing shed and extend the pre-existing non-conformity that does not meet the side setback requirements of 15 feet.

Sitting on this hearing are John O'Brien, Wade Keene, Timothy Sawyer, Harold Kalick and Amy Kullar. Also present is Kat Brennan.

David Maclean, the architect, spoke on behalf of the Joneses. An existing shed was removed approximately two months ago. It had been on the property for forty years. The homeowners would like to replace it with a storage shed and changing area. The former shed was not a perfect rectangle; and, it was approximately 183 sq. ft. The proposed new shed will be a perfect rectangle; and, will be approximately 200 sq. ft. The new proposal decreases the non-conformity. The former shed encroached the right of way. The proposed new shed will be moved back onto the property. It is lower in height and will be rotated to have less of an impact.

Ms. Brennan asked if there's an outdoor shower. Mr. Maclean stated there is, just as there was before. The shower will drain into the septic system. A brief discussion transpired pertaining to the placement of the shower and the location of where the new shed would be placed.

A question was posed regarding the ownership of the road. Mr. Maclean stated the road is private and is maintained by residents on the island. He stated the abutters do not oppose this project.

Mr. Sawyer is concerned about maintaining the structure without having to go on someone else's property. Mr. Maclean stated it's prefabricated and will require little to no maintenance.

Ms. Brennan inquired about the cement platform and Ms. Kullar inquired as to why it's being placed so close to the boundary. Mr. Maclean stated the cement platform is a generator platform. He added that the placement of the shed is because of the topography and the vegetation. He reiterated that the new structure will decrease the non-conformity, adding the road is private and the neighbors do not object to the project. A brief discussion ensued.

Mr. O'Brien stated that granting the Special Permit would require a Finding. The Finding is that the the proposed new structure will not be more detrimental to the neighborhood.

Mr. O'Brien asked for public comment. There wasn't any.

Mr. O'Brien entertained a motion to close the hearing. **Mr. Kalick motioned to close the hearing. Ms. Kullar seconded.** The motion carried 6-0.

Mr. O'Brien entertained a motion for a Finding and Special Permit. Mr. **O'Brien moved to grant a Special Permit under item #2015-SP30 with a Finding that this non-conforming use structure will not be more substantially detrimental to the neighborhood and that a Special Permit**

**be issued as requested under section 1330 with the understanding that the proposed shed will not meet the 15' setback as required by the zoning by-laws and the setback will be as stated in the attached plans dated 12/14/15. Mr. Kalick seconded.** With no further discussion, the motion passed 3-2 with Mr. Sawyer and Mr. Wade voting no, Mr. O'Brien, Mr. Kalick and Ms. Kullar voting yes.

Mr. O'Brien announced the next hearing.

3. **0 Commonwealth Avenue - Variance # 2015-V31**, Requesting a Variance to declare a non-conforming lot under contiguous ownership as buildable.

The hearing was deferred as the presenter was running a few minutes late.

Mr. O'Brien announced the next hearing.

4. **Coady School Residences** – Amendment of Comprehensive Permit #22-12, Requesting to amend the Comprehensive Permit for a 2-year extension.

Sitting on this hearing are John O'Brien, Wade Keene, Timothy Sawyer, Harold Kalick and Kat Brennan. Also present is Amy Kullar.

Mr. Laporte addressed the committee as Tom Guerino was unable to attend the hearing. Mr. Laporte explained a Comprehensive Permit under 40B was issued for this project. The Town owns this property and is under agreement to sell it to The Coady School Residences Limited Partnership. They are requesting the extension because they are waiting for funds.

A brief discussion transpired pertaining to the funding and the location of the development.

Mr. O'Brien asked if any committee members had questions. None were posed.

Mr. O'Brien asked for public comment. Selectman, Don Ellis, addressed the committee. He stated the BOS fully support this project and he respectfully requests the extension be granted.

Mr. O'Brien entertained a motion to close the hearing. **Mr. Keene motioned to close the hearing. Ms. Brennan seconded.** The motion carried 6-0.

Mr. O'Brien entertained a motion on the request for the Coady School Residences for an extension of 2-years on permit # 22-12. **Mr. Kalick motioned that under Comprehensive Permit # 22-12 requesting a 2-year**

**extension be granted. Mr. Sawyer seconded.** With no further discussion, the motion passed 5-0.

5. **0 Commonwealth Avenue - Variance # 2015-V31**, Requesting a Variance to declare a non-conforming lot under contiguous ownership as buildable.

Sitting on this hearing are John O'Brien, Wade Keene, Timothy Sawyer, Harold Kalick and Amy Kullar. Also present is Kat Brennan.

Mr. Laporte requested a 5 minute recess.

The meeting reconvened after a five minute recess.

Mr. O'Brien restated the Variance request. Mr. Laporte called a point of order. He believes that this lot does not need a Variance. He asked the former chairman of the Planning Board, Don Ellis, to address the committee.

Mr. Ellis stated he was there not only as an abutter (representing the Sagamore Cemetery Association); but, as the former chair of the Planning Board. He offered a brief explanation of the original plan that was submitted back in the late 70's / early 80's. At the time, zoning allowed this property to be split into two lots. The Zoning Board unanimously approved the division but stipulated it must remain residential. The property is a two lot subdivision that will support two houses to be built. The Sagamore Cemetery Association supports the development of two residential lots once the road is built to allow for proper frontage.

Mr. Laporte stated without the road, there is no frontage and a Variance would be needed. With the road, these lots are not contiguous lots by both state and case law. The law states that for the lots to be abutting, they have to touch each other, even if they touch by just the corners. In his opinion, the land owner does not need a Variance. He feels the applicant can withdraw his request and may obtain a Building Permit on its own merit.

Mr. O'Brien stated the committee has always allowed a person to withdraw their request without prejudice, adding that if the person withdraws, the committee will no longer discuss the issue.

Mr. Laporte asked Mr. Jason if he would like to withdraw his request. Mr. Jason stated he would like to withdraw.

Ms. Songer, an abutter, stated she has questions. Mr. O'Brien allowed the abutters present to ask Mr. Laporte questions.

Ms. Songer inquired as to why the discussion pertaining to the request to withdraw didn't occur prior to the hearing. Mr. Laporte explained that had Mr. Jason applied for a Building Permit, it would have been granted. He was under the impression that a Variance was needed, which it isn't. A brief discussion transpired pertaining to the location of the property, current zoning laws and how they do not affect the lot owner's ability to build on these lots.

Ms. Songer stated there is not an existing road there to separate the lots. Mr. Laporte explained it's a paper road, a road approved on a plan, which can be built at any time. A brief discussion ensued.

Roger Zollo, of 49 Commonwealth Ave, stated he is not opposed to two new houses being built. He discussed the Town's maintenance of the road.

A question was posed pertaining to spot zoning. Mr. Laporte assured the group that the lots would remain residentially zoned.

Bob Ferrari, of 23 Westdale Park, stated he is not opposed to two new homes being built.

Mr. O'Brien entertained a motion to allow Mr. Jason to withdraw his request for a Variance under # **2015-V31** without prejudice. **Mr. Sawyer moved to allow the applicant for 0 Commonwealth Ave, Variance # 2015-V31, to withdraw his application without prejudice. Mr. Keene seconded.** The motion carried 5-0.

6. **Old Business** – None

7. **New Business** - None

#### **IV. Adjournment**

Mr. O'Brien entertained a motion to adjourn the meeting. **Ms. Kullar motioned to adjourn the meeting. Mr. Keene seconded.** The motion carried 6-0. The meeting adjourned at 7:42 PM.

Minutes submitted by: Carol Mitchell