

Town of Bourne Zoning Board of Appeals

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

December 16, 2015

I. Call to order

John O'Brien called to order the meeting of the Zoning Board of Appeals at 7:00 PM on December 16, 2015. 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, Wade Keene, Timothy Sawyer, Amy Kullar and Kat Brennan

Members Excused: Lee Berger and Harold Kalick

Also Present: Roger Laporte, Carol Mitchell, Peter Meier (7:20), Anne Matthies, Maurice Campeau, Attorney William Smith, Michael Fraser, Architect Bill Lockwood, William Donkin, Gail Donkin, John Tassinari, Bruce Miller, John Fitch, Rick Joy and Tina Sutkus.

Documents – Agenda and packets pertaining to hearings for Variance # **2015-V26**, Special Permit # **2015-SP27** and Special Permit # **2015-SP20**.

III. Agenda Items

1. Approval of Minutes -

Mr. O'Brien entertained a motion to approve the minutes of the December 2, 2015, meeting. **Mr. Sawyer moved to accept the minutes of the December 2, 2015, meeting. Mr. Wade seconded.** With no discussion, the minutes were approved 4-0-1 with Ms. Kullar abstaining.

Mr. O'Brien announced the first hearing.

2. 1141 Shore Road Variance #2015-V26, Request for Variances from following sections of the Bourne Zoning Bylaw: Section 2500. Intensity of Use Schedule regarding the minimum requirements for Sideline Setback.

Anne Matthies and Sun Room Designer, Maurice Campeau, were present to request a Variance to add a Sun Room on to the side of the house. They presented drawings to the committee and Mr. Campeau described the addition. Mr. O'Brien questioned the location of the proposed addition. Ms.

Matthies clarified that the Sun Room would be at the back of the house rather than the side as originally thought.

Mr. O'Brien then referred to a plot map and inquired as to where the sideline setback is located. Ms. Matthies explained that the property line abuts a lot of land owned by Arthur Forziati. She further explained it is an unbuildable lot because it is classified as wetlands.

Mr. Sawyer inquired as to whether Ms. Matthies received permission to build the addition from Conservation. Ms. Matthies stated she spoke with Brandon in Conservation on numerous occasions and has received permission. Mr. Campeau explained there's an existing shed that will be removed.

A brief discussion transpired concerning the location of the existing deck and the entrance to the property.

Mr. O'Brien asked Mr. Laporte what would be the distance of the setback. Mr. Laporte stated it would be 3'. The required setback is 12'. Ms. Kullar again questioned that Conservation consented. Ms. Matthies stated they had.

Mr. Sawyer asked how close to the property line is the the existing deck now. Mr. Campeau stated it's approximately 17'. Ms. Brennan inquired as to whether or not there would be a basement with this addition. Ms. Matthies and Mr. Campeau stated no, there would not be a basement.

Mr. O'Brien reiterated that the abutting property is unbuildable. Ms. Matthies explained that she offered to purchase a strip of the land from Mr. Forziati. He told her that wouldn't be necessary.

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

Mr. O'Brien stated Ms. Matthies is requesting a Variance to allow an exception to the setback of the rear property line from its required 12' to 3'. He then asked for public comment.

Neighbors, William and Gail Donkin, addressed the committee stating they did not oppose the proposed addition.

Mr. O'Brien indicated he had difficulty finding the property. Mr. Keene suggested that Ms. Matthies place a marker at the entrance to the property which would assist fire or police in the event of an emergency. Ms. Matthies agreed.

Mr. O'Brien entertained a motion to close the hearing. **Ms. Kullar moved to close the hearing. Mr. Keene seconded.** The motioned passed unanimously 5-0.

Mr. O'Brien entertained a motion on the request for a Variance under #**2015-V26. Ms. Kullar moved to grant the Variance under #2015-V26.** Mr. O'Brien specified the Variance would allow the adjustment of the required 12' setback to 3'. **Ms. Brennan seconded the motion.** With no discussion, the motion passed unanimously 5-0.

Ms. Matthies thanked the committee.

Mr. O'Brien announced the next hearing.

3. **91 Cranberry Hwy Special Permit # 2015-SP27,** Requesting a Special Permit under section 2450 to allow an increase in Gross Floor Area (GFA) not to exceed an increase of greater than 10% of the allowable GFA for construction of a single dwelling home on a pre-existing non-conforming lot.

Attorney William Smith, property owner, Michael Fraser, and Bill Lockwood of Lockwood Architects were present to request the Special Permit.

Attorney Smith gave a brief background on the project explaining that in February 2014, Mr. Fraser filed an application to build a single family home on the lot at 91 Cranberry Hwy. He retained Robert Guay of RPG Associates to act as the architectural engineer for the project.

Mr. Guay was a personal friend and close business associate of Mr. Fraser. Mr. Smith further explained that Mr. Guay prepared a set of plans that were filed with the town and all of the necessary sign offs were received by February 25, 2014. A foundation permit was issued on March 16, 2014, at some point before the winter of 2014/2015, a foundation to the main house was poured. Mr. Guay became seriously ill over this time

Mr. Guay and Mr. Fraser had made some design changes to the home, some preliminary drawings were prepared. Mr. Fraser was under the impression that Mr. Guay had filed those changes with the town as Mr. Guay had been handling all of the permitting with the town up to that point. It was discovered he had not. Unfortunately, Mr. Guay passed away in March 2015.

Construction resumed on the site in late spring / early summer, as Mr. Fraser believed that all permitting was in order. At this point, the main structure of the house and the garage had been largely framed; however, there is still some framing to be completed. Mr. Fraser hired Lockwood Architects in June

2015, to assist with any architectural issues. It was then discovered that there were issues pertaining to the specs of the site, and the GFA would require a Special Permit. Construction had been halted, leaving the home vulnerable to vandalism and theft. Additionally, it is not weather tight. A Special Permit is needed to allow construction to resume.

Mr. O'Brien stated he visited the property and asked why construction had stopped. Mr. Laporte stated he put a cease and desist order on construction. Mr. Smith stated a stop work order was issued in September. Since that time, Mr. Fraser has attempted to work with Mr. Laporte to resolve the issues.

Mr. O'Brien asked Mr. Laporte to explain how the cease and desist relates to the coverage of the lot. Mr. Laporte explained that the original permit issued was for a different house, on a different spot on the lot. The permit is issued in two parts; first, is for the foundation only, then, once an as-built is submitted, the second permit is issued. The as-built assures that the foundation has been poured in the correct spot. In this case, the foundation was poured; but, an as-built was never submitted. The framing work started, which was done at their own risk. The whole project hadn't been approved. The architect and Mr. Fraser discovered problems and asked Mr. Laporte to inspect the property. Mr. Laporte stated that if he went to inspect and what was built wasn't what was on the plans, a cease and desist order would be issued. When Mr. Laporte inspected the property, he discovered the septic permit had expired and the foundation wasn't poured where it should've been. Additionally, the GFA now exceeds the allowable area; a granite curb that was installed, was placed on state and town property and the house is now too close to the property line. Mr. Laporte stated that all of these problems would have to be rectified before the cease and desist order can be lifted.

A brief discussion transpired concerning how the property owner will rectify the problems. Mr. Smith stated the curbing will be moved back onto the homeowner's property. He stated that if need be, when construction is allowed to resume, the setback issue will be addressed by slightly reducing the size of the frame. He added that any other concerns that the ZBA has will gladly be addressed and rectified once they receive the Special Permit and are able to resume construction.

Mr. O'Brien inquired about the small white garage behind the house. He stated it appears to be too close to the property line. Mr. Smith stated the garage on the homeowner's property does meet the current setback

regulation; however, the neighbor's garage does not. The committee members referred to plot plans and briefly discussed the property line.

Mr. O'Brien then asked for clarification on the location of where the house was built vs. where it was permitted to be built. Mr. Lockwood stated he's never seen the original site plan so he can't clarify that. Mr. Fraser interjected, stating that Mr. Guay had four different engineering companies survey the property. Initially, he was going to put a commercial business on the land; but, the neighbors were against that; so, he decided to build a home there instead. Mr. Guay designed the architectural plans, the engineering and put the points in for the home's location. Then, Mr. Guay became ill. Mr. Fraser was under the impression that Mr. Guay had submitted the design changes to the town, but he hadn't. Mr. Fraser stated that had he known the points were placed too close to the property line, he would have made changes prior to the garage foundation being poured. Mr. Smith agreed that the foundation as-built does not match what was on the original plans; but, stated it is within zoning requirements with the exception of the slight setback issue which will be rectified once construction is allowed to resume.

Mr. Sawyer inquired as to what part of the original plan was deviated from. Mr. Fraser stated originally, there were four large gables, a wrap around porch and a three car garage. Mr. Laporte showed the committee the original plan and explained the differences. Ms. Kullar asked the remedy for not complying with the original plan. Mr. Laporte stated that if you're not in compliance with the permit, a cease and desist order is issued. The choices are; to make it comply with the permit, make it comply with zoning and then the permit, or if you can't make it comply, you can try and get relief.

Mr. Fraser stated all work stopped immediately. Mr. Smith acknowledged there was a miscommunication which can't be undone. All that can be done now is to correct the errors that were made. The as-built was filed as soon as that error was brought to their attention and a septic permit application has also been filed. Nothing more can be done until they receive the Special Permit.

Mr. Sawyer asked if the present house has to be altered in order to meet the GFA. Mr. Smith stated yes, and a new design as been submitted reflecting that. Mr. Lockwood stated that in order to stay beneath the 10% that the Special Permit allows, it will be necessary to remove the second floor from the garage area. That reduction in square footage will bring it down to 5,099 sq. ft. In terms, of getting the setback in compliance, the overhang on the garage will be cut back. A brief discussion ensued.

Mr. Laporte explained that the curbing Mr. Fraser installed encroaches both town and state property. Mr. Fraser stated he was under the impression, based on the surveying, that he placed the curbing on his property. He will remove the curbing.

Mr. O'Brien asked the committee members if they had any further questions. Ms. Brennan asked Mr. Laporte if this was acceptable. Mr. Laporte stated as long as the project meets the zoning by-law, it's acceptable.

Mr. O'Brien summarized what the property owner will need to do in order to be in compliance. He needs to; move the curbing back onto his property, modify the garage to comply with the setback regulation and submit a set of new plans depicting the exact design. A brief discussion transpired relating to the plans.

Mr. O'Brien asked for public comment. John Tassinari addressed the committee. His property is located directly behind the Fraser property. He stated Mr. Fraser originally told him he planned on building a small cape. It's actually three stories high, there are 15 windows facing his pool, it's so tall that his backyard is in shade half the day. He opposes Mr. Fraser being allowed to add anything more to the property.

Mr. O'Brien stated he won't be allowed to add anything more. Ms. Kullar questioned whether the house meets height restrictions. Mr. O'Brien stated it's within height requirements.

Mr. O'Brien asked for further public comment. Bruce Miller of Cape Realty addressed the committee. He stated he hopes the property owner is required to reduce the size of the home. He is unhappy that Mr. Fraser submitted one set of plans but built something other than what was submitted.

Mr. O'Brien stated they've clarified that the zoning officer needs a design plan that shows what the property owner will do to meet the by-laws. He added, when an individual requests a consideration of an exception to the by-laws, in this case a Variance, the by-law states, you can build on a certain size piece of property, in this case, 20% of the property. According to the by-law, the ZBA is allowed to increase that by 10% . Mr. Fraser is only requesting 1.4% above what the by-law states.

Ms. Brennan asked if the committee can take into consideration impact on the neighborhood when making its decision. Mr. O'Brien stated no, the committee is there to make a decision as to whether or not to allow the property owner to go over the coverage on the lot by 1.4%. Mr. Laporte will

determine if the construction meets all of the other requirements; i.e. height and other by-laws.

Mr. Smith stated they are committed to working with Mr. Laporte to be sure the completed project meets all requirements.

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

Mr. O'Brien entertained a motion on Special Permit request # **2015-SP27**, requesting an increase in the GFA of the requirements of the by-laws by 1.4%. **Mr. Keene made a motion to grant the Special Permit # 2015-SP27, to allow an increase of 1.4% over the allowed GFA not to exceed 5,099 sq. ft., providing the curbing on Vermont Street and Cranberry Hwy. will be removed, new plans will be submitted reflecting the revision to the garage and the construction must be modified to meet the setback requirements on Vermont Street. Mr. Sawyer seconded.** With no further discussion, the motion passed. 4-1 with Ms. Brennan voting no.

Mr. Fraser and Mr. Smith thanked the committee.

Mr. O'Brien announced the next hearing.

4. **Con't hearing: 12 Cranberry Rd # 2015-SP20**, Requesting Special Permit per section 1331, 2320 and 2450 of the Bourne Zoning By-laws and M.G.L., Ch 40A, Sec 9 to find that proposed alterations to a pre-existing, non-conforming structure and use shall not be substantially more detrimental than the existing structure and use to the neighborhood.

Mr. O'Brien recused himself from voting adding because this case is a finding, three of the four votes must be in favor.

John Fitch, addressed the committee on behalf of the applicant, Rick Joy. He stated a new site plan was submitted to the board as a response to comments received from neighbors at the last hearing and a revisit to the site by their engineers. He reminded the committee this property was destroyed by fire. It is a pre-existing, valid, non-conforming use and structure on the property. The house was built in 1925, and has been a four unit dwelling since at least 1948 predating zoning regulations and most recently was turned into a condominium. Mr. Joy acquired the property in the summer of 2014 and in December of 2014 it was destroyed by fire. The town's by-law and state law support the idea that the property can be reconstructed exactly as it was

before and has to be done within two years; otherwise, it would lose its status. There is one year remaining and it can be rebuilt exactly as it was.

Mr. Fitch explained it was a large structure, sitting on a lot the size of three of the neighborhood lots and it predates most of the neighborhood. Most recently it's been a run-down slum, an eyesore of the neighborhood and a thorn in the neighbor's side. Mr. Joy purchased the property as an investment; and, was making an effort to evict tenants to remodel the property when the fire occurred.

Mr. Fitch stated they are allowed to rebuild what was there before; however, they don't wish to. Based on feedback received from neighbors at the previous hearing, Mr. Joy and his engineers revisited the property to see how to address concerns regarding the building's height and a blind curve in the road. Since the re-visit, a neighbor, Gregory French, who raised concerns at the last meeting, has sent an email stating it's the hill causing the blind corner and not any other obstacles. Mr. Joy's engineers concur.

Mr. Fitch stated the most recent revised plan shows a 4' reduction in elevation, which includes the location of the house. Mr. Laporte had a question pertaining to the plan and the low. He stated there is no elevation listed. Mr. Fitch explained the elevation of the low. Mr. Laporte asked if the cut was going to be at 32. Mr. Fitch stated it would be which will result in the building's new height to be 31' or slightly lower. The plans for the structure that have been submitted show a reduction in the footprint on the site, show a reduction in the square footage from 3467 to 2760, shows parking spaces have been increased from 7 to 9 and shows the bedrooms / units remain exactly the same. Mr. Fitch stated a landscape plan has also been submitted.

Another concern raised by neighbors was the rent amounts being charged for the units. The maximum was \$800.00 per month or less. The new proposed rent amounts will be \$1,100.00 and \$1,300.00. There will be a difference in the tenants who can afford these higher rents.

Mr. Fitch stated the structure will be new, will have a slightly less impact on the neighborhood, the quality of the people who live there will improve, the way the building will be maintained will be improved.. He added that rental housing is important to have available in a town. The new proposed units will be a higher quality than what was previously there. He's asking the committee to vote for a finding that the proposal is not substantially more detrimental to the neighborhood.

Ms. Brennan stated the neighborhood is a single family neighborhood; yet, this is an apartment building. She stated the 4 units were never legal; someone broke the original house into 4 units. Mr. Fitch stated it was done before zoning was in place which makes it legal; adding that the Town's own by-law indicates, that non-conforming uses can be extended or altered and maintained, unless it's been abandoned.

Ms. Kullar indicated her main concern is, if the committee votes against the finding, the exact same structure will be built to replace the destroyed one. A brief discussion transpired pertaining to the by-law and non-conforming uses.

Mr. Keene made an inquiry of where the rubbish will be stored. Mr. Fitch referred to the plan to explain the proposed location. A brief discussion ensued. Mr. Joy indicated he has hired a private contractor to remove the tenant's rubbish from the property.

Ms. Kullar asked for clarification on how the proposed parking solution will be better than what was previously in place. Mr. Fitch referred to the plan indicating that the new parking area has been reduced by four feet. Mr. Laporte stated the parking was never regulated; it was everywhere. Mr. Fitch stated there will be two parking spaces per unit. Ms. Kullar asked how the owner will manage non-compliant tenants. Mr. Fitch stated it will be handled as a lease violation, resulting in eviction. A brief discussion transpired pertaining to vehicles backing out into the blind corner. Mr. Fitch stated by lowering the elevation, visibility will be improved.

Mr. O'Brien asked for public comment.

Tina Sutkus, a neighbor, inquired as to whether or not the landlord will accept a tenant receiving state assistance. Mr. Sawyer stated a landlord can not discriminate against a potential tenant receiving assistance. Ms. Sutkus indicated that a lot of the former tenants were receiving state aid and the lower rents were attracting low income families. Mr. Laporte stated that is why Mr. Joy is increasing the rent, adding that the state has caps as to how much they'll subsidize for a rental unit.

Ms. Sutkus added that the neighborhood is mainly single family homes. She and other neighbors are unhappy with the fact that another apartment building is being built to replace the destroyed one. Ms. Kullar empathized; adding that the committee is trying to find an even balance.

Ms. Sutkus asked if the septic has passed as well as other permitting requirements. Mr. Laporte stated everything is pending based on the decision of the Appeals Board.

Another neighbor, Michael Buchanan, addressed the committee. He doesn't think that Mr. Joy would go through the process of rebuilding the structure, and put the effort into maintaining it, only to place a tenant in there who will ruin his efforts. He stated a simple phone call to report any trouble would solve that problem. He also feels that the new structure may increase property values in the neighborhood.

Mr. Meier inquired as to whether or not the Board of Health has had any issues. Mr. Laporte stated Mr. Joy's project has been changing; therefore, no department has signed off on it. A brief discussion transpired pertaining to the septic permit.

Ms. Kullar feels rebuilding the existing structure as it was would be a detriment to the neighborhood.

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

Mr. O'Brien entertained a motion on a request for a finding on **12 Cranberry Rd # 2015-SP20**, that the proposed alterations to a pre-existing, non-conforming structure and use shall not be substantially more detrimental than the existing structure and use to the neighborhood.

After a brief discussion, **Ms. Kullar motioned to grant Special Permit per section 1331, 2320 and 2450 of the Bourne Zoning By-laws to find that proposed alterations to a pre-existing, non-conforming structure and use shall not be substantially more detrimental than the existing structure and use to the neighborhood. Mr. Keene seconded.** The motion passed 3-1-1 with Ms. Brennan voting no and Mr. O'Brien abstaining.

5. **Old Business** – None
6. **New Business** – Mr. Meier thanked the committee members for their hard work over the last year. He wished everyone a safe and prosperous holiday.

IV. Adjournment

Mr. O'Brien entertained a motion to adjourn the meeting. Mr. Sawyer motioned to adjourn the meeting. Mr. Keene seconded. With no discussion, the motion carried unanimously 5-0. The meeting adjourned at 8:24 PM.

Minutes submitted by: Carol Mitchell