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**2009**

**Affordable  
Housing Trust**

**Assessors**

**Board of Appeals**

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TOWN CLERK'S OFFICE  
BOURNE, MASS

**Bourne Affordable Housing Trust meeting**

**Date:** Friday, May 29, 2009  
**Time:** 8:30 AM  
**Location:** Bourne Town Hall - Second Floor Conference Room  
24 Perry Ave  
Buzzards Bay, MA 02532

**Agenda**

1. Review of the "Open Meeting Law", Establishment of Interim Rules and Temporary Chairperson
2. Staff Support and Housing Specialist Status Report
3. Discussion of Funding Sources
4. Shearwater Lot
  - Taking Title
  - Perc test
  - TAP Funds
5. Adams St. lot
6. Development process
7. Process to identifying goals, objectives and priorities
8. Other business to come before the board.

**Kerry Horman, Affordable Housing Specialist**

# **Meeting of the Bourne Affordable Housing Trust**

## **Minutes**

**Meeting of May 29, 2009**

Time: 8:50 AM.

Location: Bourne Town Hall, Second Floor Conference Room, 24 Perry Ave. Buzzards Bay, MA

Trustees Present: Susan Ross, Steven Walsh, Judith Riordan, Lee Berger, and Thomas Guerino

Absent: None

Others present: Kerry Horman, Affordable Housing Specialist

Mr. Guerino offered to serve as temporary chairperson until a chairperson was elected by the Trustees. Mr. Guerino suggested that prior to the next meeting anyone who would like to serve as chairperson should inform Mr. Horman.

Mr. Guerino reviewed the Massachusetts open meeting law and discussed what constituted a meeting and under what circumstances a committee could go into executive session. He noted that e-mail correspondence can be considered as part of the public record.

Mr. Horman presented his staff report explaining that he would be able to provide staff support to the Trust under his current arrangement for up to 24 billable hours under CPA funding. He stated that he had discussed this with the Bourne Housing Partnership and that the Partnership was supportive of this arrangement.

Mr. Horman provided the Trustees with an outline entitled Bourne Affordable Housing and Financial Resources May 28, 2009. He noted that with the exception of approximately \$148,000 of funds set aside for B-HOPP the remainder of the funds potentially available could be used for a variety of and mix of Trust initiatives and Housing Partnership initiatives.

Mr. Horman informed the Trustees of the availability of \$4,000 from the Cape Cod Commission TAP program which the Partnership had requested for percolation test and septic design for the property at 12 and 14 Shearwater Drive which had been transferred from the Town's tax title inventory to the Trust at Town Meeting. He explained that if the project went ahead than the Trust would be responsible to pay the \$4,000 back to the Cape Cod Commission but it would not need to be reimbursed if the project did not go ahead.

The Trustees were in unanimous agreement that the project should go ahead and directed Mr. Horman to carry out the steps necessary to request quotations from qualified engineering firms for the Trust's review.

Mr. Walsh offered to help Mr. Horman review the engineering submittals for the septic design.

Mr. Horman informed the Trustees that an affordable building lot was available on Adams Street and that he hoped to bring this item before the Trust at the next meeting. The Trustees recommended that the request for quotations should include the option of using the same engineer for Adam's St. as well, rather than having to repeat the process.

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Mr. Horman moved on to the subject of the development process for single-family affordable homes. He explained that the Housing Partnership, in coordination with the Bourne Housing Authority, had built three single-family homes in which the process included the sale of tax title land to a builder with an agreement to build structures with an agreed upon design that would sell at a predetermined affordable

price with affordable deed riders in perpetuity. Mr. Horman suggested that this model may be the appropriate model for future development projects and that he would continue his review of that process.

The Trustees moved on to the question of goals, objectives, and priorities. A general discussion occurred relative to the need for affordable rental properties versus single-family home projects.

Ms. Riordan pointed out that the Cape Cod Commission consistently had felt that there was a great need for affordable rentals.

Ms. Ross said that historically it had been the Housing Authority who took on the role of developing affordable rental properties for the Town.

Mr. Berger raised the question of whether or not only properties that were eligible to be placed on the State's Subsidize Housing Inventory (SHI) list should be considered by the Trust. Mr. Berger also stated that the Trust should consider drafting affordable housing bylaws such as inclusionary zoning, small lots for affordable homes and efforts should be made to coordinate with other Town housing and planning agencies.

The Trustees were in general agreement that a joint meeting with the Housing Partnership and the Housing Authority might be a good way to discuss goals, priorities, and responsibilities for a coordinated effort. Mr. Horman was asked to look into the possibility of a joint meeting.

Mr. Guerino asked Mr. Horman to review the potential of using Community Preservation funds for a match for the Community Development Block Grant Program which could be used for renovation of private homes that are in disrepair if the homes were owned by moderate income households. He also suggested that Mr. Horman should research funding from an organization that worked with rural communities on affordable housing, that he believed was based in Gardner, Massachusetts.

The Trustees agreed upon the date of Friday, June 19, at 8:30AM for the next meeting.

There being no further business at the meeting was adjourned at 10:20 a.m.

Respectfully submitted,

Kerry Horman, Affordable Housing Specialist

## **Bourne Affordable Housing Trust Meeting**

**Date:** Friday, June 19, 2009

**Time:** 8:30 AM

**Location:** Bourne Town Hall  
Second Floor Conference Room  
24 Perry Avenue  
Buzzards Bay, MA 02532

### **Agenda:**

1. Review minutes of May 29, 2009 Meeting
2. Vote to go into executive session to discuss the value of real estate at 79 Adams St. for a potential purchase.
3. Return from executive session
3. Review of Quotations for septic design for 12 and 14 Shearwater and 79 Adams St. and selection of engineering firm.
5. Housing Specialist's report
6. Other business to come before the board.

Kerry Horman, Affordable Housing Specialist

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TOWN CLERK'S OFFICE  
BOURNE, MASS

**Meeting of the Bourne Affordable Housing Trust**

**Minutes**

**Meeting of June 19, 2009**

Time: 8:45 AM.

Location: Bourne Town Hall, Second Floor Conference Room, 24 Perry Ave. Buzzards Bay, MA

Trustees Present: Susan Ross, Steven Walsh, and Judith Riordan

Absent: Lee Berger and Thomas Guerino

Others present: Kerry Horman, Affordable Housing Specialist

Ms. Ross was asked to serve as temporary chairperson and she agreed.

Mr. Horman noted that Mr. Berger had sent him by e-mail some amendments to the minutes of the May 29, 2009 meeting and Mr. Horman presented those to the Trustees.

Ms. Riordan moved that the minutes of the May 29, 2009 meeting be approved with the amendments suggested in Mr. Berger's e-mail.

Mr. Walsh seconded the motion and the motion passed unanimously.

Mr. Horman presented a copy of the proposals from JC Engineering and GEOD Consulting for septic design and related services for the proposed affordable lots at Shearwater Drive and Adams Street. He informed the Trustees that he also requested quotations from Shay Environmental and from Falmouth Engineering but had not received responses from those firms. He noted that there was a wide spread in the cost of services proposed by the two responding firms and surprisingly, the lower priced firm JC Engineering included the cost of the backhoe for digging holes for the perc tests and GEOD's did not.

Ms. Ross said that the pricing presented by JC Engineering was consistent with what she had seen recently of about \$1800 per septic design.

Mr. Horman stated that based upon the pricing presented by JC the \$4000 allotted by the Cape Cod Commission under the TAP could pay for septic design for both Shearwater and Adams Street if the Commission would approve the money to be spent for both.

Ms. Riordan moved that the Trust except the proposal from JC Engineering to provide septic design for the Shearwater property, and the Adams Street property if the Cape Cod Commission approves the use of the money for both lots.

Motion was seconded by Mr. Walsh and passed unanimously.

Ms. Ross asked if there was a motion to enter into executive session in order to discuss the value of real estate at 79 Adams St., Sagamore.

Mr. Walsh so moved.

Ms. Riordan seconded the motion.

Mr. Walsh voted yes. Ms. Riordan voted yes. Ms. Ross voted yes.

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TOWN CLERK'S OFFICE  
BOURNE, MASS.

Mr. Horman provided the Trustees with a copy of an e-mail from Mr. Brett Valentini, the owner of 79 Adams St., in which he suggested that an offer should be made based upon a value of \$65,000.

Mr. Horman said that in a recent negotiation under the B-HOPP program the price paid for an affordable lot was \$45,000 and the price included a septic design for the lot.

Ms. Ross stated that usually you set the value on a piece of property based upon what other similar properties have sold for. She said that the only sale that is similar is the one in which the Bourne Housing Partnership has been involved with which sold for \$45,000. She said the lot at 79 Adams St cannot be sold to anybody unless they build affordable house on it which is basically a losing proposition. She said the only way that we can do it is because we have the B-HOPP and CPA subsidy money. She said that in her view we should only pay \$45,000 minus the cost of the septic design which is \$1,450 according to the price that we just received.

Ms. Ross pointed out that normally you would try to get an appraised value but with the deed rider restriction, the Town is the only likely buyer, so an appraisal wouldn't make much sense.

Ms. Riordan moved that the Trust offer Mr. Valentini \$43,550 for the property at 79 Adams St

Mr. Walsh seconded the motion.

Ms. Riordan voted yes. Mr. Walsh voted yes. Ms. Ross voted yes.

Mr. Walsh moved that the Trust go out of executive session and returned to open session. The motion was seconded by Ms. Riordan.

Mr. Walsh voted yes. Ms. Riordan voted yes. Ms. Ross voted yes.

The Trust was back in open session and Ms. Ross raised the issue of what the next steps would be.

A general discussion occurred in which the direction was that Mr. Horman would be in touch with Mr. Ruchinskis of the CCC to get approval to move ahead with having both Shearwater and Adams St. perced.

Mr. Horman was directed to work on getting the Adams Street perc test done while under purchase and sales agreement because if the lot did not lend itself to a reasonably priced septic system than the Trust would not want to move ahead on the proposed offer. It was noted that the appropriate procedure for the purchase and sales agreement would be for the seller's attorney to prepare the document and for the Town Counsel to review it prior to the Trust signing. After the review of Town Counsel then the individual members of the Trust could come in and sign the agreement.

Mr. Horman said that in the next phase of the Adams Street and Shearwater projects it would be necessary to do a request for proposals for developers to take the title of the properties and build homes. He said that the Bourne Housing Partnership had done this in cooperation with the Housing Authority in the past and that the consultant used to prepare the RFP was Karen Sonnarborg. He said further that Ms. Sonnarborg recently won a contract from the Bourne Housing Partnership to perform a lottery but that the contract also asked for an hourly rate to perform other consulting services if needed. The contract currently has \$1000 left in it and he had spoken with Ms. Sonnarborg and that she felt that she could bring the previously used RFP up to date for the new house construction proposed within the thousand dollars remaining on her contract. Mr. Horman stated that while he could work on putting together a new RFP it probably would be more cost-effective to have Ms. Sonnarborg updated it.

Ms. Ross agreed and noted that Ms. Sonnarborg is a real expert in this type of work. She said that the Partnership had worked with her before on a project to build three brand-new affordable saltbox homes and they were very pleased with the work that she had done.

Ms. Ross stated that the Partnership had done a lot of research on designing of homes that would fit into local neighborhoods and because of the high front of a saltbox, it gives the impression of a larger home than it actually is. She said that recently she had received comments about how one of these houses truly fits into the neighborhood and looks good. She said that the Partnership was very pleased with the saltbox design.

A general discussion occurred on the potential for the Shearwater and Adams St. lots relative to the type of designs that might turn work and it was generally agreed that if the site conditions allowed for the construction of saltbox design homes similar to those that had been done in the past that the Trustees would be in favor of that design.

Ms. Riordan moved that the Trust utilize the services of Ms. Sonnarborg to prepare an RFP for developers to purchase the lots at Adams Street and Shearwater Drive and build saltbox homes similar to those previously developed by the Bourne Housing Partnership and Bourne Housing Authority if site conditions are favorable to that design.

Mr. Walsh seconded the motion

The motion passed unanimously.

There being no further business at the meeting was adjourned at 9:47 a.m.

Respectfully submitted,

Kerry Horman, Affordable Housing Specialist



**Bourne Affordable Housing Trust Meeting  
Tuesday, August 11, 2009  
8:30 AM Bourne Town Hall  
Second Floor Conference Room  
24 Perry Ave  
Bourne, MA 02532**

**Agenda**

1. Review minutes of June 19, 2009 Meeting
2. Vote to go into executive session to discuss a) the conditions of the Purchase and Sales Agreement of real estate at 79 Adams St. for a potential approval and signing; b) potential financial participation and negotiations in a mixed use-real estate development.
3. Return from executive session
4. Vote to whether to approve and a contract with JC Engineering for septic design for 12 and 14 Shearwater and 79 Adams St.
5. Housing Specialist's report
6. Other business to come before the board.

**Kerry Horman, Affordable Housing Specialist**

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TOWN CLERK'S OFFICE  
BOURNE, MA 02532

**Meeting of the Bourne Affordable Housing Trust**

**Minutes**

**Meeting of August 11, 2009**

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TOWN CLERK'S OFFICE  
BOURNE, MASS

Time: 8:30 AM.

Location: Bourne Town Hall, Second Floor Conference Room, 24 Perry Ave. Buzzards Bay, MA

Trustees Present: Susan Ross, Steven Walsh, Judith Riordan, and Lee Berger

Absent: Thomas Guerino

Others present: Kerry Horman, Affordable Housing Specialist

Ms. Ross served as Temporary Chairperson

Ms. Ross asked if there was a motion to approve the minutes of the June 19, 2009 meeting. Ms. Riordan moved to the minutes be accepted and Mr. Walsh seconded the motion. The motion passed unanimously.

Ms. Ross noted that the first item on the agenda was the issue of whether to enter into executive session to discuss the conditions of a draft purchase and sales agreement for the purchase of real estate at 79 Adam St.

Mr. Berger moved that the trustees enter executive session in order to discuss the terms of the draft purchase and sales agreement for 79 Adam St. The motion was seconded by Mr. Walsh.

The individual votes of the Trustees were as follows: Ms. Ross-yes, Mr. Walsh-yes, Ms. Riordan- yes Mr. Berger -yes.

Mr. Horman noted that the only item that seemed to be different than the proposal recommended by the Trustees to the seller was that the seller had included in the draft purchase and sales agreement a condition that the Trust be responsible for the moving of a number of shrubs that were on the subject property to the adjacent property which was also owned by the seller. Mr. Horman stated that he had met with Mr. Valentini at the site in order to determine the scope of the work necessary and to flag the particular shrubs that he was interested in moving. Mr. Horman estimated that there were five or six that Mr. Valentini had requested to be moved.

Ms. Ross said that typically in a real estate transaction that it is the seller's responsibility to move such plantings prior to the transfer of the property, and, at the seller's expense.

There was general agreement that the responsibility for the transplanting of the shrubs should be that of the seller.

Ms. Ross also noted that the closing date for the sale was listed as September 4, 2009 and she felt that Trust would need more time. She recommended that the draft agreement be changed to the 14th day of September. There was general agreement that this would be an appropriate change.

Mr. Berger moved that the purchase and sales agreement submitted for 79 Adam St. be executed with the following changes: that under Section 22, Additional Provisions, item c should be amended to read: "Those trees, shrubs and flowering plants located on the property that have been flagged may be relocated by the seller at the seller's expense prior to closing." And that Item 8 - Time for Performance be amended to read: "Such deed is to be delivered at 1 p.m. on the 14th day of September 2009....."

The motion was seconded by Ms. Riordan and the vote was as follows:  
Mr. Walsh-yes; Ms. Ross- yes; Ms. Riordan-yes; Mr. Berger- yes.

The Trustees signed the purchase and sales agreement for 79 Adam St. as amended.

Ms. Ross asked Mr. Horman about the second item listed for executive session.

Mr. Horman stated that he had been involved with discussions relative to a mixed-use development in the new Buzzards Bay downtown zoning district but that the property in question had gone under agreement to a private developer and that it did not appear at this time that there would be a need or opportunity for the Trust to participate in the project and therefore there was no need for a discussion under executive session.

Mr. Walsh move that the Trustees returned to open session. Mr. Berger seconded the motion and the individual votes were as follows: Ms. Ross-yes; Ms. Riordan- yes; Mr. Berger – yes; Mr. Walsh-yes;

The Trustees returned to open session.

Ms. Ross asked Mr. Horman to explain the item on the agenda relative to having JC Engineering complete perc tests and septic design for 79 Adam St. and 412 and 14 Shearwater Drive.

Mr. Horman said that the initial plan was to have the technical assistance monies from the Cape Cod Commission, known as TAP, be transferred to the Trust in order to pay for the services of the engineering firm. Mr. Horman stated that after discussions with the Commission it was too late in the process to have the monies shifted to the Trust and therefore the contract with JC Engineering would have to be between them and the Town of Bourne, the recipient of the TAP monies, rather than the Trust.

Ms. Ross noted that since the Trust already approved the proposal from JC Engineering that it need not take any further action other than advise Mr. Guerino that it was in favor of the Town signing a contract. The Trustees agreed.

Mr. Berger said under the item of Other Business that he would recommend that the Trust have a set of rules by which it is to operate as to such things as what constitutes a quorum, how often the Trust should meet, and the general procedures of operation.

Mr. Horman said that he would review the Declaration of Trust and other relative documents and put a brief draft together for discussion.

Ms. Ross also suggested that at the next meeting that the Trustees vote on a Chairperson.

Mr. Horman provided the Trustees with an update of a number of projects and ideas proposed for Buzzards Bay, as well as, a number of other ongoing efforts.

A general discussion occurred relative to the types of projects that would be feasible and beneficial for Buzzards Bay.

There being no further business the meeting was adjourned at 9:45 a.m.

Respectfully submitted,

Kerry Horman, Affordable Housing Specialist

## **Bourne Affordable Housing Trust Meeting**

**Date:** Friday, October 16, 2009

**Time:** 8:30 AM

**Location:** Bourne Town Hall  
Second Floor Conference Room  
24 Perry Avenue  
Buzzards Bay, MA 02532

### **Agenda:**

1. Review minutes of August 11, 2009 Meeting
2. Housing Specialist's report
3. Discussion and vote on operating rules, officers, and procedures
4. Election of Chairperson
5. RFP for Shearwater and Adams St. developers
6. Goals and objectives
6. Other business to come before the board.

**Kerry Horman, Affordable Housing Specialist**

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TOWN CLERK'S OFFICE  
BOURNE, MASS.

**Bourne Affordable Housing Trust**  
**Minutes Meeting of October 16, 2009**

Time: 8:30 AM.

Location: Bourne Town Hall, Basement Conference Room, 24 Perry Ave. Buzzards Bay, MA

Trustees Present: Susan Ross, Steven Walsh, Judith Riordan, and Lee Berger

Absent: Thomas Guerino

Others present: Kerry Horman, Affordable Housing Specialist

Ms. Ross served as Temporary Chairperson

Ms. Ross asked if there was a motion to approve the minutes of the August 11, 2009 meeting.

Mr. Berger said that before getting into approving the past minutes he believed that when ever the Trust goes into executive session that the minutes from that executive session should be formally voted to be opened prior to them becoming public. He said in the current case there is no longer any need for the minutes to remain under the executive session but he still felt that there should be a vote to release them.

Mr. Berger at moved that the executive session minutes of the August 11 meeting of the Trust be released.

Mr. Walsh seconded the motion and the motion passed unanimously.

Mr. Berger raised the issue as to the status of the previous executive session minutes on the Adam St. property. He moved to those minutes be released from executive session confidentiality as well.

Ms. Riordan seconded the motion and the motion was approved unanimously.

Mr. Berger then moved that the entire minutes of the August 11, 2009 meeting be approved. It was seconded by Mr. Walsh and the Trustees voted unanimously to approve the minutes.

Mr. Horman provided the Trust with a verbal summary of his monthly report. He pointed out that it appears that for approximately \$1,500 per property that the Trust, if it decided to do so, could have the developer of Adam St. and Shearwater to install the septic systems for four bedroom homes even though initially only three-bedroom homes would be built. This would allow for expansion in the future if larger families were identified.

A discussion of occurred on specifications for the proposed two single-family houses to be built. It was generally agreed that a high an energy efficiency standard should be used, that the houses should be initially designed for three bedrooms but that the septic systems should be for four bedrooms and that the Shearwater home should have a walkout with a slider in the initial design. Also, it was noted by Mr. Walsh that some savings might occur if the same builder were to build both houses by taking excess sand and gravel from Adam St. and bringing it to Shearwater where additional material was needed.

Mr. Horman provided the Trustees with an update of the various projects that the Trust is involved in and those that are happening throughout the community related to housing and revitalization. He also noted that the Town Planner and the Housing Partnership were working to re-approved some subsidized housing units that DHCD had removed from the approved list. He said these units were on the list from 2003 up until the fall of 2008 and it was not totally clear as to why they were taken off.

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TOWN CLERK'S OFFICE  
BOURNE, MASS.

Ms. Ross noted that one of the reasons had to do with the old deed rider that was forced upon the Town by the Cape Cod Commission.

Ms. Riordan noted that the issue of the new deed rider had come up at the Commission recently.

Mr. Berger said that at the Cape Cod Commission meeting they were informed that the new "universal deed rider" was not acceptable to Housing and Urban Development under the Home Program.

Mr. Horman also raised the issue of the use of CPA funds. He said there is a question in his mind as to how the Trust would access the funds necessary to do the projects planned for the future. He noted that it appears that the funds allocated under the CPA approvals seem to be allocated to the Housing Partnership.

A general discussion occurred and there was agreement that the current available funds probably need approval by the Housing Partnership, and that in the future, funds could be set aside specifically for the Trust.

Ms. Ross moved on to the issue of creating officers.

Mr. Horman's recommendation to the Trustees was that there be three officers so that at any time there was a quorum one officer would be available to preside over the meeting.

A general discussion occurred as to who might be available to serve in the role as chairperson.

Mr. Berger moved that Mr. Walsh be approved as Chairperson of the Trust. Ms. Ross asked for a vote and the Trustees voted unanimously for Mr. Walsh to become Chairperson.

Mr. Walsh noted that two more officers needed to be elected and he asked for a motion.

Mr. Berger nominated Ms. Riordan to be Vice Chairperson. Ms. Ross seconded the motion, and the motion passed unanimously.

Mr. Berger moved that Ms. Ross be elected Secretary of the Trust. Mr. Walsh seconded the motion, and the motion passed unanimously.

Ms. Ross suggested that at the next Partnership meeting she would seek authority to approve funds for the Trust.

Ms. Ross noted that in the past the committee had attempted to meet on the last Friday of each month and suggested that the trust may wish to continue that time.

Ms. Riordan noted that in November and in December the last week was the holiday week and possibly another week might be a better choice.

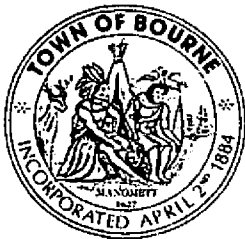
Ms. Ross moved that meetings be held in the future on the second Friday morning of each month. Ms. Riordan seconded the motion and the motion passed unanimously.

The need to provide building lots for affordable homes and the methods which could be used in order to produce these lots was discussed and Mr. Horman said that he would do some additional work on the Yarmouth affordable housing nonconforming lot special permit ordinance.

There being no further business the meeting was adjourned at 10:20 a.m.

Respectfully submitted,

Kerry Horman, Affordable Housing Specialist



# Bourne Affordable Housing Trust Meeting Notice



Date: Friday  
November 20, 2009

Time: 8:30 A.M.

Location: Lower Conference Room  
Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532

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TOWN CLERK'S OFFICE  
BOURNE, MASS

## AGENDA

1. Review minutes of October 16th meeting.
2. Housing Specialist Report.
3. Update of the Shearwater and Adams St. RFP for developers.
4. Goals and objectives.
5. Any new business that may come before the committee.

Kerry Horman *uek*  
Kerry Horman  
November 16, 2009.

cc: Town Clerk

**Bourne Affordable Housing Trust**

**Minutes Meeting of November 20, 2009**

Time: 8:30 AM.

Location: Bourne Town Hall, Basement Conference Room, 24 Perry Ave. Buzzards Bay, MA

Trustees Present: Susan Ross, Steven Walsh, Judith Riordan, and Lee Berger

Absent: Thomas Guerino; Others present: Kerry Horman, Affordable Housing Specialist

2009 FEB 22 PM 3 17  
TOWN CLERK'S OFFICE

Mr. Walsh asked if there was a motion to approve the minutes of the October 16, 2009 meeting

Ms. Riordan moved that the minutes be approved. Mr. Berger seconded the motion and the motion passed unanimously.

Mr. Walsh asked Mr. Horman to present his report.

Mr. Horman summarized his written report noting that the Bourne Housing Partnership had given Ms. Ross authority to approve Trust expenditures; that he and Mr. Walsh had attended a Mass Housing Partnership seminar on Housing Trusts at which it was reconfirmed that it was in the best interest of the Town to turn title of affordable properties over to the builder; and that in a recent conversation with the owner of an affordable home that it was very important to build homes that are highly energy-efficient. Mr. Horman further noted that he had received a specification from an energy expert used by Housing Assistance Corp. and Habitat to be part of RFP now being prepared by Ms. Sonnarborg.

Mr. Horman informed the Trustees that the Partnership, the Town Planner, and consultant Karen Sonnarberg were working in an attempt to convince DHCD to reinstate units that had been removed from the subsidized housing inventory list.

Ms. Ross said that the State wants the Town to go through the entire lottery process for each of the removed units when and if they become available for sale because they have deed riders unacceptable to the State. She said that the State has no record of the Local Initiative Program approving the units to be on the list even though they have been included on the list since 2004.

Ms. Ross noted that the deed restriction would that was on three of the units was the one required to be used by the Cape Cod Commission and that the lottery process was carried out by Ms. Sonnarborg, a well-known expert in the affordable housing community.

Ms. Riordan said that Mr. Ruchinskas at the Cape Cod Commission had informed her and Mr. Berger about the situation and that Mr. Ruchinskas had offered to support the efforts of Bourne in this matter.

It was generally agreed that the Town should aggressively pursue the reinstatement of the units.

Ms. Ross asked the Chairman if the Trustees could take an item out of order from the set agenda and move past a discussion of goals and objectives to other business. Ms. Riordan moved that the Trustees grant Ms. Ross's request. Mr. Berger seconded the motion and the motion carried unanimously.

Ms. Ross stated that a family which owns one of the properties that had been taken off the Subsidized Housing Inventory List had indicated their interest in selling. Because of the unique nature of the particular deed rider and oversight occurred and it's possible that the unit could be sold without going to an eligible affordable buyer. She said that since the Town is having a problem with this deed rider, it has been recommended that the Trust consider purchasing the property and then reselling it after a lottery. She said that the sale price of the house by formula would be approximately \$147,800.

Mr. Berger asked why the price of the property would be so low.



Ms. Ross responded that it was based upon the resale formula in the deed rider. She said that the original sale price was between \$114,000 and \$115,000 in 2003, so that the family has gained some equity.

Mr. Berger said that his preference would be for an eligible family to buy the property rather than the Housing Trust and that he did not believe that it may be an appropriate role for the Trusts to buy a property and then sell it at a profit.

Ms. Ross stated that any increase in the sale price would be used to produce other affordable units.

Mr. Horman stated that he was unsure as to how the state would react to an increased sale price.

Mr. Walsh pointed out that from the conference on housing trusts that he and Mr. Horman had attended it had been pointed out by Attorney Kathleen O'Donnell that the old deed riders did not survive foreclosure while the new deed riders did survive foreclosure and that may be another reason why a the Trust might wish to purchase the property and protected it in perpetuity.

A general discussion occurred on how DHCD determines the pricing for affordable houses.

Ms. Ross said that the question that she would like to place before the Trustees was whether they would be willing to purchase the Tattler Circle property to return it to the list, secure it as adeed restricted affordable house, and resell it to an eligible household.

Ms. Riordan asked if this house was one of the five that had been taken off the subsidized inventory list.

Ms. Ross confirmed that it was.

Mr. Berger asked if any of the money on the original development of this property was from the Cape Cod Commission.

Ms. Ross said that it was from money set aside for affordable housing in Bourne held by the Cape Cod Commission and was paid back to that account. She pointed out that that money is the Town of Bourne's money but that it is administered by the Cape Cod Commission.

Mr. Berger moved that the Trust send a letter to the owners of the property at 1 Tattler Circle offering to purchase the property at the maximum amount as allowed under the deed restriction.

Ms. Ross seconded the motion and the motion passed unanimously.

Mr. Berger stated that he was concerned that changing the deed rider on the Tattler Circle property would not be as easy as it might appear to be and that the Trust should have legal counsel research the matter.

Ms. Riordan moved that Mr. Horman be directed to ask Mr. Guerino for authority to take the necessary steps to get legal counsel familiar with DHCD deed riders and related real estate issues if it appears that the Tattler Circle transaction appears likely to move ahead.

Ms. Ross seconded the motion and the motion passed unanimously.

Mr. Walsh asked Mr. Horman to move on to the subject of goals and objectives.

Mr. Horman referred to the Town of Bourne Housing Needs Assessment and Action Plan. He said a review of the activities recommended within the plan indicates that the Town has made an outstanding effort to implement the objectives of the plan and has complete or begun many of them.

He said that currently the Affordable Housing Partnership was working on a draft ordinance based on one just recently approved by the Attorney General that the Town of Yarmouth had approved. It provides for the use of nonconforming lots as building lots for affordable homes after a special permit process.

He asked the Trustees if they were areas that had not been covered that should focus on.

A general discussion occurred on the status of the various publicly owned properties that were identified in the Action Plan as having potential for affordable housing.

Ms. Ross said that she often thought that the Town should consider a program in which elderly residents are provided with funds to repair their home with the stipulation that they wish to sell, or if they pass away, that the property would be put on the market as an affordable home with the deed restriction.

Ms. Riordan said that it's likely that any heirs to the properties might want to hold on to the future sale rights and that she thought that the Cape Cod Commission had a housing rehab program.

Ms. Ross said that the heirs would be able to receive some equity when a property sold and they might be better off then if the property were held by the parents but not maintained.

A discussion occurred as to how the State would look at affordable units produced in this way and whether the units would go on the subsidized inventory list when the agreement was made with the current owner or only after a lottery took place and a new eligible buyer were in place.

Mr. Walsh asked if it was a motion to have Mr. Horman research how DHCD would look at this issue.

Ms. Riordan so moved and Mr. Berger seconded the motion. The motion passed unanimously.

Mr. Berger said that he would like to return to the planning related issue of a nonconforming lot affordable housing special permit ordinance. He said that he thought that the support of the Planning Board for the ordinance would be very critical for its success at town meeting.

Mr. Berger moved that Mr. Horman be directed to approach the Planning Board with a purpose of establishing a subcommittee to work on the ordinance. The motion was seconded by Ms. Riordan and passed unanimously.

There being no further business, Mr. Walsh asked for a motion to adjourn.

Ms. Ross moved that the meeting be adjourned. Ms. Riordan seconded the motion, and the motion passed unanimously.

The meeting was adjourned at 9:50 a.m.

Respectfully submitted,

Kerry Horman, Affordable Housing Specialist

Bourne Affordable Housing Trust Meeting  
Friday, December 11, 2009  
8:30 AM Bourne Town Hall  
Basement Conference Room  
24 Perry Ave  
Bourne, MA 02532

2009 DEC 7 AM 10 55  
TOWN CLERK'S OFFICE  
BOURNE, MASS

Agenda:

1. Review minutes of the November, 2009 Meeting
2. Housing Specialist's report
3. Work on specifications for Shearwater and Adams St. RFP
4. Other business to come before the board.

Kerry Horman, Affordable Housing Specialist

**Bourne Affordable Housing Trust**

**Minutes Meeting of December 11, 2009**

Time: 8:30 AM.

Location: Bourne Town Hall, Basement Conference Room, 24 Perry Ave. Buzzards Bay, MA

Trustees Present: Susan Ross, Steven Walsh, Judith Riordan, and Lee Berger

Absent: Thomas Guerino

Others present: Kerry Horman, Affordable Housing Specialist

2010 FEB 22 PM 3:17  
TOWN CLERK'S OFFICE  
BOURNE, MASS.

Mr. Walsh asked if there was a motion to approve the minutes of the November 20, 2009 meeting.

Mr. Berger noted an error in the minutes.

Ms. Riordan moved that the minutes be approved subject to Mr. Berger's edits. Ms. Ross seconded the motion and the motion passed unanimously.

Mr. Walsh asked Mr. Horman to present his report.

Mr. Horman suggested that since Mr. Berger had to leave before the meeting was likely to end and that because one of the items on the agenda was related to real estate and a vote would be needed, he asked that his report be very brief or moved to the end of the meeting.

Mr. Berger moved that Tattler Circle be made the first item on the agenda.

Ms. Ross seconded the motion and the motion passed unanimously.

Mr. Horman informed the Trustees that the owners of 1 Tattler Circle had informed him that they would like to sell their property to the Bourne Housing Trust. He said that since there was a good deal of real estate experience on the part of the Trustees that he would like to receive guidance from them as to the procedural steps that should be taken from this point on. He said that he had passed on a request to Mr. Guerino for legal assistance for this matter and further that it was his understanding that because of the current format of the Trust that all four Trustees had to act unanimously on an issue related to real estate purchase or sale.

Ms. Ross stated that since the Trust has already sent a letter of offer to the owners, the Trust should move directly to a purchase and sales agreement with the condition of a site inspection. She said we also need to ask Town Counsel about how to amend the deed rider to switch to the new universal deed rider.

Mr. Walsh asked about a Title V inspection.

Ms. Ross noted that that should be included but the cost of that inspection should be borne by the seller.

Mr. Horman asked how the Trustees would like to proceed as far as signing the purchase and sales agreement. He asked if all members wanted to sign.

Mr. Berger moved that Mr. Walsh be given authority to sign on behalf of the Trustees subject to Attorney Troy's review of the documents.

Ms. Ross seconded the motion and the motion was passed unanimously.

Ms. Ross suggested that Mr. Horman speak with Karen Sunnarborg to identify the person that might be able to give Mr. Troy guidance on changing the deed rider.

Mr. Walsh asked about a home inspector.

Ms. Riordan said that we should have the legal protection of having a qualified home inspector review the property.

Ms. Ross agreed and suggested that it should not be a HQS inspector as in B-HOPP but the same type of Inspector that normally inspects properties for real estate transactions.

Mr. Berger suggested that we might be able to put together a list of qualified inspectors that could be used on a rotating basis rather than using the same inspector over and over again.

There was general agreement that that was a good idea.

Mr. Berger moved that Mr. Walsh be given the authority to take the necessary and reasonable steps needed to move ahead with the purchase of the property including approving the hiring of a home inspector to work on behalf of the Trust.

Ms. Ross seconded the motion and the motion carried unanimously.

Mr. Horman provided the Trustees with a copy of the draft RFP for developers for Adams Street and Shearwater Drive.

Ms. Ross felt that the requirement in the draft RFP that the developer meet with the neighbors was unfair to the developer and unnecessary since no other developer has to meet with the neighbors before building a home.

Mr. Horman suggested that the Trustees may want to consider selling one of the houses at a price for those between 50 and 65% of median income and the other house for those between 65 and 80% of median income.

Ms. Ross suggested that the US Department of Agriculture mortgage opened the door was to those at between 50% and 65% of median income without penalizing those between 65 and 80% of median income.

Ms. Riordan pointed out that under that situation the range in the interest rates is what would allow the full range of applicants to qualify.

Mr. Berger pointed out that in projects that come before the Cape Cod Commission that homes are priced at various steps between 60% and 100% of median income.

Ms. Ross noted that the same can be accomplished through the utilization of our relationship with the USDA while selling the property at a price high enough so that the Town has money to do additional units rather than subsidizing the sales price down to meet what is affordable to people at 50 and 60% of median.

It was generally agreed that Mr. Horman would research with the USDA whether a unit could be set aside for their program.

Mr. Horman said that in the draft RFP the developer is required to provide monies to repay \$4,000 of TAP money from the Cape Cod Commission. He asked whether the Trustees felt that this should remain in the RFP or whether the TAP money should be paid for directly from CPA funds.

Ms. Riordan suggested that for proper accounting procedures it made sense to keep the cost of the TAP repayment within the project cost. This was generally agreed upon by the Trustees.

Mr. Berger informed the other Trustees that he had to leave for a doctor's appointment.

Ms. Ross asked Mr. Horman about the energy expert that he had contacted relative to a energy specification within the RFP.

Mr. Horman noted that the energy expert was the one that was used and recommended by Habitat For Humanity and by HAC.

Ms. Ross also asked why Mr. Horman wanted to utilize the services of an architect on the out side treatments.

Mr. Horman stated that it was his opinion that using an architect to specify the exterior trim and siding prior to the RFP might allow more consistency in the proposals and would allow the Trust to identify modern materials that might be of benefit to use.

Ms. Ross noted that in the past they had allowed the developer to submit what they thought was the best treatment.

Mr. Horman stated that what he wanted to do determine is whether the Trustees wanted to be specific with a series of specifications that all developers would include or whether the Trustees would rather open the door more broadly and let the developers propose their own solutions and designs.

A general discussion occurred as to what level of specifications or standards would be appropriate. It was agreed that when it came to energy conservation that the specification and standard provided to Mr. Horman by Bruce Torrey, the energy conservation consultant used by Habitat and HAC, would be adequate. Also, it was decided that the style of house and the exterior treatments should be specified as consistent with the neighborhood but not any particular design or materials.

Ms. Riordan expressed the opinion that it seems to be the preference of the Trustees that they would prefer to have the specifications more general and to use the advice of the architect and the energy consultant after the proposals had been received. Mr. Walsh and Ms. Ross concurred.

Mr. Horman pointed out that the draft RFP requires that the developer should demonstrate the ability to borrow for a construction loan up to \$250,000. Mr. Horman suggested that because we're looking at two properties which are likely to cost in the neighborhood of \$175,000 each to build that the contractor should demonstrate the ability to borrow up to \$350,000. The Trustees were in general agreement with that recommendation.

Mr. Horman stated his concern about simply specifying a minimum amount of square footage for example 1200 ft.<sup>2</sup>, because he thought that it would be too difficult to make judgments about properties that were ranging from 1200 ft.<sup>2</sup> to 1500 ft.<sup>2</sup>. He suggested that the community had been happy with the saltboxes that were built previously and the recent three-bedroom ranch that had been built under B-HOPP. He thought that the range in size as for those houses was between 1400 and 1500 ft.<sup>2</sup>

The Trustees concurred that a specification in that range would be appropriate.

Mr. Horman provided a verbal summary of his monthly report.

Ms. Ross moved that the meeting be adjourned. Ms. Riordan seconded the motion, and the motion passed unanimously.

The meeting was adjourned at 10:30 a.m.

Respectfully submitted,

Kerry Horman, Affordable Housing Specialist

TOWN OF BOURNE MEETING NOTICE

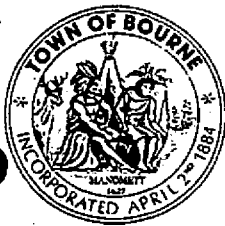
BOARD: Board of Assessors

DATE AND TIME: Tuesday, January 20, 2009

PLACE: Town Hall

AGENDA: Abatements & Deferrals

2009 JAN 9 AM 10 07  
TOWN CLERK'S OFFICE  
BOURNE, MASS



## TOWN OF BOURNE

Board of Assessors

24 Perry Avenue

Buzzards Bay, MA 02532

(508) 759-0600 Ext. 510 ♦ Fax (508) 759-8026



J. Malcolm Whitney, MAA, Chairman  
Priscilla A. Koleshis, Clerk  
Anne Ekstrom, Member

Donna L. Barakauskas, MAA,  
Principal Assessor

The Board of Assessors held their regularly scheduled meeting on January 20, 2009 in the Town Hall. Present were Clerk Priscilla Koleshis, member Anne Ekstrom and Principal Assessor, Donna Barakauskas.

The Board reviewed the minutes of the December 9, 2008 meeting. Upon motion, individually, by Ms. Ekstrom and seconded by Ms. Koleshis, the vote being unanimous to accept the minutes of the December 9<sup>th</sup> meeting.

The Board reviewed and signed 32 abatement applications and two deferral applications.

Respectfully submitted,

Donna L. Barakauskas  
Principal Assessor

2009 MAR 4 AM 8 49  
TOWN CLERK'S OFFICE  
BOURNE, MASS



Town of Bourne Meeting Notice

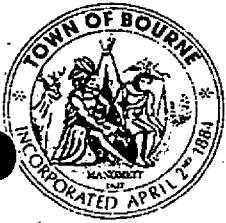
Board: Board of Assessors

Date & Time: Tuesday, March 3, 2009 at 4:00 p.m.

Place: Town Hall-Upstairs Conference Room

Agenda: Abatements and review local option decrease in interest rate that is applied to taxes deferred

2009 FEB 20 AM 10 00  
TOWN CLERK'S OFFICE  
BOURNE, MASS



## TOWN OF BOURNE

Board of Assessors

24 Perry Avenue

Buzzards Bay, MA 02532

(508) 759-0600 Ext. 510 ♦ Fax (508) 759-8026



J. Malcolm Whitney, MAA, Chairman  
Priscilla A. Koleshis, Clerk  
Anne Ekstrom, Member

Donna L. Barakauskas, MAA,  
Principal Assessor

The Board of Assessors held their regularly scheduled meeting on March 3, 2009 in the Town Hall. Present were Chairman J. Malcolm Whitney, Clerk Priscilla Koleshis, member Anne Ekstrom and Principal Assessor, Donna Barakauskas.

The Board reviewed the minutes of the January 22, 2009 meeting. Upon motion, individually, by Ms. Ekstrom and seconded by Ms. Koleshis, the vote being unanimous to accept the minutes of the January 22<sup>nd</sup> meeting.

The Board voted to reduce the rate of interest that accrues on property taxes deferred by eligible seniors under MGL Chapter 59, Section 5, Clause 41A from 8% to 4%, with such reduced rate to apply to taxes assessed for any fiscal year beginning on or after July 1, 2009. Upon motion, individually, by Mr. Whitney and seconded by Ms. Koleshis, the vote being unanimous to reduce the rate of interest.

The Board reviewed and signed 63 abatement applications and two deferral applications.

Respectfully submitted,

Donna L. Barakauskas  
Principal Assessor

TOWN CLERK'S OFFICE  
BOURNE, MASS

2009 MAR 27 AM 8 39

TOWN OF BOURNE MEETING NOTICE

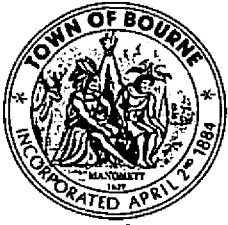
BOARD: BOARD OF ASSESSORS

DATE AND TIME: THURSDAY, MARCH 26, 2009 AT 4:00 P.M.

PLACE: TOWN HALL CONFERENCE ROOM

AGENDA: ABATEMENTS & 1 DEFERRAL

2009 MAR 20 AM 11 45  
TOWN CLERK'S OFFICE  
BOURNE, MASS.



## TOWN OF BOURNE

Board of Assessors

24 Perry Avenue

Buzzards Bay, MA 02532

(508) 759-0600 Ext. 510 ♦ Fax (508) 759-8026



J. Malcolm Whitney, MAA, Chairman  
Priscilla A. Koleshis, Clerk  
Anne Ekstrom, Member

Donna L. Barakauskas, MAA,  
Principal Assessor

The Board of Assessors held their regularly scheduled meeting on March 26, 2009 in the Town Hall. Present were Chairman J. Malcolm Whitney, Clerk Priscilla Koleshis, member Anne Ekstrom and Principal Assessor, Donna Barakauskas.

The Board reviewed the minutes of the March 3, 2009 meeting. Upon motion, individually, by Ms. Koleshis and seconded by Ms. Ekstrom, the vote being unanimous to accept the minutes of the March 3<sup>rd</sup> meeting.

The Board reviewed and signed 63 abatement applications and one deferral application.

Respectfully submitted,

Donna L. Barakauskas  
Principal Assessor

TOWN CLERK'S OFFICE  
BOURNE, MASS

2009 NOV 18 PM 9 44

TOWN OF BOURNE MEETING NOTICE

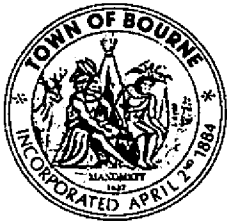
BOARD: BOARD OF ASSESSORS

DATE AND TIME: THURSDAY, April 10, 2009 AT 8:30 P.M.

PLACE: TOWN HALL CONFERENCE ROOM

AGENDA: Abatement Hearing

2009 APR 30 AM 11 33  
TOWN CLERK'S OFFICE  
BOURNE, MASS



## TOWN OF BOURNE

Board of Assessors

24 Perry Avenue

Buzzards Bay, MA 02532

(508) 759-0600 Ext. 510 ♦ Fax (508) 759-8026



J. Malcolm Whitney, MAA, Chairman  
Priscilla A. Koleshis, Clerk  
Anne Ekstrom, Member

Donna L. Barakauskas, MAA,  
Principal Assessor

The Board of Assessors held their regularly scheduled meeting on April 10, 2009 in the Town Hall. Present were Chairman J. Malcolm Whitney, Clerk Priscilla Koleshis, member Anne Ekstrom and Principal Assessor, Donna Barakauskas.

The Board reviewed the minutes of the March 26, 2009 meeting. Upon motion, individually, by Ms. Ekstrom and seconded by Ms. Koleshis, the vote being unanimous to accept the minutes of the March 26<sup>th</sup> meeting.

The Board reviewed and signed 34 abatement applications.

Respectfully submitted,

Donna L. Barakauskas  
Principal Assessor

2010 FEB 11 PM 3 19  
TOWN CLERK'S OFFICE  
BOURNE, MASS

TOWN OF BOURNE MEETING NOTICE

BOARD: BOARD OF ASSESSORS

DATE AND TIME: Friday, April 17, 2009 AT 9:30 A.M.

PLACE: Bassetts Island

AGENDA: Property Field Review

2009 APR 14 PM 10 00  
TOWN CLERK'S OFFICE  
BOURNE, MASS



## **TOWN OF BOURNE**

**Board of Assessors**

**24 Perry Avenue**

**Buzzards Bay, MA 02532**

**(508) 759-0600 Ext. 510 ♦ Fax (508) 759-8026**

J. Malcolm Whitney, MAA, Chairman  
Priscilla A. Koleshis, Clerk  
Anne Ekstrom, Member



Donna L. Barakauskas, MAA,  
Principal Assessor

The Board of Assessors inspected and viewed Bassetts Island properties owned by the Chase family on April 17, 2009. The Board inspected the properties because the Chase Family filed abatement applications and part of the deliberation process, an inspection of the property is necessary in order to verify information. Present were Clerk Priscilla Koleshis, member Anne Ekstrom and Principal Assessor, Donna Barakauskas.

Respectfully submitted,

Donna L. Barakauskas  
Principal Assessor

TOWN CLERK'S OFFICE

2010 JUL 12 PM 2 20



TOWN OF BOURNE MEETING NOTICE

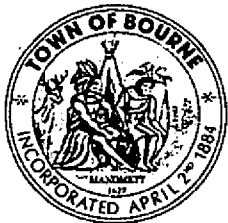
BOARD: BOARD OF ASSESSORS

DATE AND TIME: Monday, April 20, 2009 AT 9:00 A.M.

PLACE: Town Hall

AGENDA: Abatements

2009 APR 15 AM 11 10  
TOWN CLERK'S OFFICE  
BOURNE, MASS



## TOWN OF BOURNE

Board of Assessors

24 Perry Avenue

Buzzards Bay, MA 02532

(508) 759-0600 Ext. 510 ♦ Fax (508) 759-8026



J. Malcolm Whitney, MAA, Chairman  
Priscilla A. Koleshis, Clerk  
Anne Ekstrom, Member

Donna L. Barakauskas, MAA,  
Principal Assessor

The Board of Assessors held their regularly scheduled meeting on April 20, 2009 in the Town Hall. Present were Chairman J. Malcolm Whitney, Clerk Priscilla Koleshis, member Anne Ekstrom and Principal Assessor, Donna Barakauskas.

The Board reviewed the minutes of the April 10, 2009 meeting. Upon motion, individually, by Ms. Ekstrom and seconded by Ms. Koleshis, the vote being unanimous to accept the minutes of the April 10<sup>th</sup> meeting.

The Board reviewed and signed 116 abatement applications.

Respectfully submitted,

Donna L. Barakauskas  
Principal Assessor

2010 FEB 11 PM 3 19  
TOWN CLERK'S OFFICE  
BOURNE, MASS

Town of Bourne Meeting Notice

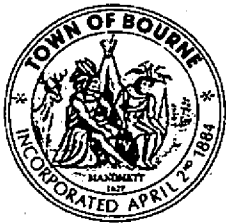
Board: Board of Assessors

Date & Time: Tuesday, June 30, 2009 at 4:00 p.m.

Place: Town Hall-Upstairs Conference Room

Agenda: BB Water District overlay surplus

TOWN CLERK'S OFFICE  
BOURNE, MASS.  
2009 JUN 25 AM 9 28



## TOWN OF BOURNE

Board of Assessors

24 Perry Avenue

Buzzards Bay, MA 02532

(508) 759-0600 Ext. 510 ♦ Fax (508) 759-8026



J. Malcolm Whitney, MAA, Chairman  
Priscilla A. Koleshis, Clerk  
Anne Ekstrom, Member

Donna L. Barakauskas, MAA,  
Principal Assessor

The Board of Assessors held their regularly scheduled meeting on June 30, 2009 in the Town Hall. Present were Chairman J. Malcolm Whitney, Clerk Priscilla Koleshis, member Anne Ekstrom and Principal Assessor, Donna Barakauskas.

The Board reviewed the minutes of the April 20, 2009 meeting. Upon motion, individually, by Ms. Koleshis and seconded by Ms. Ekstrom, the vote being unanimous to accept the minutes of the April 20<sup>th</sup> meeting.

The Buzzards Bay Water District has requested to transfer the sum of \$11,173.788 from the overlay reserve to overlay surplus.

Upon motion, individually, by Ms. Koleshis and seconded by Ms. Ekstrom, the vote being unanimous to transfer the sum of \$11,173.78 from Buzzards Bay Water District's overlay reserve to overlay surplus for fiscal years 1998, 1999, 2000, 2001, 2002 & 2004.

Respectfully submitted,

Donna L. Barakauskas  
Principal Assessor

2010 FEB 11 PM 3 19  
TOWN CLERK'S OFFICE  
BOURNE, MASS

TOWN OF BOURNE MEETING NOTICE

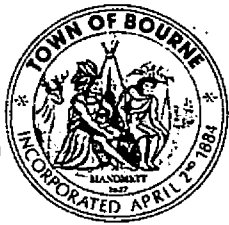
BOARD: BOARD OF ASSESSORS

DATE AND TIME: Tuesday, November 17, 2009 AT 4:00 P.M.

PLACE: Town Hall

AGENDA: Classification

2009 NOV 3 PM 10 13  
TOWN CLERK'S OFFICE  
BOURNE, MASS.



## TOWN OF BOURNE

Board of Assessors

24 Perry Avenue

Buzzards Bay, MA 02532

(508) 759-0600 Ext. 510 ♦ Fax (508) 759-8026



J. Malcolm Whitney, MAA, Chairman  
Priscilla A. Koleshis, Clerk  
Anne Ekstrom, Member

Donna L. Barakauskas, MAA,  
Principal Assessor

The Board of Assessors held their regularly scheduled meeting on November 17, 2009 in the Town Hall. Present were Chairman J. Malcolm Whitney, Clerk Priscilla Koleshis, and Principal Assessor, Donna Barakauskas.

The Board reviewed the minutes of the March 26, 2009 meeting. Upon motion, individually, by Mr. Whitney and seconded by Ms. Koleshis, the vote being unanimous to accept the minutes of the March 26<sup>th</sup> meeting.

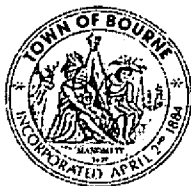
The Board voted to retain one tax rate for all classes of property to be presented to the Board of Selectmen on November 17, 2009.

The Board reviewed and signed tax recap documents.

Respectfully submitted,

*Donna L. Barakauskas*  
Donna L. Barakauskas  
Principal Assessor

2010 JAN 20 AM 9 12  
TOWN CLERK'S OFFICE  
BOURNE, MASS



## TOWN OF BOURNE

### *Board of Appeals*

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611



## PUBLIC HEARING NOTICE

**APPEAL:**

**#07-30– Special Permit**

**APPLICANT:**

Rescom Architectural, Inc., on behalf of Joey Federico

**LOCATION:**

9 Canal Drive, Pocasset

Map 45 Parcel 17 R-80 zoning district

**PROPOSAL:**

COURT ORDER REMAND, SUPERIOR COURT DEPARTMENT C.A. No. 08-164

**\*\*The applicant seeks to alter a pre-existing non-conforming structure by razing and rebuilding within a "VE" FEMA zone.\*\***

**DATE & TIME:**

Wednesday, January 6, 2010 at 7:45 p.m.

**PLACE:**

Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Upper Cape Codder Publishing Dates:

December 23, 2009

December 30, 2009

2009 DEC 6 PM 9 41  
TOWN CLERK'S OFFICE  
BOURNE, MASS

**Zoning Board of Appeals Minutes – January 7, 2009  
Bourne Town Hall  
Buzzards Bay, MA 02532**

\*\*\*\*\*

**Attendance:** Lee Berger – Chairman (excused), John Priestley, Jr. – Vice Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien

**Meeting Called to Order**

Meeting called to order at 7:30 pm.

**# 09-01 – SPECIAL PERMIT – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Rescom Architectural, Inc. Location: 84 Sagamore Road, Sagamore. Map 4.1, Parcel 52 in a R40 zoning district. Proposal: To alter a pre-existing non-conforming structure by razing and rebuilding when all requirements of table 2450 are met.

Sitting for the Board: J. Priestley, Jr., T. Sawyer, J. Riordan, R. Gaynor and Wade Keene  
Also present: J. O'Brien

Property does not qualify as being historic. Applicant looking to include addition of a bulkhead at the front corner of the house, which was not in the original application.

Discussion held on erosion due to the proximity of the dwelling to the ocean.

R. Gaynor **MOVED** and **SECONDED** by J. Riordan to close public hearing for #09-01 Special Permit. **VOTE 5-0.**

J. Riordan **MOVED** and **SECONDED** by T. Sawyer to approve #09-01 Special Permit at 84 Sagamore Road, Sagamore according to revised plans dated January 6, 2009 and recognition of Board of Health letter dated November 30, 2008. **VOTE 5-0.**

**Old Business - Approval of minutes**

None at this time.

**New Business**

None at this time.

**Adjourn**

J. Priestley, Jr. **MOVED** and **SECONDED** by J. Riordan to adjourn. Meeting adjourned at 8:00 pm. **UNANIMOUS VOTE.**

Respectfully submitted,  
Lisa Groezinger, sec.

2009 MAY 6 PM 10 40  
TOWN CLERK'S OFFICE  
BOURNE, MASS



# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

TOWN CLERK'S OFFICE  
BOURNE, MASS

2008 DEC 29 PM 12 16

## **PUBLIC HEARING NOTICE**

**APPEAL:** **#09-03– Special Permit** – EXTENSION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:** Steve Certa

**LOCATION:** 5 Park Street, Pocasset

Map 43 Parcel 3 R-40 zoning district

**PROPOSAL:** Applicant requests a special permit to raze and existing three bedroom one  
story, full basement structure with a three bedroom two story, crawl  
foundation with in the existing footprint.

**DATE & TIME:** Wednesday, January 21, 2009 at 7:40 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

January 7, 2009

January 14, 2009

**Zoning Board of Appeals Minutes – January 21, 2009  
Bourne Town Hall  
Buzzards Bay, MA 02532**

\*\*\*\*\*

**Attendance:** Lee Berger – Chairman (excused), John Priestley, Jr. – Vice Chairman, Timothy Sawyer (excused), Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien

**Meeting Called to Order**

Meeting called to order at 7:30 pm.

**# 09-02 – VARIANCE – UNDER MASS GENERAL LAWS, CHAPTER 40A, SECTION 10**

Brett Valentini. Location: 79 Adams Street, Sagamore. Map 17.2, Parcel 12 in a R40 zoning district. Proposal: The applicant seeks a variance from the minimum lot area requirements of Section 2500 of the Zoning Bylaw for the first dwelling unit in an R-40 residential zoning district and/or Section 2400 as to its requirements for separate ownership at the time of recording or endorsement, to permit the construction of a single-family housing unit on premises to be sold or rented as an affordable unit.

Sitting for the Board: J. Priestley, Jr., J. Riordan, W. Keene, R. Gaynor and J. O'Brien

Atty. Bob Parody for applicant  
Kerry Horman, Bourne Housing Partnership

Bourne Housing Partnership letter dated January 20, 2009 requesting Board to grant said variance so lot may be built upon as an affordable lot.

Board of Health letter dated December 30, 2008 regarding percolation test has been conducted on property and permitted Title 5 design required before any construction begins.

Letters from abutters not in support of requested variance, as they question the hardship.

Edward Lapreti – 81 Adams Street – against variance request. He raised issue with wild life who frequent lot and all homes/lots in area qualify for affordable.

Discussion on new vs. low priced homes and new more cost effective.

J. Riordan **MOVED** and **SECONDED** by R. Gaynor to close public hearing on #09-02 Variance. **VOTE 5-0.**

R. Gaynor **MOVED** and **SECONDED** by J. Riordan to grant Variance #09-02 for property at 79 Adams Street with stipulation that said property be purchased and/or

TOWN CLERK'S OFFICE  
BOURNE MASS

2009 FEB 19 PM 1:12

rented under affordable housing and said property to be in conjunction with the Bourne Housing Partnership. **VOTE 5-0.**

**# 09-03 – SPECIAL PERMIT – EXTENTION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Steve Certa. Location: 5 Park Street, Pocasset. Map 43, Parcel 3 in a R40 zoning district. Proposal: Applicant requests a special permit to raze an existing three bedroom one story, full basement structure with a three bedroom two story, crawl foundation with in the existing footprint.

Sitting for the Board: J. Priestley, Jr., J. Riordan, W. Keene, R. Gaynor and J. O'Brien

Board of Health letter dated December 30, 2008 regarding approval of variances for installation of a new Alternative Technology septic system on December 10, 2008. Should plans change there would be another BOH hearing to review changes.

Fire Chief memo dated December 30, 2008 requesting structure be brought into compliance with regard to smoke and CO detectors. Also recommended structure have residential sprinkler system installed.

Discussion held on ground elevation (front - 10 or 11 feet; back – 5 feet).

John Herther, abutter, opposes the obstruction of view and the height, not the project.

J. O'Brien **MOVED** and **SECONDED** by R. Gaynor to continue hearing for Special Permit #09-03 to February 4, 2009 at 7:45 pm. **VOTE 5-0.**

**Old Business - Approval of minutes**

R. Gaynor **MOVED** and **SECONDED** by J. Riordan to approve minutes of December 3, 2008 as submitted. **VOTE 5-0.**

**New Business**

None at this time.

**Public Comment**

None at this time.

**Adjourn**

J. Riordan **MOVED** and **SECONDED** by R. Gaynor to adjourn. Meeting adjourned at 8:30 pm. **UNANIMOUS VOTE.**

Respectfully submitted,  
Lisa Groezinger, sec.

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

**DATE**

Wednesday February 4, 2009

**TIME**

7:30 P.M.

**LOCATION**

Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #08-12 – APPEAL OF THE BUILDING INSPECTOR'S DECISION –  
CONTINUANCE**

Cumberland Farms. Location: 160 Main Street, Route 6, Holt Road, Buzzards Bay. Map 23.2, Parcel 142 & 142.1 in a B-2 zoning district. Proposal: Appealing the Building Inspector's refusal to issue a building permit because the Planning Board did not grant a Special Permit. Petitioner does not agree a Special Permit is required from the Planning Board.

**Old Business**

**New Business**

**Members Present**

_____	_____	_____
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TOWN CLERK'S OFFICE  
BOURNE, MASS.

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

2008 DEC 17 PM 1 19  
TOWN CLERK'S OFFICE  
BOURNE, MASS

**APPEAL: #08-12- Notice of Appeal of the Decision of the Building Inspector  
CONTINUANCE**

**APPLICANT:** Cumberland Farms, Inc.

**LOCATION:** 160 Main Street. Route 6 at Holt Road

Map 23.2 Parcel 142 & 142.1 B2 zoning district

**PROPOSAL:** Appealing Building Inspector's refusal to issue a Building Permit based on his decision that a Special Permit from the Planning Board is required for a gas station. Petitioner does not agree a Special Permit from the Planning Board is required.

**DATE & TIME:** Wednesday, February 4, 2009 at 7:35 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

February 14, 2009

February 21, 2009

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615 Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:** #09-04- Variance  
UNDER MASS GENERAL LAWS, CHAPTER 40A, SECTION 10

**APPLICANT:** John R. Kashmanian

**LOCATION:** 12 Buttermilk Way, Buzzards Bay  
Map 23.1 Parcels 96 R-40 zoning district

**PROPOSAL:** Applicant seeks relief from the Bourne Zoning Bylaw to place a prefabricated shed, 8x12, up against his property line.

**DATE & TIME:** Wednesday, February 4, 2009 at 7:40 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

January 14, 2009

January 21, 2009

2009 JAN 5 AM 9 47  
TOWN CLERK'S OFFICE  
BOURNE, MASS

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<u>Wednesday February 4, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #08-12 – APPEAL OF THE BUILDING INSPECTOR'S DECISION –  
CONTINUANCE**

Cumberland Farms. Location: 160 Main Street, Route 6, Holt Road, Buzzards Bay. Map 23.2, Parcel 142 & 142.1 in a B-2 zoning district. Proposal: Appealing the Building Inspector's refusal to issue a building permit because the Planning Board did not grant a Special Permit. Petitioner does not agree a Special Permit is required from the Planning Board.

**7:40 p.m. – #09-04 – VARIANCE**

John R. Kashmanian. Location: 12 Buttermilk Way, Buzzards Bay. Map 23.1, Parcel 96 in a R-40 zoning district. Proposal: Applicant seeks relief from the Bourne Zoning Bylaw to place a prefabricated shed, 8x12, up against his property line.

**7:45 p.m. # 09-03 – SPECIAL PERMIT – EXTENTION OR ALTERATION OF A PRE-  
EXISTING NON-CONFORMING STRUCTURE OR USE**

Steve Certa. Location: 5 Park Street, Pocasset. Map 43, Parcel 3 in a R40 zoning district. Proposal: Applicant requests a special permit to raze an existing three bedroom one story, full basement structure with a three bedroom two story, crawl foundation with in the existing footprint.

BOURNE, MASS  
TOWN CLERK'S OFFICE

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**Old Business**

**New Business**

**Members Present**

**Zoning Board of Appeals Minutes – February 4, 2009  
Bourne Town Hall  
Buzzards Bay, MA 02532**

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**Attendance:** Lee Berger – Chairman, John Priestley, Jr. – Vice Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor (excused), Wade Keene and John

**Meeting Called to Order**

Meeting called to order at 7:30 pm.

**#08-12 – APPEAL OF THE BUILDING INSPECTOR'S DECISION – CONTINUANCE**

Cumberland Farms. Location: 160 Main Street, Route 6, Holt Road, Buzzards Bay. Map 23.2, Parcel 142 & 142.1 in a B-2 zoning district. Proposal: Appealing the Building Inspector's refusal to issue a building permit because the Planning Board did not grant a Special Permit. Petitioner does not agree a Special Permit is required from the Planning Board.

Sitting for the Board: L. Berger, J. Priestley, Jr., J. Riordan, T. Sawyer and R. Gaynor.  
Also present: W. Keene and J. O'Brien

Chm. Berger stated his recollection that, with reference to the site plan, the Planning Board had failed to act on the site plan in a timely manner, and therefore the Board of Appeals had ordered that the site plan be deemed constructively approved.

Atty. for applicant argues that there is no reason to interpret the bylaw as requiring that a Special Permit be issued by both the Selectmen and the Planning Board. He contends that the bylaw should be interpreted to mean that the Planning Board must issue the Special Permit when a retail operation permit is required, not when a retail operation is being changed to include the sale of gasoline.

He also argues that the Selectmen took out the requirement that a Special Permit be issued by the Planning Board when it amended its decision issuing a Special Permit, which nullified the town bylaw. Chm. Berger responded that the Selectmen do not have authority to change the zoning bylaws.

Applicant also raised the issue of the town enforcing a bylaw provision that was not included in the official records of the Town Clerk. The Board was in general agreement that the building inspector, and the Board, were obliged to enforce the bylaws as passed by Town Meeting, whether or not contained in the official records of the Town Clerk. While the statute (Ch. 40A, sec. 5) does say that the Town Clerk is required to keep copies of the zoning bylaws, the statute does not say that the failure to do so nullifies the bylaw. Chm. Berger noted that the Town Clerk kept transcripts of the Town Meeting that did contain the bylaw passed by the Town Meeting.

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Applicant argued that it was a fairness issue, since the Applicant was not aware of the bylaw requiring a special Permit from the Planning Board at the time it applied for a Special Permit from the Selectmen, because it was erroneously not contained in the zoning bylaws. He argues that the Board of Appeals has the power not to enforce a bylaw that was not contained in the official records maintained by the clerk, and thus was not in compliance with the statute. (However, it was contained in official records, thus arguably complying with the statute, but not in the compilation of the zoning bylaws.)

The Building Inspector stated he has no discretionary powers and followed Town Counsel's opinion. The question was raised whether the Board has discretionary powers to not enforce a provision of the zoning bylaws that was not contained within the compilation of the zoning bylaws.

Applicant stated that there were several other cases in which the building inspector issued building permits without the Planning Board issuing a Special Permit. Chm. Berger asked the applicant for specifics, which the Attorney did not have with him, but the Building Inspector agreed that there were other instances when he did issue a building permit because, during a period of 10 years, there was a clerical error in the bylaws in that they did not include the requirement, passed by Town Meeting, that the Planning Board issue a Special Permit for gasoline sales. Applicant argued selective enforcement, but Board Members indicated it did not matter whether other building permits were issued without the Planning Board issuing a Special Permit because other mistakes, if they were mistakes, would not require mistakes in all instances.

The applicant stated, and the building inspector did not dispute, that the Selectmen had issued an underground storage tank permit as required by the bylaws.

Atty. for applicant stated there is already a legal, existing retail use on site. A Special permit was obtained. Building Inspector's interpretation of bylaw is to have two (2) special permits at this location. Applicant argues there is no reason for obtaining two special permits, especially when the grounds for the issuance of the Special Permit under the zoning bylaws are identical, whether issued by the Planning Board or by the Selectmen. Rather, the applicant argues, the bylaw should not be interpreted as requiring two special permits.

The Board members were not certain whether the criteria for the issuance of the two Special Permits was identical. (Mr. Jim Mulvey observed that while the criteria may be the same each Board had different responsibilities, and thus two Special Permits may be exactly what the Town Meeting wanted and required.)

Board members expressed their desire to have Town Counsel present to answer their questions before deciding the issues.

J. O'Brien **MOVED** and **SECONDED** by J. Riordan to continue #08-12 Appeal of Building Inspector decision to February 18, 2009 at 7:35 pm in order that Atty. Troy could be present. **VOTE 5-0.** [Chm. Berger will contact Atty. Troy for his availability].

**#09-04 – VARIANCE**

John R. Kashmanian. Location: 12 Buttermilk Way, Buzzards Bay. Map 23.1, Parcel 96 in a R-40 zoning district. Proposal: Applicant seeks relief from the Bourne Zoning Bylaw to place a prefabricated shed, 8'x12', up against his property line.

Sitting for the Board: L. Berger, J. Priestley, Jr., J. Riordan, T. Sawyer and R. Gaynor.  
Also present: W. Keene and J. O'Brien

Abutter at 8 Buttermilk Way is concerned with location of shed, as it would block his water view. Another abutter requested to see proposed location of shed and determined he had no issue.

Applicant has since proposed to place shed in another location. Chm. Berger asked about lot coverage and it was determined that lot coverage did not exceed the requirements of the bylaw.

J. Priestley, Jr. **MOVED** and **SECONDED** by J. Riordan to approve #09-04 Variance at 12 Buttermilk Way, Buzzards Bay with the condition that the shed shall not be used for any other purpose than storage and be located in accordance with revised plans dated February 4, 2009. **VOTE 5-0.**

**#09-03 – SPECIAL PERMIT – EXTENTION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Steve Certa. Location: 5 Park Street, Pocasset. Map 43, Parcel 3 in a R40 zoning district. Proposal: Applicant requests a special permit to raze an existing three bedroom one story, full basement structure with a three bedroom two story, crawl foundation within the existing footprint.

Sitting for the Board: J. Priestley, Jr., J. Riordan, R. Gaynor, J. O'Brien and W. Keene  
Also present tonight are L. Berger and T. Sawyer

Plans reflect changes from the previous hearing.

J. Riordan **MOVED** and **SECONDED** by J. O'Brien to close public hearing for #09-03 Special Permit Extension or Alteration of pre-existing non-conforming structure or use. **VOTE 5-0.**

R. Gaynor **MOVED** and **SECONDED** by J. Riordan to approve #09-03 Special Permit - Extension or Alteration of pre-existing non-conforming structure or use at 5 Park Street, Pocasset according to plans as written dated January 28, 2009. **VOTE 3-2** with oppositions from J. Priestley and John O'Brien.

**Old Business - Approval of minutes**  
Minutes deferred to next hearing.

**New Business**

None at this time.

**Public Comment**

None at this time.

**Adjourn**

R. Gaynor **MOVED** and **SECONDED** by J. Riordan to adjourn. Meeting adjourned at 9:30 pm. **UNANIMOUS VOTE.**

Respectfully submitted,  
Lisa Groezinger, sec.

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

**DATE**

**TIME**

**LOCATION**

Wednesday February 18, 2009

7:30 P.M.

Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #09-05 – VARIANCE, UNDER MASSACHUSETTS GENERAL LAW, SECTION 10**

Robert C. Cannon Jr. Location: 4 Winchester Ave, Bourne. Map 3, Parcel 150 in a R-80 zoning district. Proposal: Applicant seeks relief from the Bourne Zoning Bylaws to build a 22' x 28' garage six foot from property line due to topography of lot.

**Old Business**

**New Business**

**Members Present**

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BOURNE, MASS.  
TOWN CLERKS OFFICE  
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**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

<u>DATE</u>	<u>TIME</u>	<u>LOCATION</u>
<u>Wednesday February 18, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #08-12 – APPEAL OF THE BUILDING INSPECTOR'S DECISION –  
CONTINUANCE**

Cumberland Farms. Location: 160 Main Street, Route 6, Holt Road, Buzzards Bay. Map 23.2, Parcel 142 & 142.1 in a B-2 zoning district. Proposal: Appealing the Building Inspector's refusal to issue a building permit because the Planning Board did not grant a Special Permit. Petitioner does not agree a Special Permit is required from the Planning Board.

**Old Business**

**New Business**

**Members Present**

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TOWN CLERK'S OFFICE  
BOURNE, MASS

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<u>Wednesday February 18, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #09-05 – VARIANCE, UNDER MASSACHUSETTS GENERAL LAW, SECTION 10**

Robert C. Cannon Jr. Location: 4 Winchester Ave, Bourne. Map 3, Parcel 150 in a R-80 zoning district. Proposal: Applicant seeks relief from the Bourne Zoning Bylaws to build a 22' x 28' garage six foot from property line due to topography of lot.

**PLEASE NOTE:**

**#08-12 – APPEAL OF THE BUILDING INSPECTOR'S DECISION – CONTINUANCE HAS BEEN RESCHEDULED FOR APRIL 1, 2009 - 7:35 PM**

Cumberland Farms. Location: 160 Main Street, Route 6, Holt Road, Buzzards Bay. Map 23.2, Parcel 142 & 142.1 in a B-2 zoning district. Proposal: Appealing the Building Inspector's refusal to issue a building permit because the Planning Board did not grant a Special Permit. Petitioner does not agree a Special Permit is required from the Planning Board.

**Old Business**

**New Business**

**Members Present**

TOWN CLERK'S OFFICE  
BOURNE, MASS.  
2009 FEB 13 PM 1 16

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:** #09-05- Variance  
UNDER MASS GENERAL LAWS, CHAPTER 40A, SECTION 10

**APPLICANT:** Robert C. Cannon Jr.

**LOCATION:** 4 Winchester Ave, Bourne

Map 3 Parcels 150 R-80 zoning district

**PROPOSAL:** Applicant seeks relief from the Bourne Zoning Bylaw to build a 22' x 28' garage six foot from property line due to topography of lot.

**DATE & TIME:** Wednesday, February 18, 2009 at 7:34 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

February 11, 2009

February 18, 2009

BOURNE, MASS  
TOWN CLERK'S OFFICE

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**Zoning Board of Appeals Minutes – February 18, 2009  
Bourne Town Hall  
Buzzards Bay, MA 02532**

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**Attendance:** Lee Berger – Chairman, John Priestley, Jr. – Vice Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene (excused) and John O'Brien

**Meeting Called to Order**

Meeting called to order at 7:30 pm.

Approved Minutes – 1/21/09

**# 09-05 – VARIANCE – UNDER MASS GENERAL LAWS, CHAPTER 40A, SECTION 10**

Robert C. Cannon Jr., Location: 4 Winchester Ave, Bourne. Map 3, Parcel 150 in a R80 zoning district. Proposal: Applicant seeks relief from the Bourne Zoning Bylaw, to build 22' x 28' garage no less than six feet from property line due to topography of lot.

Sitting for the Board: Lee Berger, John Priestley Jr., Judith Riordan, Timothy Sawyer, Robert Gaynor and John O'Brien

Applicant representing himself, Robert C. Cannon Jr.

Letters from two direct abutters and one from the Weldon Park Association in favor of proposed garage, Mary Willett, Weldon Park Board Member, also present and in favor.

Discussion:

Robert Cannon: Reasoning for choosing the location of the garage was due to the topography of my lot and how it drops off behind his house. The septic tank is also located in the back yard and structures are to be at least 10 ft away from the septic system. Referring to the drawings, explains that if he was to choose a site more set back from the house they would have to raise the lot; adding dirt to make it level as well as create retaining walls and bigger foundation walls would do this. This would take away from the characteristics of house.

John Priestley: Inquired about the height of the garage, drainage and what would be the purpose of the upstairs to the garage.

Robert Cannon: Proposed height of the garage would be roughly 18 feet in height, depending on how the roof is pitched; and a cricket would help direct the rain run-off. The upstairs would have a pull down staircase for storage of Christmas decorations and miscellaneous storage items.

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Robert Gaynor: Inquired about elevation drawings, and pitch of lot. Questioning the fact of why this garage cannot be build according to setback requirements. Also questions lot boundaries.

Robert Cannon: The contour of the yard drops off, and slopes towards neighbors house. The contour drops off in 2-foot intervals in the back. A fence was erected along lot line however this fence actually runs 1 foot to 2 foot along lot line due to the tree line. So with that said this garage will actually be between 6 and 8 feet from lot line.

Lee Berger: Asked if Board had any more questions for the applicant.

Timothy Sawyer **MOVED** and **SECONDED** by Judith Riordan to close public hearing on #09-05 Variance. **VOTE 5-0.**

John Priestly Jr. **MOVED** and **SECONDED** by Timothy Sawyer to grant Variance #09-05 for property at 4 Winchester Ave with stipulation that garage is not to be more than a 2- car garage. The second floor is not to be used as habitable space, should be built no closer than six (6) feet from lot line, according to as-built plan, dated 5/29/92 for lot 45, Winchester Ave. **VOTE 5-0.**

Lee Berger: In regards to Cumberland Farms, Special Permit 08-12, the Board received a stipulation signed by Attorney Robert Troy and Attorney Douglas A. Troyer stating that the attorneys could not attend tonight's meeting and agree to continue this hearing for April 1, 2009 at 7:35 pm in the lower conference room located at Bourne Town Hall.

John Priestley Jr. **MOVED** and **SECONDED** by Timothy Sawyer to continue hearing for Special Permit #08-12 to April 1, 2009 at 7:35 pm. **VOTE 5-0.**

#### **Old Business - Approval of minutes**

None at this time.

#### **New Business**

None at this time.

#### **Public Comment**

None at this time.

#### **Adjourn**

John Priestley Jr. **MOVED** and **SECONDED** Timothy Sawyer to adjourn. Meeting adjourned at 8:14 pm. **UNANIMOUS VOTE.**

Respectfully submitted,  
Kimberly Griffin, sec.

**TOWN OF BOURNE**  
**BOARD OF APPEALS**  
**24 Perry Avenue**  
**Buzzards Bay, MA 02532**

**AGENDA**

**DATE**

Wednesday March 4, 2009

**TIME**

7:30 P.M.

**LOCATION**

Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**THERE WILL BE NO MEETING TONIGHT**

**Old Business**

**New Business**

**Members Present**

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TOWN CLERK'S OFFICE  
BOURNE, MASS.

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532  
Phone: (508) 759-0615 Fax: (508) 759-0611

### **PUBLIC HEARING NOTICE**

**APPEAL:** **#09-06– Special Permit** – EXTENSION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:** Linda H. Powers, c/o Bracken Engineering, Inc.

**LOCATION:** 49 Herring Pond Road, Buzzards Bay  
Map 37.4 Parcel 53 R-40 zoning district

**PROPOSAL:** Renovations and additions to existing non-conforming structures on non-  
conforming lot. Special permit required per Bourne Zoning Bylaw section  
2457

**DATE & TIME:** Wednesday, March 18, 2009 at 7:35 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

March 4, 2009  
March 11, 2009

BOURNE, MASS.  
TOWN CLERK'S OFFICE  
2009 FEB 13 PM 1 16

# TOWN OF BOURNE

## *Board of Appeals*

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## PUBLIC HEARING NOTICE

Amended

**APPEAL:** #09-06- Special Permit – EXTENSION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:** Linda H. Powers, c/o Bracken Engineering, Inc.

**LOCATION:** 23 Spurr Road, Buzzards Bay

Map 37.4 Parcel 53 R-40 zoning district

**PROPOSAL:** Renovations and additions to existing non-conforming structures on non-conforming lot. Special permit required per Bourne Zoning Bylaw section 2457

**DATE & TIME:** Wednesday, March 18, 2009 at 7:35 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

March 4, 2009  
March 11, 2009

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TOWN CLERK'S OFFICE  
BOURNE, MASS

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

**DATE**

Wednesday March 18, 2009

**TIME**

7:30 P.M.

**LOCATION**

Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532

2009 MAR 2 PM 2 19  
TOWN CLERK'S OFFICE  
BOURNE, MASS

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. # 09-06 – SPECIAL PERMIT – EXTENTION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Linda H. Powers. Location: 49 Herring Pond Road, Buzzards Bay. Map 37.4, Parcel 53 in a R40 zoning district. Proposal: Renovations and additions to existing non-conforming structures on non-conforming lot. Special permit required per Bourne Zoning By-Law sections 2457.

**Old Business**

**New Business**

**Members Present**

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**Zoning Board of Appeals Minutes – March 18, 2009  
Bourne Town Hall  
Buzzards Bay, MA 02532**

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**Attendance:** Lee Berger – Chairman (excused), John Priestley, Jr. – Vice Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor (excused), Wade Keene and John O'Brien

**Meeting Called to Order**

Meeting called to order at 7:30 pm.

**# 09-06 – SPECIAL PERMIT – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Linda H. Powers. Location: 49 Herring Pond Road, Buzzards Bay. Map 37.4, Parcel 53 in a R40 zoning district. Proposal: Renovations and additions to existing non-conforming structures on non-conforming lot. Special permit required per Bourne Zoning By-Law sections 2457.

Sitting for the Board: J. Priestley, Jr., J. Riordan, T. Sawyer, J. O'Brien and W. Keene

Don Bracken, Bracken Engineering, for applicant stated currently on the lot is a two-story, three-bedroom single family house. For a non-conforming structure, there is a 9 foot setback to the street line and a 3.3 foot setback to the side.

Adding a one-story 22' x 24' family room, enclosing existing open porch and adding a 10' x 10' deck. Proposed addition will be setback 15.5 feet and 31 feet from the nearest abutting property line. In order to get special permit, it is required to upgrade the septic system. Applicant is proposing system mounted to a two-foot wall around with a ground level elevation.

Site is located within the flood zone and existing first floor elevation is already built to flood zone elevations. Proposed addition will be constructed to conform to the special requirement. Conservation Commission has approved.

Applicant is also requesting in relation to the maximum lot coverage and gross floor area requirements, and asking an additional increase within the 10% for the special permit. Calculations fall within the special permit criteria.

Foundation is on piles and is in flood zone.

J. O'Brien **MOVED** and **SECONDED** by J. Riordan to close public hearing for #09-06 Special Permit Extension or Alteration of pre-existing non-conforming structure or use.  
**VOTE 5-0.**

SSWA '344709  
321113 Public Hearing for #09-06  
14 01 08 9 1844 6002

J. Riordan **MOVED** and **SECONDED** by W. Keene to approve #09-06 Special Permit Extension or Alteration of pre-existing non-conforming structure or use for Linda H. Powers. Location: 49 Herring Pond Road, Buzzards Bay. Map 37.4, Parcel 53 in a R40 zoning district according to revised plans submitted dated February 3, 2009. **VOTE 5-0.**

**Old Business - Approval of minutes**

J. O'Brien **MOVED** and **SECONDED** by T. Sawyer to approve minutes of February 18, 2009 as submitted. **VOTE 5-0.**

**Public Comment**

None at this time.

**Adjourn**

J. O'Brien **MOVED** and **SECONDED** by J. Riordan to adjourn. Meeting adjourned at 8:00 pm. **UNANIMOUS VOTE.**

Respectfully submitted,  
Lisa Groezinger, sec.

# TOWN OF BOURNE

## *Board of Appeals*

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## PUBLIC HEARING NOTICE

APPEAL: **#09-07– Special Permit** – CHANGE OF USE – SECTION 2340 OF THE  
BOURNE ZONING BYLAW

APPLICANT: Walter Sullivan

LOCATION: 11 Eel Pond Road, Monument Beach

Map 30.2 Parcel 138 R-40 zoning district

PROPOSAL: Applicant seeks to alter and extend existing garage warehouse building by replacing with new more attractive structure, increasing the warehouse area by 713 sq.ft. also adding an office and apartment 1000 ± sq.ft.

DATE & TIME: Wednesday, April 1, 2009 at 7:40 p.m.

PLACE: Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

March 18, 2009

March 25, 2009

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# TOWN OF BOURNE

## *Board of Appeals*

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## PUBLIC HEARING NOTICE

**APPEAL:** #09-08- Special Permit – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:** Richard E. Jose

**LOCATION:** 38C Hide Away Village, Buzzards Bay  
Map 14 Parcel 49.71 R-80 zoning district

**PROPOSAL:** Applicant seeks to build an 8' x 8' shed to his property.

**DATE & TIME:** Wednesday, April 1, 2009 at 7:45 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532.

Bourne Courier Publishing Dates:

March 18, 2009

March 25, 2009

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## **Zoning Board of Appeals Minutes – April 1, 2009**

Bourne Town Hall  
Buzzards Bay, MA 02532

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**Attendance:** Lee Berger – Chairman, John Priestley, Jr. – Vice Chairman, Timothy Sawyer, Judith Riordan, and Wade Keene. Robert Gaynor and John O'Brien were excused.

### **Meeting Called to Order**

Meeting called to order at 7:30 pm.

### **Approval of minutes**

J. Priestley, Jr. **MOVED** and **SECONDED** by J. Riordan to partially approve minutes of February 4, 2009 to reflect the accuracy of the minutes as to Hearings #08-02 and #09-04. Action was deferred on approval of the minutes as to Hearing #09-03 until the next meeting to enable Lisa to check on who voted yea or nea with reference to said hearing.

**VOTE 5-0.**

J. Priestley, Jr. **MOVED** and **SECONDED** by T. Sawyer to approve minutes of February 18, 2009 as submitted. **VOTE 4-0-1** with abstention from W. Keene.

J. Riordan **MOVED** and **SECONDED** by J. Priestley, Jr. to take special permit #09-08 out of order. **UNANIMOUS VOTE.**

### **#09-08 – SPECIAL PERMIT – EXTENTION OR ALTERATION OF A PRE-EXISTING NON - CONFORMING STRUCTURE OR USE**

Richard E. Jose. Location: 38C Hide Away Village, Buzzards Bay. Map 14, Parcel 49.71 in a R-80 zoning district. Proposal: Applicant seeks to build an 8' x 8' garden shed on his property.

Sitting for the Board: L. Berger, J. Priestley, Jr., T. Sawyer, J. Riordan and W. Keene

Chm. Berger stated he visited the site earlier today. He also stated the map with package does not reflect bathroom extension already added.

J. Priestley, Jr. **MOVED** and **SECONDED** by J. Riordan to approve #09-08 in accordance with plans submitted as to the location of the shed. **VOTE 5-0.**

### **#08-12 – APPEAL OF THE BUILDING INSPECTOR'S DECISION – CONTINUANCE**

Cumberland Farms. Location: 160 Main Street, Route 6, Holt Road, Buzzards Bay. Map 23.2, Parcel 142 & 142.1 in a B-2 zoning district. Proposal: Appealing the Building Inspector's refusal to issue a building permit because the Planning Board did not grant a Special Permit. Petitioner does not agree a Special Permit is required from the Planning Board.

Sitting for the Board: L. Berger, J. Priestley, Jr., T. Sawyer, J. Riordan and W. Keene

Atty. Robert Troy was asked questions concerning the Board's power and ability to interpret the bylaws. Specifically, the Board was concerned that the bylaws should not be interpreted to require a business to obtain two Special Permits, each from different Special Permit Granting Authorities, where each SPGA was to use the identical criteria in determining whether or not to grant the Special Permit.

Atty. Troy noted three issues:

1. Interpretation: Is the a motor vehicle service station a different use when it is combined with retail store? Retail sales generally require a special permit from Planning Board, although in this case the retail store is in a B-2 business zone, and therefore does not need a special permit from the Planning Board for its retail store. Attorney Troy analogized the situation to a take out/drive through that requires a Special Permit from the Planning Board. Attorney Troy stated there is a formatting problem in the bylaw – Planning Board intends to go to Town Meeting to clarify. Atty. Troy stated his interpretation of the bylaw is that applicant is required to go to both the Board of Selectmen and Planning Board for two different Special Permits.

Atty. Troy further stated that logically the Board could come to the conclusion that because Cumberland Farms already has a retail store, it does not need a Special Permit from the Planning Board because the retail use is grandfathered. However, he suggested that combining the retail use with the gas sale use is a different class of use from which one could also logically come to the conclusion that Special Permits from both the Planning Board and the Selectmen are required before a Building Permit can be issued.

2. Does ZBA have discretion to decide the case either way? Yes
3. With reference to selective enforcement, Attorney Troy stated that the Doctrine of Fariness was very important, that it was very important that the bylaws be enforced consistently.

Atty. for applicant noted agreeing with Atty. Troy's interpretation.

#### **Comments**

Peter Meier, Planning Board member, when asked why the Planning Board denied the Special Permit, responded that safety was an issue for the Planning Board, but primarily the Planning Board felt that Buzzards Bay did not need another gas station.

Jim Mulvey inquired on the difference between in/out service station vs. filling up and going to a retail store. If you have established retail and then add a gas station, does that change the nature of the retail operation, or is that retail operation still grandfathered?

J. Priestley, Jr. **MOVED** and **SECONDED** by J. Riordan to close public hearing for #08-12. **VOTE 5-0.**

J. Priestley, Jr. **MOVED** and **SECONDED** by J. Riordan to overturn the Building Inspector's Decision. **VOTE 4-1** with opposing vote with W. Keene.

**#09-07 – SPECIAL PERMIT – CHANGE OF USE**

Walter Sullivan. Location: 11 Eel Pond Road, Monument Beach. Map 30.2, Parcel 138 in a R-40 zoning district. Proposal: Applicant seeks to alter and extend existing garage warehouse building by replacing with new more attractive structure. Increasing the warehouse area by 713 sq.ft. Also adding an office and apartment 1000 ± sq.ft.

Sitting for the Board: L. Berger, J. Priestley, Jr., T. Sawyer, J. Riordan and W. Keene

Atty. Ford O'Connor for applicant.

Use variances allowed the then metal shop on site to be expanded. Rental apartment to be added to keep an eye on the property, and to increase income. Applicant proposing to extend, alter and modify a legally permitted existing garage warehouse and make it more aesthetic to the neighborhood. Looking to expand storage with no other commercial usage other than small office area.

Helen Wikenship, 14 Eel Pond Road, is not in favor of plan as proposed as it is a large commercial building with rental property. She feels it depreciates her property.

Stephanie Kelley, 18 Eel Pond Road, is not in favor of plan as proposed as it is a neighborhood and not an industrial park. Safety is an issue.

Edward Osgood, 38 Brooks Road, is not in favor of plan. Concerns over use of apartment and not owner-occupied.

Elaine Cowe, 1 Eel Pond Road, is not in favor of plan or commercial use in the neighborhood. Concerned with type of tenants coming to the neighborhood.

Rick Cowe, 1 Eel Pond Road, is not in favor of proposed plan.

Tim Denmark, currently owner of property, in favor of proposed plan.

John Cody, 22 Elm Avenue, inquired if square footage of building within lot in accordance with the bylaw.

**Comments**

The consensus of the Board was not to approve expanding the warehouse and commercial use in a residential district.

Atty. Ford requested permission to withdraw the application without prejudice. Upon Motion of John Priestley, seconded by Judith Riordan, it was voted 5-0 to allow applicant to withdraw application without prejudice.

**Public Comment**

None at this time.

**Other Business**

Atty. for Chase asking for Chm. Berger thoughts on proposal regarding some housing now and more later when the traffic light is installed.

Appeal – HAC had ordered counsel for DHDC to testify, but counsel for DHCD has filed a motion to quash the subpoena. This is being heard at the end of April.

**New Business**

Wade Keene and Lee Berger to make up the ZBA subcommittee to work with the Planning Board on rewriting Zoning Bylaws.

Chm. Berger and Judith Riordan were appointed to the Affordable Housing Trust.

**Adjourn**

J. Priestley, Jr. **MOVED** and **SECONDED** by T. Sawyer\ to adjourn. Meeting adjourned at 9:50 pm.  
**UNANIMOUS VOTE.**

Respectfully submitted,  
Lisa Groezinger, sec.

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#09-10– Special Permit – SECTION 2220, DOG KENNEL**

**APPLICANT:**     Katherine Halicki

**LOCATION:**       10 Howard Ave, Monument Beach

Map 35.1   Parcel 119   R-40 zoning district

**PROPOSAL:**       Section 2220, Kennel – Applicant seeks to secure a kennel permit so she  
can adopt a forth dog.

**DATE & TIME:**    Wednesday, April 15, 2009 at 7:40 p.m.

**PLACE:**           Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

April 1, 2009

April 8, 2009

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**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

<u>DATE</u>	<u>TIME</u>	<u>LOCATION</u>
<u>Wednesday April 15, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #09-09 – SPECIAL PERMIT – EXTENTION OR ALTERATION OF A PRE-EXISTING NON -CONFORMING STRUCTURE OR USE**

Rescom Architectural, Inc. c/o Geraldine Howard. Location: 44 Kenwood Road, Pocasset. Map 38.3, Parcel 201 in a R-40 zoning district. Proposal: The applicant requests for good cause departure from the max gross floor area, per 2457.

**7:40 p.m. – #09-10 – SPECIAL PERMIT – SECTION 2220, KENNEL PERMIT**

Katherine Halicki. Location: 10 Howard Ave, Monument Beach. Map 35.1, Parcel 119 in a R-40 zoning district. Proposal: Applicant seeks to secure a kennel permit so she can adopt a forth dog.

**Old Business**

**New Business**

**Members Present**

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# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#09-09- Special Permit** – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:**     Rescom Architectural, Inc.  
                          C/o Geraldine Howard

**LOCATION:**        44 Kenwood Road, Pocasset  
  
                          Map 38.3   Parcel 201    R-40 zoning district

**PROPOSAL:**       The applicant requests for good cause departure from the max gross floor  
                          area, per 2457.

**DATE & TIME:**     Wednesday, April 15, 2009 at 7:35 p.m.

**PLACE:**            Bourne Town Hall, Lower Conference Room  
                          24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

April 1, 2009

April 8, 2009

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BOURNE, MASS.



**Zoning Board of Appeals Minutes- April 15, 2009**  
**Bourne Town Hall**  
**Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Judith Riordan, Wade Keene and John O'Brien. Robert Gaynor and Timothy Sawyer were excused.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes:**

J. Riordan **moved** and **seconded** by J. O'Brien to approve minutes of January 7, 2009 as submitted. **Vote 4-0-1** with abstention from L. Berger.

J. Riordan **moved** and **seconded** by J. O'Brien to approve the last portion of (hearing #09-03) minutes of February 4, 2009. **Vote 5-0.**

J. O'Brien **moved** and **seconded** by J. Riordan to approve minutes of March 18, 2009 as submitted. **Vote 4-0-1** with abstention from L. Berger.

J. Priestley **moved** and **seconded** by J. Riordan to approve minutes of April 1, 2009 as submitted. **Vote 4-0-1** with abstention from J. O'Brien.

**#09-09 - SPECIAL PERMIT- EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE.**

Rescom Architectural, Inc. c/o Geraldine Howard. Location: 44 Kenwood Road, Pocasset. Map 38.3, Parcel 201 in a R-40 zoning district. Proposal: The applicant requests for good cause departure from the max gross floor area, per 2457.

Sitting for the Board: Lee Berger, John Priestley, Jr., John O'Brien, Wade Keene and Judith Riordan.

Rescom Architectural, Inc. representing Geraldine Howard.

**Discussion:**

**Rescom Architectural:** Because the house is a VE flood zone, the first floor needs to be elevated. They would like to enclose a portion of the space below the flood line rather than expose concrete piers. Part of the enclosed area will be an entrance with a set of stairs that goes to the first level. There will also be a 2-car garage which part of will be under the house.

**Brian McCann, abutter:** Curious about exactly where the house will sit and how far away it will be from his property. Has some concerns about the height of the house. He has an exposed shower on the side of his house and wants to make sure the neighbors will not be able to see the shower. Also, he would like some plantings for privacy.

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Rescom Architectural: Willing to adjust the plan in any way to satisfy the neighbors. They have agreed to put plantings/trees on the side of the house that faces Mr. McCann's property.

Lee Berger: Asks the Board if there are any more questions.

Judith Riordan **moved** and **seconded** by John O'Brien to close the public hearing on #09-09 Special Permit. **VOTE 5-0.**

Judith Riordan **moved** and **seconded** by Wade Keene to grant the Special Permit #09-09 for property at 44 Kenwood Rd with stipulation that the owners must put plantings on the right side of the house to serve as a buffer to the McCann's property and exposed outside shower. **Vote 5-0.**

#### **#09-10- SPECIAL PERMIT- SECTION 2220, KENNEL PERMIT**

Katherine Halicki. Location: 10 Howard Ave, Monument Beach. Map 35.1, Parcel 119 in a R-40 zoning district. Proposal: Applicant seeks to secure a kennel permit so she can adopt a fourth dog.

Sitting for the Board: Lee Berger, John Priestley, Jr., John O'Brien, Wade Keene and Judith Riordan.

Applicant representing herself, Katherine Halicki

#### Discussion:

Katherine Halicki: She adopted 2 greyhounds and she has a chihuahua. Officer Hamilton found an Australian cattle dog that was living underneath her shed. They have adopted her. She is a good dog and doesn't bark. They have an enclosed yard that they keep clean.

Bruce Carroll, an abutter: Will this be for just the dogs they have now or will they be able to get more.

Lee Berger: There will be a limit of four dogs and if one shall leave for whatever reason they will only be allowed to have 3.

Diane Pacie, an abutter: Is concerned about the word kennel. Is there going to be a structure put up or any more dogs.

Sophie Karidoyanes, an abutter: one of the dogs Katherine has now barks any time she goes in her yard. She wants to make sure they keep an eye on the dogs when they bark and bring them in if they are outside.

Lee Berger: Asks the Board if there are any more questions.

Judith Riordan **moved** and **seconded** by John O'Brien to close the public hearing on #09-10 Special Permit. **VOTE 5-0.**

Judith Riordan **moved and seconded** by Wade Keene to grant the Special Permit #09-10 for property at 10 Howard Ave with stipulation that the permit will lapse if the house is sold, only to allow a maximum of 4 dogs, which are Randy, Lucy, Paige and Sadie, if one of those 4 dogs leaves the home for any reason the special permit will lapse, no outdoor kennel structure, and the existing fence must stay up. **Vote 5-0.**

**New Business**

None at this time

**Public Comment**

None at this time

**Adjourn**

John Priestley Jr. **moved and seconded** by John O'Brien to adjourn. Meeting adjourned at 8:30 pm. **Unanimous Vote.**

Respectfully Submitted,  
JoAnna Cheverie, sec.

# TOWN OF BOURNE

## *Board of Appeals*

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

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BOURNE, MASS

## PUBLIC HEARING NOTICE

**APPEAL:** #09-11– Appeal of the Decision of the Building Inspector –  
CHAPTER 40A, SECTION 8

**APPLICANT:** Circle O, LLC // d/b/a Cape Cod Harley Davidson

**LOCATION:** 750 MacArthur Blvd, Pocasset

Map 44.2 Parcel 24 & 25 B-2 zoning district

**PROPOSAL:** The existing sign is too high. The mulch has washed away and settling of the ground has occurred. The sign has not been touched or altered since it was erected in 1994.

**DATE & TIME:** Wednesday, May 6, 2009 at 7:35 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

April 22, 2009

April 29, 2009

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **AMENDED PUBLIC HEARING NOTICE**

**APPEAL:** #09-12– Special Permit – Accessory Dwelling

**APPLICANT:** Wayne E. Covell

**LOCATION:** 2 Kimba Lane, Sagamore Beach

Map 4 Parcel 78 R-40 zoning district

**PROPOSAL:** Applicant requests a special permit for this pre-existing accessory dwelling.

**DATE & TIME:** Wednesday, May 6, 2009 at 7:40 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

April 22, 2009

April 29, 2009

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# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#09-13– Special Permit** – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:**     Mary & Harry Woodruff

**LOCATION:**       12C Thompson Lane, Hide Away Village

Map 14   Parcel 49.53   R-80 zoning district

**PROPOSAL:**       Applicant seeks to convert existing enclosed porch to wash area and  
storage. This entails installation of washing machine, clothes dryer,  
freezer, closet, cabinets and windows.

**DATE & TIME:**    Wednesday, May 6, 2009 at 7:45 p.m.

**PLACE:**           Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

April 22, 2009

April 29, 2009

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**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<u>Wednesday May 6, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #09-11 – APPEAL OF THE DECISION OF THE BUILDING INSPECTOR  
CHAPTER 40A, SECTION 8**

Circle O, dba Cape Cod Harley Davidson. Location: 750 MacArthur Blvd, Pocasset. Map 44.2, Parcel 24 & 25 in a B-2 zoning district. Proposal: The existing sign is too high. The mulch has washed away and settling of the ground has occurred. The sign has not been touched or altered since it was erected in 1994.

**7:40 p.m. – #09-12 – SPECIAL PERMIT – ACCESSORY DWELLING**

Wayne E. Covell. Location: 2 Kimba Lane, Sagamore Beach. Map 4, Parcel 78 in a R-40 zoning district. Proposal: Applicant requests a special permit for this pre-existing accessory dwelling.

**7:45 p.m. – #09-13 – SPECIAL PERMIT – EXTENSION OR ALTERATION OF A PRE-EXISTING NON CONFORMING STRUCTURE OR USE.**

Mary & Harry Woodruff. Location: 12C Thompson Lane, Hide Away Village, Buzzards Bay. Map 14, Parcel 49.53 in a R-80 zoning district. Proposal: Applicant seeks to convert existing enclosed porch to wash area and storage. This entails installation of washing machine, clothes dryer, freezer, closet, cabinets and windows.

**7:50 p.m. – #09-14 – VARIANCE – UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 40A, SECTION 10**

Brookside Residential, LLC. Location: Lot 36-B, Brookside Road, Bourne. Book 15112, Page 39 in a R-40 zoning district. Proposal: Applicant seeks relief from the Bourne Zoning Bylaw requesting front setback relief from 30 feet to 20 feet.

**Zoning Board of Appeals Minutes- May 6, 2009**  
**Bourne Town Hall**  
**Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan (excused), Robert Gaynor, Wade Keene and John O'Brien.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes**

J. Priestley, Jr. **MOVED** and **SECONDED** by J. O'Brien to approve minutes of April 15, 2009 as submitted. **VOTE 4-0-2** with abstentions from Sawyer and Gaynor.

**#09-11 - APPEAL OF THE DECISION OF THE BUILDING INSPECTOR**

**CHAPTER 40A, SECTION 8**

Circle O, dba Cape Cod Harley Davidson. Location: 750 MacArthur Blvd, Pocasset. Map 44.2, Parcel 24 & 25 in a B-2 zoning district. Proposal: The existing sign is too high. The mulch has washed away and settling of the ground has occurred. The sign has not been touched or altered since it was erected in 1994.

Sitting on the board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Robert Gaynor, Wade Keene. Also present: John O'Brien.

Applicant requests to withdraw without prejudice. Chm. Berger explained that the sign the applicant wants to change is too high, so the applicant could have chosen to lower the sign or apply for Special Permit. Instead, the applicant appealed the decision of the Building Inspector, but the Building Inspector's decision was based on measurements taken by the applicant. The applicant intends to apply for a Special Permit.

John Priestley, Jr. **MOVED** and **SECONDED** by R. Gaynor to allow applicant to withdraw without prejudice. **VOTE 5-0** in favor of the motion.

**#09-12 – SPECIAL PERMIT – ACCESSORY DWELLING**

Wayne E. Covell. Location: 2 Kimba Lane, Sagamore Beach. Map 4, Parcel 78 in a R-40 zoning district. Proposal: Applicant requests a special permit for this pre-existing accessory dwelling.

Sitting on the board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Robert Gaynor, Wade Keene. Also present: John O'Brien.

Home was purchased with the in-law apartment, but no permit was ever obtained from the ZBA. Applicant here before the Board to be in compliance with the by-laws. Applicant's mother-in-law, Dorothy Barr, has been living in the dwelling, caring for Mr. Covell's disabled wife. The applicant submitted documents evidencing that septic system

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BOURNE, MA



was built for a 6 bedroom home, and including the accessory dwelling, the bedroom count does not exceed 6 bedrooms. On-site parking is more than sufficient.

J. Priestley, Jr. **MOVED** and **SECONDED** by T. Sawyer to close public hearing for #09-12. **VOTE 5-0** in favor of the motion.

J. Priestley, Jr. **MOVED** and **SECONDED** by R. Gaynor to grant a special permit for #09-12 for an accessory dwelling for Dorothy Barr for a period of three (3) years. **VOTE 5-0** in favor of the motion.

R. Gaynor **MOVED** and **SECONDED** by T. Sawyer to amend original motion to include requirement that applicant modify current fire alarm system to current code. **VOTE 5-0** in favor of the motion.

**#09-13 – SPECIAL PERMIT – EXTENTION OR ALTERATION OF A PRE-EXISTING NON CONFORMING STRUCTURE OR USE.**

Mary & Harry Woodruff. Location: 12C Thompson Lane, Hide Away Village, Buzzards Bay. Map 14, Parcel 49.53 in a R-80 zoning district. Proposal: Applicant seeks to convert existing enclosed porch to wash area and storage. This entails installation of washing machine, clothes dryer, freezer, closet, cabinets and windows.

Sitting on the board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Robert Gaynor, John O'Brien. Also present: Wade Keene.

J. Priestley, Jr. **MOVED** and **SECONDED** by J. O'Brien to close public hearing. **VOTE 5-0** in favor of the motion.

J. Priestley, Jr. **MOVED** and **SECONDED** by J. O'Brien to grant special permit for #09-12 to convert existing enclosed porch to wash area and storage. **VOTE 5-0** in favor of the motion.

**#09-14 – VARIANCE – UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 40A, SECTION 10**

Brookside Residential, LLC. Location: Lot 36 B Brookside Road, Bourne. Book 15112, Page 39 in a R-40 zoning district. Proposal: Applicant seeks relief from the Bourne Zoning Bylaw requesting front setback relief from 30 feet to 20 feet.

Sitting on the board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Robert Gaynor, John O'Brien. Also present: Wade Keene.

Jack Dolly as developer representing applicant. Sean Gayhill, manager of site.

Applicant requests to reduce set back from 30 feet to 20 feet for this lot only (Lot 36) in order to pull homes further off the golf course to make less susceptible to being hit by a golf ball and make a safer environment for future owners. At a minimum he is requesting relief for about half the lot.

R. Gaynor requested a commitment of about a ten (10) foot treed area.

Abutters concerned about the safety of pedestrians on Brookside Road. Proposal will bring property 10 feet closer to these main roads, and there is significant speeding on these roads. No guest parking is another concern.

Chm. Berger suggested sidewalks (not enough room) or speed bumps (community opposed) to control traffic. Chairman Berger asked the developer how much it would cost to put in a card controlled gate. The developer stated that safety was not an issue in his request for a developer. The Chairman stated that safety is indeed an issue since the developer is asking the Board to reduce the front yard set back, and one of the purposes of a front yard setback is safety, and mitigation is certainly an appropriate issue to explore. The developer then stated that he was not willing to put up a gate, or spend any money to mitigate safety.

After hearing the abutters' concerns, applicant decided to ask the Board to permit him to withdraw his application for a variance without prejudice.

J. O'Brien **MOVED** and **SECONDED** by J. Priestly, Jr. to permit applicant to withdraw the application for a variance without prejudice. **VOTE 5-0** in favor of the motion.

#### **Old Business**

Housing Assistance Corporation (HAC), residents at Canal Bluffs, requests "for insubstantial changes" to its Comprehensive Permit # 05-43.

Sitting on the board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Robert Gaynor, Wade Keene. Also present: John O'Brien.

HAC is requesting two (2) changes to their comprehensive permit for residences at Canal Bluffs, located off Otis Park Drive:

- 1) Change in definition of local preference (Page 20, #4) to conform to DHCD's current guidelines.

J. Priestley, Jr. **MOVED** and **SECONDED** by R. Gaynor to declare the change in the definition of a Bourne resident for local preference purposes an insubstantial change. **VOTE 5-0** in favor of the motion.

J. Priestley, Jr. **MOVED** and **SECONDED** by R. Gaynor to change the definition of a Bourne Resident, as defined in Comprehensive Permit # 05-43, to conform to current DHCD guidelines. **VOTE 5-0** in favor of the motion.

- 2) Change from ownership to rental for Phase III building – After discussion, since several members of the board expressed their opinions that this request was a "substantial" change, HAC agreed not to pursue this request as an insubstantial change, and informed the Board that it would file appropriate paperwork and notify abutters of the substance of this request, and a hearing would be scheduled.

J. Priestley, Jr. **MOVED** and **SECONDED** by R. Gaynor to allow applicant withdraw the second request for an insubstantial change without prejudice. **VOTE 5-0** in favor of the motion.

**New Business**

None at this time.

**Public Comment**

None at this time.

**Adjournment**

John O'Brien **MOVED** and **SECONDED** by John Priestley, Jr. to adjourn. Meeting adjourned at 9:30 pm. **UNANIMOUS VOTE.**

Respectfully submitted,  
Lisa Groezinger, sec.

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#09-15- Special Permit** -- EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:**     Joanne M. Morgan  
C/o J. Ford O'Connor

**LOCATION:**       8 Waterhouse Road, Bourne  
  
Map 24.3   Parcel 53   VB zoning district

**PROPOSAL:**       Applicant seeks to add external stairs for fire access to new office.  
Building is very close to lot line, stairs will increase closeness, however  
stairs will remain inside the existing stockade fenced area.

**DATE & TIME:**    Wednesday, May 20, 2009 at 7:35 p.m.

**PLACE:**           Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

May 6, 2009  
May 13, 2009

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TOWN CLERK'S OFFICE  
BOURNE, MASS

## TOWN OF BOURNE

### *Board of Appeals*

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## PUBLIC HEARING NOTICE

**APPEAL:** #09-17- Special Permit – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:** Ryan M. Haden

**LOCATION:** 18 Sachem Drive, Sagamore

Map 7.4 Parcel 85 R-40 zoning district

**PROPOSAL:** Applicant seeks to build a two car garage addition to my existing home,  
seeking relief from the requirements of Table 2456, Maximum Floor Area,  
in the Town of Bourne's zoning bylaw.

**DATE & TIME:** Wednesday, May 20, 2009 at 7:45 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

May 6, 2009

May 13, 2009

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **AMENDED** **PUBLIC HEARING NOTICE**

**APPEAL:** **#09-16- BUILDING INSPECTOR APPEAL & VARIANCE**  
**UNDER MASS GENERAL LAWS, CHAPTER 40A, SECTION 8& 10**

**APPLICANT:** Stephen Colonna, Trustee of DAC Nominee Trust  
C/o Sarah Turano-Flores, Attorney for Owner

**LOCATION:** 0 Cedar Point Drive  
  
Book 47.1 Page 47 R-40 zoning district

**PROPOSAL:** Specifically the applicant is requesting a variance from the frontage and minimum area requirements for the R-40 Zoning District, as more particularly described in the attached narrative. This narrative is on file with the Town Clerk and the Zoning Board of Appeals for review.

**DATE & TIME:** Wednesday, May 20, 2009 at 7:40 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

May 6, 2009  
May 13, 2009

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TOWN CLERK'S OFFICE  
BOURNE, MASS

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

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TOWN CLERK'S OFFICE  
BOURNE, MASS

**AGENDA**

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<u>Wednesday May 20, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #09-15 – SPECIAL PERMIT – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE.**

Joanne M. Morgan. Location: 8 Waterhouse Road, Bourne. Map 24.3, Parcel 53 in a VB zoning district. Proposal: Applicant seeks to add external stairs for fire access to new office. Building is very close to lot line, stairs will increase closeness, however stairs will remain inside the existing stockade fenced area.

**7:40 p.m. – #09-16 – BUILDING INSPECTOR APPEAL & VARIANCE**

**UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 40A, SECTION 8&10**

Stephen Colonna. Location: 0 Cedar Point Drive. Map 47.1, Parcel 47 in a R-40 zoning district. Proposal: Specifically the applicant is requesting a variance from the frontage and minimum area requirements for the R-40 Zoning District, as more particularly described in the attached narrative. This narrative is on file with the Town Clerk and the Zoning Board of Appeals for review.

**7:45 p.m. – #09-17 – SPECIAL PERMIT – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE.**

Ryan M. Haden. Location: 18 Sachem Drive, Sagamore. Map 7.4, Parcel 85 in a R-40 zoning district. Proposal: Applicant seeks to build a two car garage addition to my existing home, seeking relief from the requirements of Table 2456, Maximum Floor Area, in the Town of Bourne's Zoning Bylaws.

**Zoning Board of Appeals Minutes- May 20, 2009**  
**Bourne Town Hall**  
**Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes**

J. O'Brien **MOVED** and **SECONDED** by R. Gaynor to table minutes of May 6, 2009 to the next meeting. **UNANIMOUS VOTE.**

**#09-15 - Special Permit - Extension or alteration of a pre-existing non-conforming structure or use.**

Joanne M. Morgan. Location: 8 Waterhouse Road, Bourne. Map 24.3, Parcel 53 in a VB zoning district. Proposal: Applicant seeks to add external stairs for fire access to new office. Building is very close to lot line, stairs will increase closeness, however stairs will remain inside the existing stockade fenced area.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene and John O'Brien

Fire Department by letter has requested that a gate be installed in order that people exiting from the outside staircase can exit the fenced in area.

J. Priestley, Jr. **MOVED** and **SECONDED** by J. Riordan to close public hearing for #09-15. **VOTE 5-0.**

J. Priestley, Jr. **MOVED** and **SECONDED** by J. Riordan to grant special permit #09-15 with the condition that a gate be installed for egress from the fenced in yard. **VOTE 5-0 in favor of the motion.**

**#09-16 - Building Inspector Appeal & Variance**

**under Massachusetts General Laws, Chapter 40A, Section 8&10**

Stephen Colonna. Location: 0 Cedar Point Drive. Map 47.1, Parcel 47 in a R-40 zoning district. Proposal: Applicant is appealing the decision of the Building Inspector that the lot is an unbuildable lot. In the alternative, the applicant is requesting a variance from the frontage and minimum area requirements for the R-40 Zoning District, as more particularly described in a narrative on file with the Town Clerk and the Zoning Board of Appeals.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene and John O'Brien

Atty. Sara Turano-Flores and land surveyor Matt Costa for applicant.

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DELMAR, MASS.



Applicant contends that documentation of lot 82 on a 1952 subdivision plan recorded with the Registry of Deeds depicts a lot approved by the Planning Board as a buildable lot. Atty. for applicant stated there is no record in the Town Hall concerning the Planning Board's action, or any other Town Board's action.

J. O'Brien **MOVED** and **SECONDED** by J. Riordan to suspend hearing to go to next hearing (#09-17) and go back at conclusion of next hearing. **VOTE 5-0 in favor of the motion.**

After hearing #09-17 (see below), J. Priestley, Jr. **MOVED** and **SECONDED** by J. Riordan to resume hearing #09-16. **VOTE 5-0 in favor of the motion.**

Inspector of Buildings stated development was to be used for single-family as use per deed, after all required approvals from the Town were obtained. Atty. for applicant argued that the frontage on a private way includes a beach reservation, so that the entire frontage measures 53' +/-.

Chm. Berger commented on the merger issue by asking who had control at the relevant time period, which was 1971 when zoning changed to require 20,000 square foot lots.

In 1971, Dorothy & Anthony Colona owned lot 81 as tenants by entirety. The contiguous Lot 82 was owned by a trust from 1968 to the present. From 1968 to 1970, the trustees were Anthony Colona and his daughter Judith Gilman. The sole beneficiary was Dorothy Colona. In 1970, Judith Gilman resigned as co-trustee, and Dorothy Colona replaced her as co-trustee. Attorney Turano-Flores contended that Dorothy Colona, as sole beneficiary, had control over the trust under the common law (not under the terms of the trust itself), and therefore Lot 91 was controlled by Anthony and Dorothy Colona, and Lot 82 was controlled exclusively by Dorothy Colona. Chm. Berger stated his understanding that the trustees was in control of a trust, but requested Attorney Turano-Flores to provide the Board of Appeals with relevant case law to support her interpretation of the common law concerning the control of the trust.

Affidavit of Dorothy Colonna was submitted for the record. Attorney Turano-Flores says it depicts marital assets divided for protection from husband's creditors, and reflects that there has not been common control since 1968.

Inspector of Buildings indicated there is no record for building permit for addition or shed.

In 1968, when domestic separation occurred, Dorothy Colonna, as sole beneficiary under the trust, received title to Lot 82 as a division of marital assets, including the shed which was constructed with her permission.

Inspector of Buildings stated under doctrine of merger, even if wife is not on document and husband owns property, all is common property.

Atty. Stephanie Keefer, representing several abutters, will file eight copies of the same documents she filed in 2007 with the prior appeal so each Board member can pick his/her copy up at Town Hall. She referred the Board to the 1955 deed (Exhibit F to Nutter submission), stating that that deed not only conveyed lot 82, but also conveyed many other lots in the neighborhood – thus the requirement that the lots only have residential buildings on them. She also states that the Inspector of Building's decision of insufficient frontage requirement needs to be looked at today, as well as in 1952.

J. Priestley, Jr. suggested that the hearing be continued, and that the applicant come back with a physical alternative to support the variance, including architectural elevations and as much detail as possible, and that the applicant meet with the abutters before the next hearing to iron out their differences. He stated that if the Board simply affirmed the Inspector of Building's decision and denied a variance, the two lots would likely be sold, the smaller building demolished, and a "mcmansion" constructed, and no one want a "mcmansion."

R. Gaynor strongly encouraged all parties involved to get together and try to resolve their concerns. J. O'Brien requested applicant submit plans to review at next hearing.

Ms. Anderson, an abutter, does not object to applicant's plans.

The Cedar Point Association has never seen any plans.

Atty. for applicant will submit 2007 surveyor's letter to the Board regarding the 53-foot setback prior to the next hearing. She will also notify all concerned parties if June 17, 2009 date is not appropriate, and if another date is needed.

J. Riordan **MOVED** and **SECONDED** by J. O'Brien to continue hearing #09-16 to June 17, 2009 at 7:40 pm. **VOTE 5-0 in favor of the motion.**

**#09-17 - Special Permit - Extension or alteration of a pre-existing NON-CONFORMING structure or use.**

Ryan M. Haden. Location: 18 Sachem Drive, Sagamore. Map 7.4, Parcel 85 in a R-40 zoning district. Proposal: Applicant seeks to build a two car garage addition to his existing home, seeking relief from the requirements of Table 2456, Maximum Floor Area, in the Town of Bourne's Zoning Bylaws.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene and John O'Brien

J. Priestley, Jr. stated applicant is not eligible for a Special Permit if the figures on the worksheet are correct, as the Planning Board wrote the bylaw in such a way as to limit the Board of Appeal's authority to grant a Special Permit to an increase of the maximum allowed floor area of 10%, and the applicant appears to be requesting more than 10%. However, the total gross floor area is in question. Mr. Priestley believes the lowest floor of the building constitutes a basement which will be more than 50% below grade, and therefore should not be counted as part of the gross floor area under the terms of the bylaw.

Mr. Priestley suggested the applicant hire a surveyor to draw the existing and proposed plan to make an accurate calculation, and to also determine what percentage of the basement will be below natural grade. Chm. Berger suggested to also provide a copy of the surveyor's documentation to Coreen Moore, Town Planner, for her review and input prior to the next hearing.

J. Riordan **MOVED** and **SECONDED** by R. Gaynor to continue hearing #09-18 to June 17, 2009 at 7:35 pm. **VOTE 5-0 in favor of the motion.**

**Adjournment**

John O'Brien **MOVED** and **SECONDED** by John Priestley, Jr. to adjourn. Meeting adjourned at 9:45 pm. **UNANIMOUS VOTE.**

Respectfully submitted,  
Lisa Groezinger, sec.

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

TOWN CLERK'S OFFICE  
BOURNE, MASS.

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**AGENDA**

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<u>Wednesday June 3, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #09-18 – SPECIAL PERMIT – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE.**

Joe and Debbie Carty. Location: 475 Shore Road, Bourne. Map 30.4 Parcel 264 in an R-40 zoning district. Proposal: Applicant would like to build an addition (approximately. 5 ft. x 13 ft.) over an existing small porch and stairs to accommodate a more useful kitchen.

**Old Business**

**New Business**

**Members Present**

_____	_____	_____
_____	_____	_____
_____	_____	_____

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

2009 MAY 15 PM 1 43  
TOWN CLERK'S OFFICE  
BOURNE, MASS.

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#09-18- Special Permit** – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:**     Joe and Debbie Carty

**LOCATION:**       475 Shore Road, Bourne

Map 30.4   Parcel 264   R-40 zoning district

**PROPOSAL:**       Applicant would like to build an addition (approximately . 5 ft. x 13 ft.)  
over an existing small porch and stairs to accommodate a more useful  
kitchen.

**DATE & TIME:**    Wednesday, June 3, 2009 at 7:35 p.m.

**PLACE:**           Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

May 20, 2009

May 27, 2009

**Zoning Board of Appeals Minutes – June 3, 2009  
Bourne Town Hall  
Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes**

J. Riordan moved and seconded by J. Priestley, Jr. to approve minutes of May 6, 2009 as submitted. **Vote 5-0.**

J. Riordan moved and seconded by J. Priestley, Jr. to approve minutes of May 20, 2009 as submitted. **Vote 5-0.**

**09-18 – SPECIAL PERMIT – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE.**

Joe and Debbie Carty. Location: 475 Shore Road, Bourne. Map 30.4 Parcel 264 in an R-40 zoning district. Proposal: Applicant would like to build an addition (approximately 5 ft. x 13 ft.) over an existing small porch and stairs to accommodate a more useful kitchen.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene and John O'Brien

J. Priestley, Jr. moved and seconded by R. Gaynor to close public hearing for #09-18. **Vote 5-0.**

J. Priestley, Jr. moved and seconded by R. Gaynor to approve and grant special permit #09-18 in accordance with plans on file dated February 11, 2009. **Vote 5-0.**

**Other business**

High Rock Factory at 7:34 pm for extension on agenda.

**Adjournment**

John Priestley, Jr. moved and seconded by John O'Brien to adjourn. Meeting adjourned at 8:00 pm. **Unanimous vote.**

Respectfully submitted,  
Lisa Groezinger, sec.

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**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

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TOWN CLERK'S OFFICE  
BOURNE, MASS**

**AGENDA**

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<u>Wednesday June 17, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #09-17 – SPECIAL PERMIT – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE. CONTINUANCE**

Ryan M. Haden. Location: 18 Sachem Drive, Sagamore. Map 7.4, Parcel 85 in a R-40 zoning district. Proposal: Applicant seeks to build a two car garage addition to my existing home, seeking relief from the requirements of Table 2456, Maximum Floor Area, in the Town of Bourne's Zoning Bylaws.

**7:40 p.m. – #09-16 – BUILDING INSPECTOR APPEAL & VARIANCE  
UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 40A, SECTION 8&10  
CONTINUANCE**

Stephen Colonna. Location: 0 Cedar Point Drive. Map 47.1, Parcel 47 in a R-40 zoning district. Proposal: Specifically the applicant is requesting a variance from the frontage and minimum area requirements for the R-40 Zoning District, as more particularly described in the attached narrative. This narrative is on file with the Town Clerk and the Zoning Board of Appeals for review.

**Old Business**

**New Business**

**Members Present**

_____	_____	_____
_____	_____	_____
_____	_____	_____

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AMENDED AGENDA**

<u>DATE</u>	<u>TIME</u>	<u>LOCATION</u>
<u>Wednesday June 17, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:34 p.m. – 08-15 – Variance Decision extension – High Rock Factory Outlet Road I, LLC and Cape Cod Windmill, LLC, 0 and 1 Factory Outlet Road**

Applicant seeks 6-month extension of granted variance decision, dated July 3, 2008. This request has been filed prior to the expiration of the decision.

**7:35 p.m. – #09-17 – SPECIAL PERMIT – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE. CONTINUANCE**

Ryan M. Haden. Location: 18 Sachem Drive, Sagamore. Map 7.4, Parcel 85 in a R-40 zoning district. Proposal: Applicant seeks to build a two car garage addition to my existing home, seeking relief from the requirements of Table 2456, Maximum Floor Area, in the Town of Bourne's Zoning Bylaws.

**7:37 p.m. – #09-16 – BUILDING INSPECTOR APPEAL & VARIANCE  
UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 40A, SECTION 8&10 CONTINUANCE**

Stephen Colonna. Location: 0 Cedar Point Drive. Map 47.1, Parcel 47 in a R-40 zoning district. Proposal: Specifically the applicant is requesting a variance from the frontage and minimum area requirements for the R-40 Zoning District, as more particularly described in the attached narrative. This narrative is on file with the Town Clerk and the Zoning Board of Appeals for review.

**Old Business**

**New Business**

**Members Present**

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TOWN CLERK'S OFFICE  
BOURNE, MASS  
2009 MAY 33 AM 11 42

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**Zoning Board of Appeals Minutes – June 17, 2009**  
**Bourne Town Hall**  
**Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes**

J. Riordan moved and seconded by J. O'Brien to approve minutes of June 3, 2009 as submitted. Vote 5-0.

**#08-15 – Variance Decision extension – High Rock Factory Outlet Road I, LLC and Cape Cod Windmill, LLC, 0 and 1 Factory Outlet Road**

Applicant seeks 6-month extension of granted variance decision, dated July 3, 2008. This request has been filed prior to the expiration of the decision.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene and John O'Brien.

Atty. Liza Cox for applicants.

J. Priestley, Jr. moved and seconded by J. Riordan to close hearing #08-15. Vote 5-0.

J. Priestley, Jr. moved and seconded by J. Riordan to grant 6-month extension of granted variance decision #08-15 dated July 3, 2008 to January 3, 2010. Vote 5-0.

**#09-17 – Special Permit – Extension or alteration of a pre-existing NON-CONFORMING structure or use. Continuance**

Ryan M. Haden. Location: 18 Sachem Drive, Sagamore. Map 7.4, Parcel 85 in a R-40 zoning district. Proposal: Applicant seeks to build a two car garage addition to my existing home, seeking relief from the requirements of Table 2456, Maximum Floor Area, in the Town of Bourne's Zoning Bylaws.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene and John O'Brien.

J. Riordan moved and seconded by R. Gaynor to allow applicant withdraw without prejudice. Vote 5-0.

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TOWN CLERK'S OFFICE  
BOURNE, MA 02532

**#09-16 – Building Inspector Appeal & Variance - under Massachusetts general laws, chapter 40A, section 8&10 Continuance**

Stephen Colonna. Location: 0 Cedar Point Drive. Map 47.1, Parcel 47 in a R-40 zoning district. Proposal: Specifically the applicant is requesting a variance from the frontage and minimum area requirements for the R-40 Zoning District, as more particularly described in the attached narrative. This narrative is on file with the Town Clerk and the Zoning Board of Appeals for review.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene and John O'Brien.

Atty. Sara Tavera-Flores for applicant  
Matt Bercette

Chm. Berger noted at last hearing the Board asked parties meet and come to some kind of agreement. Frank Burkeman, Home Owner's Association, noted no agreement reached based on proposed plans.

Atty. Flores requested to address the Variance and why applicant meets criteria. Site plan and elevation plans brought forth – all zoning bylaws met, including lot coverage and height elevation. Building is 28' x 23'. The hardship, Atty. Flores explained, is that applicant is not permitted to do what everyone else has done in the neighborhood.

Case site on point in Town of Wareham – Sagronas vs. Board of Wareham. Court addressed variance criteria. 33 Mass App. Court 1992. Atty. Flores cited case for the record.

Atty. Flores raised issue with Atty. Cox representing parties who are not disclosed. There was no indication in meeting with Association of opposition. Atty. Flores feels being taken advantage of their hospitality.

Letter from Jackie Carmichael, abutter, has no objection to the proposed site plans.

Question raised regarding a contiguous lot if variance is granted. Atty. Flores discussed a grandfathering provision if commonly held properties. She states no further variance approval is required.

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Chm. Berger commented on lot being speculation and there is no proof. He provided copy of Cornell vs. Dracat – variance not effective until it is recorded after the Registry of Deeds to Atty. Flores.

Inspector of Buildings stated applicant would need to create a substanded lot. He further went on to say applicant needs: 1) apply for another variance; and 2) a waiver from the Planning Board to create a substanded lot.

Joe Bagley (69 Spruce Drive), President of Home Owner's Association presentation given. Petition signed in 2007 people didn't relate to a variance request. Association's position relative to the variance application is the concern about zoning (insufficient zoneage and land). They are also concerned of the view.

Frank Gasson, former President of Association, stated Colonna family blocked private road - paved without Association approval.

Atty. Keiffer claims applicant has insufficient requests for variance on lot size. Roof pitch issue raised. [Inspector of Buildings noted the addition of 5 feet to roof height is not issue]. Building size is acceded - have not defined all wetlands and suggested applicant may be subject to a further variance.

Atty. for applicant stated coastal banks will be done later and does not affect upland area discussed.

Atty. Keiffer commented on another peninsula sited and that the Board has to look at site before the Board.

Burkeman presentation demonstrates failure of three criteria for unique variance. No legal basis for variance, detrimental to community (inconsistent capacities and water front aesthetics). He concluded a building below tree line would be permitted. Chm. Berger commented on access into the property.

Coastal depicted on presentation noted inaccurate by Burkeman's presentation.

Chm. Berger asked parties if there was any compromise as height is the biggest issue.

Pat Colonna, direct abutter and only abutter, does not object to applicant's proposal. He added applicant being open to work on height of building with Association.

Walter Stalk, abutter, commented on issue as height. [It was noted abutter's house is not on pilings].

J. Priestley, Jr. stated he doesn't believe applicant has a sensitive, architectural approach for the proposed building. The consensus of the Board is for applicant get preliminary architectural plans for the Board to review.

Rhonda Burkeman submitted to the Board the Colonna plans dated 2007.

Anthony Colonna commented on being disappointed on what the Association wanted at the recent meeting. He was hoping Association would express concerns for what they can do.

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Applicant will submit tax information on property to the Board.

Carol McDonald, resident, commented on lowering roof below the trees. She also commented on land by her house was kept untouched so no large house would block the view.

If applicant was granted a variance, applicant would withdraw their application to appeal Inspector of Buildings Decision.

Atty. Flores submitted for applicant, written waiver of time periods requiring the Zoning Board of Appeals to vote on the above-referenced application in order to accommodate a continuance to the August 19, 2009 meeting.

J. Priestley, Jr. moved and seconded by J. Riordan to continue hearing for #09-16 to August 19, 2009 at 7:35 pm. Vote 5-0.

**Other business**

Chase - Pappas property hearing coming before the Board on July 15, 2009.

**Adjournment**

John Priestley, Jr. moved and seconded by Timothy Sawyer to adjourn. Meeting adjourned at 10:30 pm. Unanimous vote.

Respectfully submitted,  
Lisa Groezinger, sec.

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **AMENDED PUBLIC HEARING NOTICE**

**APPEAL:** **#09-19– Special Permit – Accessory Dwelling**

**APPLICANT:** Nathan Haskell

**LOCATION:** 16 Herring Pond Road, Bourne

Map 11 Parcel 7 VB zoning district

**PROPOSAL:** Applicant seeks to turn his garage into an in-law apartment for his grandmother.

**DATE & TIME:** Wednesday, July 1, 2009 at 7:35 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

June 17, 2009

June 24, 2009

BOURNE, MASS.  
TOWN CLERK'S OFFICE

2009 MAY 26 AM 9 47

# TOWN OF BOURNE

## *Board of Appeals*

Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532  
Phone: (508) 759-0615 Fax: (508) 759-0611

TOWN CLERK'S OFFICE  
BOURNE, MASS

2009 MAY 31 AM 10 58

## PUBLIC HEARING NOTICE

**APPEAL:** #05-43- Comprehensive Permit – SUBSTANTIAL CHANGE / AMENDMENT

**APPLICANT:** Housing Assistance Corporation

**LOCATION:** Canal Bluffs, 6 Otis Park Drive

Map 35 Parcel 51 B-4 zoning district

**PROPOSAL:** Applicant requests to change from home ownership to rentals for Phase III building.

**DATE & TIME:** Wednesday, July 1, 2009 at 7:40 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

June 17, 2009

June 24, 2009

BOURNE, MASS  
TOWN CLERK'S OFFICE

2009 JUN 3 AM 11 42

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# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#05-43– Comprehensive Permit** – SUBSTANTIAL CHANGE / AMENDMENT

**APPLICANT:**     Housing Assistance Corporation

**LOCATION:**       Canal Bluffs, 6 Otis Park Drive

Map 35   Parcel 51   B-4 zoning district

**PROPOSAL:**       Applicant requests to change from home ownership to rentals for Phase III building.

**DATE & TIME:**    Wednesday, July 1, 2009 at 7:40 p.m.

**PLACE:**           Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

June 17, 2009

June 24, 2009

BOURNE, MASS  
TOWN CLERK'S OFFICE

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**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

2009 JUN 24 PM 1 10  
TOWN CLERK'S OFFICE  
BOURNE, MASS

**DATE**

**TIME**

**LOCATION**

Wednesday July 1, 2009

7:30 P.M.

Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – 09-19 SPECIAL PERMIT – ACCESSORY DWELLING**

Nathan Haskell. Location: 16 Herring Pond Road, Bournedale. Map 11 Parcel 7 in an VB zoning district. Proposal: Applicant seeks to turn his garage into an in-law apartment for his grandmother.

**7:40 p.m. – 05-43 COMPREHENSIVE PERMIT – SUBSTANTIAL CHANGE/AMENDMENT**

Housing Assistant Corporation. Location: Canal Bluffs, Otis Park Drive, Bourne  
Proposal: Applicant requests to change from home ownership to rental for Phase III building.

**Old Business**

**New Business**

**Members Present**

_____	_____	_____
_____	_____	_____
_____	_____	_____



**Zoning Board of Appeals Minutes – July 1, 2009  
Bourne Town Hall  
Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes**

J. Riordan **moved** and **seconded** by J. O'Brien to approve minutes of June 17, 2009 as submitted. **Vote 5-0.**

**09-19 SPECIAL PERMIT – ACCESSORY DWELLING**

Nathan Haskell. Location: 16 Herring Pond Road, Bournedale. Map 11 Parcel 7 in an VB zoning district. Proposal: Applicant seeks to turn his garage into an in-law apartment for his grandmother.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene and John O'Brien.

J. Priestley, Jr. **moved** and **seconded** by J. Riordan to close hearing #09-19. **Vote 5-0.**

J. Priestley, Jr. **moved** and **seconded** by J. Riordan to grant special permit #09-19 for 16 Herring Pond Road in Bournedale per plans submitted dated \_\_\_\_\_. **Vote 5-0.**

**05-43 COMPREHENSIVE PERMIT – SUBSTANTIAL CHANGE/AMENDMENT**

Housing Assistant Corporation. Location: Canal Bluffs, Otis Park Drive, Bourne  
Proposal: Applicant requests to change from home ownership to rental for Phase III building.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene and John O'Brien.

J. Priestley, Jr. **moved** and **seconded** by J. Riordan to grant 6-month extension of granted variance decision #08-15 dated July 3, 2008 to January 3, 2010. **Vote 5-0.**

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BOURNE, MASS

**Other business**

**Adjournment**

John Priestley, Jr. **moved and seconded** by Timothy Sawyer to adjourn. Meeting adjourned at 10:30 pm. **Unanimous vote.**

Respectfully submitted,  
Lisa Groezinger, sec.

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **AMENDED PUBLIC HEARING NOTICE**

**APPEAL:** **#09-20– Special Permit – Accessory Dwelling**

**APPLICANT:** Barbara E. Perry

**LOCATION:** 8 Peaked Cliff Road, Sagamore

Map 2.3 Parcel 34 R40 zoning district

**PROPOSAL:** Applicant seeks to name current resident in accessory dwelling, granted to her back in 2004.

**DATE & TIME:** Wednesday, July 15, 2009 at 7:40 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

July 1, 2009

July 8, 2009

BOURNE TOWN  
TOWN CLERK'S OFFICE

2009 JUN 22 PM 2 45

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

<u>DATE</u>	<u>TIME</u>	<u>LOCATION</u>
<u>Wednesday July 15, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #08-18 – COMPREHENSIVE PERMIT, 40B**

Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Foretop Road, Buzzards Bay, MA, 02532 to construct 32 residential units, 8 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called "Chase Estates" on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36.

**7:40 p.m. – #09-20 – SPECIAL PERMIT – ACCESSORY DWELLING**

Barbara E. Perry. Location: 8 Peaked Cliff Road, Sagamore. Map 2.3, Parcels 34 in an R40 zoning district. Proposal: Applicant seeks to name current resident in accessory dwelling, granted to her back in 2004.

**Old Business**

**New Business**

**Members Present**

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\_\_\_\_\_  
\_\_\_\_\_

TOWN CLERK'S OFFICE  
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**TOWN OF BOURNE**  
**BOARD OF APPEALS**  
**24 Perry Avenue**  
**Buzzards Bay, MA 02532**

**AMENDED AGENDA**

<u>DATE</u>	<u>TIME</u>	<u>LOCATION</u>
<u>Wednesday July 15, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:32 p.m. – 7:40 p.m. – 05-43 COMPREHENSIVE PERMIT – SUBSTANTIAL  
CHANGE/AMENDMENT**

Housing Assistant Corporation. Location: Canal Bluffs, Otis Park Drive, Bourne

**7:35 p.m. – #08-18 – COMPREHENSIVE PERMIT, 40B**

Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Foretop Road, Buzzards Bay, MA, 02532 to construct 32 residential units, 8 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called “Chase Estates” on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36.

**7:40 p.m. – #09-20 – SPECIAL PERMIT – ACCESSORY DWELLING**

Barbara E. Perry. Location: 8 Peaked Cliff Road, Sagamore. Map 2.3, Parcels 34 in an R40 zoning district. Proposal: Applicant seeks to name current resident in accessory dwelling, granted to her back in 2004.

**Old Business**

**New Business**

**Members Present**

TOWN CLERK'S OFFICE  
BOURNE, MASSACHUSETTS  
2009 JUL 10 PM 8 48

**Zoning Board of Appeals Minutes – July 15, 2009  
Bourne Town Hall  
Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Robert Gaynor, Wade Keene and John O'Brien. Judith Riordan was excused.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes**

J. O'Brien moved and seconded by R. Gaynor to approve minutes of June 3, 2009 as submitted. **Vote 5-0.**

J. O'Brien moved and seconded by R. Gaynor to approve minutes of July 1, 2009 as submitted. **Vote 5-0.**

**#05-04 Comprehensive Permit – Substantial Change/Amendment**

Housing Assistant Corporation. Location: Canal Bluffs, Otis Park Drive

Sitting for the Board: Lee Berger, John Priestley, Jr., Tim Sawyer, Robert Gaynor and Wade Keene. Also present: John O'Brien

Atty. Dan Rosen for applicant reviewed changes (clean-up edits) in the draft decision and responses to questions raised at the last hearing.

2<sup>nd</sup> page, Section V – language changed to "Board neither approves/nor disapproves the alternate proforma." Whether the final profit is under the 10% agreed to in the original permit will depend on the final audit to be performed by DHCD when the project is complete.

The applicant obtained an amended site approval letter from DHCD, dated June 29, 2009, stating:

- Construction of residences shall comply with all state and local codes not specifically exempted by the comp. Permit
- Project including housing and infrastructure, shall be constructed in accordance with approved plans.
- Amended final approval determination letter is not transferable to any other project sponsor or housing program without the express written consent of DHCD submitted

Page 3, Section 11 – first part recognizes concerns prior to formation of condominium who's responsible for what (septic, common areas, etc.)

Page 3, Section 12 – not changed, but fire department submitted a letter stating that the width and radius of the parking area was sufficient. In addition, at Bob Gaynor's suggestion, the Board agreed to add the word "general" before "access" to be sure that the access road through the Grand Union parking lot was a general access and not just an emergency access.

J. Priestley, Jr. **moved and seconded** by R. Gaynor to approve the Comprehensive permit – substantial change/Fifth Amendment, in accordance with the final draft decision before the Board, with the addition of the term "general" before the word "access" in section 12, to the Canal Bluffs 40B project as amended. **Vote 5-0.**

J. Priestley, Jr. **moved and seconded** by J. O'Brien to take Appeal #09-20 out of order. **Unanimous vote.**

**#09-20 - Special Permit - accessory dwelling**

Barbara E. Perry. Location: 8 Peaked Cliff Road, Sagamore. Map 2.3, Parcels 34 in an R40 zoning district. Proposal: Applicant seeks to name current resident in accessory dwelling. A special Permit had been granted to her back in 2004, but the former tenant is now deceased.

Sitting for the Board: Lee Berger, John Priestley, Jr., Tim Sawyer, Robert Gaynor and John O'Brien. Also present: Wade Keene.

The Board of Health submitted a letter stating that the septic system was adequate to maintain both the main dwelling and the accessory dwelling.

There were numerous complaints in the neighborhood as the person on Special Permit no longer lived at the dwelling, and on street parking was an issue. (The bylaw states off street paved parking must be provided). Applicant submitting photographs showing that she had created five (5) spaces for parking by removing lawn and adding gravel.

J. Priestley, Jr. **moved and seconded** by T. Sawyer to approve Appeal #09-20 to change the name of the tenant permitted to live in the accessory dwelling to Tina Mingace, with the condition of parking on the premises. **Vote 5-0.**

**#08-18 - Comprehensive Permit, 40B**

Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Foretop Road, Buzzards Bay, MA, 02532 to construct 32 residential units, 8 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called "Chase Estates" on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36.

Atty. Jon Witten for Board of Appeals  
Atty. Paul Attea for the applicant

Sitting for the Board: Lee Berger, John Priestley, Jr., Tim Sawyer, Robert Gaynor and Wade Keene. Also present: John O'Brien

Jon Witten gave a summary of the prior proceedings, including the litigation before the Housing Appeals Committee, which finally ruled that Bourne had safe harbor from this 40B.

On April 28, 2008, the Board filed the Canalside decision with the Town Clerk, which met the requirements of Bourne's affordable housing action plan for one year. On June 3, 2008, the applicant filed his 40B application with the Town of Bourne. Since Bourne has safe harbor from all 40B applications filed within one year after April 28, 2008, regardless of what the Board does, its decision will be consistent with local needs. Therefore, the applicant does not have an appeal to the Housing Appeals Committee from a denial or an approval with conditions concerning this application.

6/3/08 to open public hearing – DHCD certified on July 8, 2008. DHCD certification came after plan filed. Argued successfully is relevant.

Board does need to be concerned with the 180 day time limit for when a decision is due. However, the time limit was suspended during the period of the appeal litigation before the Housing Appeals Committee, and the applicant has signed a waiver of the time limit for the next two months until the next hearing on this matter.

Atty. Witten will let us know exactly how much time we have left to make a decision, but it is at least 110 days after the September, 2009 hearing date.

Atty. Attea today is seeking Boards feedback on a proposal, and assures the Board that we will have complete information before making a decision. He stated that Mr. Pappas intends to go forward with this land and pursue rights to make good use of his land. If at the end of process the project is denied, it would be a denial without prejudice, and the applicant would come back. He hopes to propose to the ZBA a plan that makes the most sense.

Most attention was on access and traffic flow from the density of the project (safety issue). Discussion tonight involved a concept that contains a total of 32 units, to be built in two phases. Recognizing the challenges of access onto Sandwich Road, recognizing the benefit of the nearby Cubellis project, the concept shows the vast majority of the units having access to Sandwich Road at a traffic light through the Cubellis bypass road. It is not yet clear who would pay for the light, or where it would be located (as stated on the Cubellis approved 40B plan, or in front of Pappas' property).

However, because of the unknown time factor for the bypass road to be built, the applicant is seeing approval for the first phase, including 6 rental units, to access and



leave the development directly from and onto Sandwich Road. The 6 rental units would include 4 to be incorporated into the existing garage structure, and 2 to be built on the existing foundation that sits above the garage structure. The exterior of the existing garage would be extensively redesigned. Of the 6 rental units, the 4 in the garage would be affordable units – thus, 2/3 of the units would be affordable and access, until the bypass road was built, would be directly to and from Sandwich Road. Once the bypass road was built, the applicant wants permission to turn all of the units into home ownership condominium units, which could involve evicting the tenants. Even after the bypass road is built, the applicant would like the 4 units in the garage to exit and enter directly from Sandwich Road.

Pappas says he has the right to access via his Port O'Call lot, but under concept he is proposing he would not access the property through the Port O'Call.

For safety reasons, approval of a high density project must be contingent upon access through a lighted intersection.

Continuing access onto Sandwich Road for the 4 units after the bypass road is built did not sit well with Chairman Berger. He stated there is no reason that those 4 units could not connect to the bypass road at a lower and different level than the other units would connect. Also, Chairman Berger did not like the idea of evicting tenants, and preferred to make the first phase permanently rental. He also was not pleased with 6 units, preferring only 4 units to exit onto Sandwich Road on a temporary basis, right turn only.

Jon Witten stated the Board has no authority to approve rental units under the site eligibility letter, so the proposal was a non starter.

Atty. Attea stated this was a preliminary concept, looking for Board feedback, and if it was acceptable, he would get an amended site eligibility letter from DHCD.

Concerning Chm. Berger's concerns re evicting tenants, Atty. Attea stated that the terms of any lease would be upfront, so that the tenants would know what they were getting into. This did not satisfy Chm. Berger's concerns.

Total square footage is 177,000 – approximately 4 acres.

The Board asked how the people in the two unit building would get down the hill, and were told that there would be a temporary driveway that would have to be removed once the bypass road was built and the other 24 units were built. T. Sawyer doesn't see how that would work for the two-family unit. He stated it is a lot of work for 2 units.

Chm. Berger stated the applicant was there to get board members' feelings about the proposal, so how did they feel?

Chm. Berger was concerned that the proposal calls for 6 households going out of Sandwich Road with a right-turn only restriction. It follows that if they want to go to

Buzzards Bay or Providence or Falmouth, they will make either ignore the right turn only law or make illegal u-turns once on Sandwich Road, or go through Gallo Ice Arena or Schooner Pass. This is not a safe situation.

Atty. Attea stated that the applicant would have a landscaping plan that would enhance the look of the property. The landlord will maintain responsibility for maintenance of property.

Chm. Berger asked about why it was necessary to keep the garage structure. Atty. Attea stated it is possible that it could be removed, but Mr. Pappas wants to maintain the option keep it because he may have to pay for the traffic light, which could cost about \$350,000.

The Board had in the past asked for architectural drawings, including elevations, and requested them again.

The applicant said that there would be significant changes in the height and need for retaining walls, since the applicant expected to obtain easements for grading from abutters. Board members were skeptical as to whether easements could be obtained, considering the opposition from abutters on Schooner Pass.

The Inspector of Buildings raised the issue that if two 40B applicants (Cubellis and Pappas) are using cost of the same traffic light as part of the proforma to increase the numbers of units, that is not right. Does Mr. Cubellis have the light in his 40B proforma? Neither Chm. Berger nor Atty. Witten recalled. This should be checked. Although the final audit by DHCD when each project was completed would be determinative of the profit margin, it was important to know whether Pappas was paying for the light in order to determine how many units would be permitted by the Board.

Atty. Witten stated the issue of proforma is irrelevant, and the Board need not worry about creating economic conditions since it has safe harbor.

Concerning the applicant's request that the Board consider whether six (6) units should be able to enter and exit onto Sandwich Road:

J. Priestley, Jr. suggested that due to very unsafe traffic conditions, applicant should consider applying for a six unit 40B as a separate application?

Chm. Berger discussed in terms of mixed projects (rental and sale), would entire project be counted towards the Town's 10% requirement under ch. 40B? Atty. Witten stated no – 100% of rental units would count, but only the affordable sale units (25%) would count.

Atty. Attea stated the applicant is not apposed to having the first 6 units be home ownership units, rather than rental units. In garage, 4 units will have 2 bedrooms and all other units will have 2 bedrooms.

T. Sawyer commented on safety issue and need for a traffic light.

Atty. Attea said Mr. Pappas could conceivably build 4 units on property without light. Under current zoning, Planning Board approved 2 units already – not the back lots. (Applicant would need to apply to the Planning Board for a back lot subdivision.)

W. Keene commented on concept of new proposal of rental units go before start 40B project. Ideally soon as possible, but have no control of development of neighboring property (Cubellis to install light on his own). Timeframe cannot be pegged.

Installation of light is approximately \$350,000. Pappas willing to do what is best and reasonable for everyone.

Chm. Berger stated liking to see four (4) of the units being permanent, as opposed to evicting renters out of their units.

Atty. Witten stated that Comp. Permits are for 3 years, but can be extended every 3 years, unless the Town meets its safe harbor requirements, so it is hard for a comprehensive permit to be extinguished.

J. Priestley, Jr. stated he would like to see the architecturals, elevations, and the complete design before committing to anything.

J. O'Brien raised issue of who's decision is it to change garage permit into 4 housing units? ZBA as a 40B or go to the Planning Board. Roger said it is up to the Board as a 40B project, that if the applicant wanted 4 unit via the planning board he would have to do 2 on the front 2 acres and 2 on the back 2 acres.

Sean Scully – abutter (Port O'Call), raised issue of easements with Port O'Call and Schooner Pass – he doesn't know anything about it. He thinks Pappas wants to have the option to connect into Port O'Call. Nothing has been formed, no easement in front of the Planning Board. Ken Sundman went before the Planning Board needing a special permit to change the master deed. This was denied. Application has expired. Bourne does not have a definition or limit on the size of a garage, so when he got a permit for a 2 family house and built a 4 car garage, it was legal. The curb cut onto Sandwich Road granted by Mass Highway only allows a right turn exit.

Issues always are safety. Chm. Berger said the concept of access road was his idea to make the whole project safer and to allow Port O'Call and Schooner Pass residents to access the light.

This proposal does not include any kind of access at this particular stage. ZBA cannot vote at this time concerning an access road. If we ever get to a final decision, one of the issues will be access/egress.

Bejay Bliss – abutter, heard attorney Attea say he was leaving the option open to pursue access through Port O'Call. Hopes the ZBA votes the proposal down.

Joe Agrillo Sr. – what will be done to protect abutters of wall.

Dave Green – 17 Mizzen Lane, can ZBA overturn Planning Boards decision to allow an access road into Port O'Call?

Roger, no, only ZBA looking at 4 acres (40B) dumping onto Sandwich Road.

Lee Berger, if people were to go up the hill and out through Port O'Call onto Sandwich Road is just as dangerous. The only thing that would make sense in regards to safety is to allow Port O'Call residents to enter and exit though Pappas property at a traffic light.

John Priestley Jr., your issues are with the Planning Board, they can change this proposal through the master deed.

Roger Laporte, the Planning Board can change a special permit, make an amendment.

Lee Berger, trying to keep focus on the plan not the access road. This issue should not be discussed and will move on from the access road / Port O'Call residents comments. If it is ever proposed we will revisit this conversation at that time.

Pappas commented he had no intention of going through Port O'Call. Willing to let Port O'Call decide that issue sometime in the future. He commented on conforming with the Board's wishes with the retaining walls with the engineer.

Engineer reduced retaining walls to 7 or 9 feet high, believes Schooner Pass will grant an easement for grading.

Atty. Attea signed waiver of all time constraints to suspend the time for making a decision during the period of the continuance until the September 15, 2009 meeting.

Atty. Witten raised issue of payments for Board's Atty. Witten from applicant since we were not getting into a more comprehensive proposal. Atty. Attea stated that if we wanted to make a specific proposal to send it to him and he will take it under advisement. Chm. Berger suggested they start with \$5,000, and replenish that retainer as needed, for all experts and consultants.

J. Priestley, Jr. commented on phasing and suggested 2 story residences.

Applicant said his proposal would assume easements. Chm. Berger suggested that the applicant should not assume anything, get commitments on easements, so he does not have to come back to the Board for changes that we may not want to make.

J. Priestley, Jr. commented that any retaining wall higher than 5 feet is offensive. He would like to see architectural elevations, unit plans at the next hearing.

J. O'Brien Moved and seconded by R. Gaynor to continue Comprehensive Permit #08-18 to September 16, 2009 at 7:35 pm.

**Other business**

Pretrial memorandum re: Wings Neck. Fitch's argument is disagreeing with Inspector of Buildings interpretation. Gross floor area bylaw changed. Single car garage, if take out 312 feet, below the gross floor area. Chm. Berger drafted a statement sent to Bob Troy, said ZBA in compliance. Chm. Berger asked Building Inspector to contact Atty. Troy.

**Adjournment**

John Priestley, Jr. moved and seconded by J. O'Brien to adjourn. Meeting adjourned at 9:55 pm. **Unanimous vote.**

Respectfully submitted,  
Lisa Groezinger, sec.

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

**DATE**

Wednesday August 5, 2009

**TIME**

7:30 P.M.

**LOCATION**

Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**NO MEETING**

**Old Business**

**New Business**

**Members Present:**

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2009 JUL 28 PM 2 14  
TOWN CLERK'S OFFICE

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<u>Wednesday August 19, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:32 p.m. – #09-16 – BUILDING INSPECTOR APPEAL & VARIANCE  
UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 40A, SECTION 8&10 CONTINUANCE**

Stephen Colonna. Location: 0 Cedar Point Drive. Map 47.1, Parcel 47 in a R-40 zoning district. Proposal: Specifically the applicant is requesting a variance from the frontage and minimum area requirements for the R-40 Zoning District, as more particularly described in the attached narrative. This narrative is on file with the Town Clerk and the Zoning Board of Appeals for review.

**Old Business**

**New Business**

Discussion of Accessory Dwelling tenant update / questionnaire

**Members Present:**

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TOWN CLERK'S OFFICE  
BOURNE, MASSACHUSETTS

2009 JUL 28 PM 2 14

**Zoning Board of Appeals Minutes- August 19, 2009**  
**Bourne Town Hall**  
**Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes**

R. Gaynor **moved** and **seconded** by T. Sawyer to approve minutes of July 15, 2009.

**Vote 4-0-1** with abstention from J. Riordan.

**#09-16 - Building Inspector Appeal & Variance**

**under Massachusetts General Laws, Chapter 40A, Section 8&10**

Stephen Colonna. Location: 0 Cedar Point Drive. Map 47.1, Parcel 47 in a R-40 zoning district. Proposal: Specifically the applicant is requesting a variance from the frontage and minimum area requirements for the R-40 Zoning District, as more particularly described in the attached narrative. This narrative is on file with the Town Clerk and the Zoning Board of Appeals for review.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene and John O'Brien.

Atty. Doris Kofield for applicant.

Atty. Turano-Flores letter dated August 17, 2009 requesting a continuance to November, 2009. She confirmed agreement to waive the statutory timelines by which a decision must be rendered for this appeal for an additional 120 days. She is also requesting a copy of anything filed related to this application, upon hearing of materials filed by those opposing the application.

Frank Gasson, Treasure of Cedar Point Association, inquired of protocol for the continuance, as he expressed concern over the delays.

Copy of materials from President of Cedar Point Association was given to Atty. Kofield.

President of Cedar Point Association stated he would not be available in November, 2009.

J. Riordan **moved** and **seconded** by R. Gaynor to continue hearing #09-16 to December 2, 2009 at 7:35 pm. **Vote 5-0.**

**Old Business**

Chairman Berger informed the Board that Attorneys for Cumberland Farms will be meeting with Selectmen, Atty. Bob Troy, and the Planning Board in the near future.

**New Business**

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On September 2, 2009 the agenda includes Ocean Pines asking the ZBA to overrule a decision of the Building Inspector, who contends he is just following the lead of the Planning Board. Chairman Berger has spoken with Atty. Troy about whether this appeal is really asking the ZBA to overrule the Planning Board. Atty Troy told Chairman Berger that he will be sending a letter to the ZBA stating that, in his opinion, the ZBA does not have jurisdiction, and that the applicant should file suit against the Planning Board if it disagrees with that decision.

Inspector of Buildings stated he interprets the zoning bylaw, and the ZBA has authority to overrule him only vote if he made a mistake in his decision.

Chairman Berger stated that there should be a census taken as to the appropriate use of accessory dwellings permitted under the bylaws to insure that the proper people are living in them. This is a check and balance enforcement issue. The Inspector of Buildings will, with Kim's assistance, organize and work on this issue.

#### **Adjournment**

J. Priestley, Jr. **moved** and **seconded** by J. O'Brien to adjourn. Meeting adjourned at 8:00 pm. **Unanimous vote.**

Respectfully submitted,  
Lisa Groezinger, sec.

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615 Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:** #09-21– Appeal of the Decision of the Building Inspector

**APPLICANT:** Ocean Pines, LLC (Brian Hebb, MGR)

**LOCATION:** Lot 66, 4A-4B-4C Wildwood Lane, Sagamore

Map 6 Parcel 128 R40 zoning district

**PROPOSAL:** Special Permit was granted with conditions. Planning Board has made a finding of substantial completion. All conditions have been fulfilled, including transfer of open space lots to Home Owners Association. All infrastructures, excepting final paving coat completed and a bond has been placed with the Planning Board. Planning Board Restrictive Covenant released and recorded, copy on file with Town Clerk.

**DATE & TIME:** September 2, 2009 at 7:35 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

August 19, 2009  
August 26, 2009

2009 JUL 23 AM 8 56  
TOWN CLERK'S OFFICE  
BOURNE, MA 02532

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#09-22- Special Permit** – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:**     Mary K. Noll

**LOCATION:**       15 B Wild Rose Drive, Buzzards Bay

Map 14   Parcel 49.35   R-80 zoning district

**PROPOSAL:**     Applicant seeks to enlarge existing deck by 6 feet, and wishes to relocate  
the stairs to the center of the deck.

**DATE & TIME:**   Wednesday, September 2, 2009 at 7:40 p.m.

**PLACE:**         Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

August 19, 2009

August 26, 2009

2009 JUL 27 PM 2 32  
TOWN CLERKS OFFICE  
BOURNE, MASS.

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#09-23– Special Permit** – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:**     Wayne R. Larkin

**LOCATION:**       21 A Thompson Street, Buzzards Bay

Map 14   Parcel 49.18   R-80 zoning district

**PROPOSAL:**       Applicant seeks to change their existing screen porch into a three-season  
room.

**DATE & TIME:**    Wednesday, September 2, 2009 at 7:45 p.m.

**PLACE:**           Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

August 19, 2009

August 26, 2009

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TOWN CLERK'S OFFICE  
RECEIVED

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:** **#09-24-VARIANCE**  
**UNDER MASS GENERAL LAWS, CHAPTER 40A, SECTION 8& 10**

**APPLICANT:** Steve Good, c/o J. Ford O'Connor

**LOCATION:** 1340 County Road, Cataumet  
Map 54 Parcel 53 B-2 zoning district

**PROPOSAL:** Applicant sees a variance to construct a building, portion of which is 12.5 feet from a residential district. (footnote: "h" of section 2500 which requires a 25 foot setback)

**DATE & TIME:** Wednesday, September 2, 2009 at 7:50 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Cape Cod Times Publishing Dates:

August 21, 2009

August 29, 2009

2009 AUG 18 PM 12 29  
TOWN CLERK'S OFFICE  
BOURNE, MASS

**TOWN OF BOURNE**  
**BOARD OF APPEALS**  
**24 Perry Avenue**  
**Buzzards Bay, MA 02532**

**AGENDA**

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<b><u>Wednesday, September 2, 2009</u></b>	<b><u>7:30 P.M.</u></b>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – 09-21 APPEAL OF THE DECISION OF THE BUILDING INSPECTOR**  
**Ocean Pines, LLC (Brian Hebb, MGR).** Location: Lot 66, 4A-4B-4C Wildwood Lane, Sagamore. Map 6, Parcel 128 in a R40 zoning district. Proposal: Special Permit was granted with conditions. Planning Board has made a finding of substantial completion. All conditions have been fulfilled, including transfer of open space lots to Home Owners Association. All infrastructures, excepting final paving coat completed and a bond has been placed with the Planning Board. Planning Board Restrictive Covenant released and recorded, copy on file with Town Clerk.

**7:40 p.m. – #09-22 – SPECIAL PERMIT, EXTENTION OR ALTERATION OF A PRE-EXISTING NON CONFORMING STUCTURE**  
Mary K. Noll. Location: 15 B Wild Rose Drive. Map 14, Parcels 49.35 in a R80 zoning district. Proposal: Applicant seeks to enlarge existing deck by 6 feet, and wishes to relocate the stairs to the center of the deck.

**7:45 p.m. – #09-23 – SPECIAL PERMIT, EXTENTION OR ALTERATION OF A PRE-EXISTING NON CONFORMING STUCTURE**  
Wayne R. Larkin. Location: 21 A Thompson. Map 14, Parcels 49.18 in a R80 zoning district. Proposal: Applicant seeks to change their existing screen porch into a three-season room.

**7:50 p.m. #09-24–VARIANCE UNDER MASS GENERAL LAWS, CHAPTER 40A, SECTION 8& 10**  
Steve Good, c/o J. Ford O'Connor. Location: 1340 County Road, Cataumet. Map 54, Parcels 53 in a B-2 zoning district. Proposal: Applicant seeks a variance to construct a building, portion of which is 12.5 feet from a residential district. (footnote: "h" of section 2500 which requires a 25 foot setback)

**Zoning Board of Appeals Minutes – September 2, 2009**  
**Bourne Town Hall**  
**Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien (excused)

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes**

J. Riordan **seconded** by J. Priestly, Jr. to approve minutes of August 19, 2009.

**Vote 5-0.**

**19-21 Appeal of the Decision of the Building Inspector**

**Ocean Pines, LLC (Brian Hebb, MGR).** Location: Lot 66, 4A-4B-4C Wildwood Lane, Sagamore. Map 6, Parcel 128 in a R40 zoning district. Proposal: Special Permit was granted with conditions. Planning Board has made a finding of substantial completion. All conditions have been fulfilled, including transfer of open space lots to Home Owners Association. All infrastructures, excepting final paving coat completed and a bond has been placed with the Planning Board. Planning Board Restrictive Covenant released and recorded, copy on file with Town Clerk.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene

Atty. Frank Balis representing Applicant and Home Owners Association.

Atty. Balis addressed the Fire Department's concern that a sprinkler system is needed, saying that the issue is resolved.

Attorney Troy's memo dated September 1, 2009 was entered into the file, in which he stated his opinion that the Board may not overturn the decision of the Building's Inspector since the Town of Bourne Zoning Bylaws required the decision made by the Building Inspector. Attorney Troy's memo states that the remedies available to Applicant include petitioning the Planning Board to issue a new Special Permit, or take other remedial action that could reinstate the revoked Special Permit. Applicant also has the remedy of appealing the decision of the Planning Board if they deny relief.

Attorney Balis says the only way the Special Permit could not be in effect is if the Special Permit has been revoked or has lapsed? If it has not been revoked or lapsed, the Special Permit is in full force and affect. If it is still in effect, the Building Inspector has no basis on which to deny the building permit. Attorney Balis claims that the Planning board's refusal to sign off on the routing slip is an administrative act that does not permit the Building Inspector to deny the building permit.

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If the Planning Board revoked the permit, they would have had to hold a public hearing and give written notice. If they did revoke the permit, the decision has to be in writing, stating the reasons, and filed with the Town Clerk. Atty. Balis says this never happened, and thus he cannot appeal to court since the Planning Board never filed a decision from which he can appeal. He has appealed the decision of the Building Inspector in order to exhaust his administrative remedies before going to court.

Jack Howarth from the Planning Board stated that on September 13, 2007, the Planning Board voted to adopt the opinion of Town Counsel that the Special Permit had lapsed because of lack of compliance with the terms of the Special Permit that had been granted over 20 years ago. All parties were notified and any appeals should go to Appeals Court.

Chm. Berger asked for a copy of either the Planning Board agenda or minutes of the meeting in question. No one had the documents available, and no such copies had been provided to the Board at tonight's meeting.

Attorney Balis stated that no motion was ever made to revoke the Special Permit.

Atty. Balis stated he had looked at the file and could not find any decision filed with the Town Clerk to either revoke or affirm the lapsing of the Special Permit. He states a copy of the minutes, even if filed with the Town Clerk, is not a decision from which he can appeal under the Massachusetts statutes.

R. Gaynor stated that if the Special Permit had lapsed due to inaction by the applicant, there is no need for the Planning Board to file a decision.

Chm. Berger stated the applicant has to prove the Building Inspector did something wrong by refusing to issue the building permit. It appears that the applicant's beef is with the Planning Board, not the Building Inspector, who was required to follow the opinions of Town Counsel and the Planning Board, both of which said that the Special Permit had lapsed.

Attorney Balis stated again that in order for a Special Permit to be denied, it either had to lapse or be revoked.

Building Inspector stated the routing slip is not legally binding, but advisory. Routing slip is to inform every Board so they can put opinions on it. Applicant's only recourse is to go to Court. Since the Planning Board agreed with Attorney Troy's opinion that the Special Permit had lapsed, the Building Inspector cannot issue permit.

Attorney Balis stated that in 2006, the applicant posted a \$38,000 bond, and a restricted covenant was released. When applicant filed for a building permit, he was told the Special Permit has lapsed.



Applicant addressed Attorney Troy's letter stated the Special Permit lapsed. He added that six months earlier Attorney Troy wrote another letter and stated there was a Special Permit.

Chm. Berger stated not all materials have been given to the Board and the applicant's file is incomplete.

Atty. Balis then requested a continuance to enable him to provide the Board with all of the documentation. Shortly thereafter he withdrew that request, and asked the Board to rule on the papers before them.

Chm. Berger suggested the applicant might file a Declaratory Relief action asking the Superior Court to rule on whether the Special Permit had lapsed, been revoked, or was still in effect. It was also suggested to go back before the Planning Board.

Scott Hebb (one of the principles of the applicant) inquired about a constructive grant by the Planning Board because the Planning Board had failed to act in a timely manner. Chm. Berger suggested applicant speak with his counsel for a legal opinion about the rules under which the Planning Board must act.

Atty. Balis stated that prior to the applicant owning the land, a man named Walsh came and stripped the land in the buffer zone and a whole remedial plan was addressed by the applicant.

Craig Frost, an abutter on Ocean Pines Drive, commented that the previous owners had failed to perform their obligations within 23 years, and that is the reason the Special Permit had lapsed.

Further comments were solicited by the Chairman, but none were forthcoming.

J. Priestly, Jr. **moved** and **seconded** by J. Riordan to close the public hearing. **Vote 5-0.**

J. Priestley, Jr. **moved** and **seconded** by J. Riordan to deny the applicant's appeal of the decision of the Building Inspector, Appeal #09-21, and to affirm the decision of the Building Inspector to not issue a building permit for Lot 66, 4A-4B-4C Wildwood Lane, Sagamore. Discussion: R. Gaynor inquired about whether the reasons for the decision, including lack of jurisdiction to override a decision of the Planning Board, should be stated in the motion. Chm. Berger stated that the reasons would be addressed in the decision. **Vote 5-0 in favor of the motion.**

**#09-22 – Special Permit, extension or alteration of pre-existing non-conforming structure.** Mary K. Noll. Location 15 B Wild Rose Drive. Map 14, Parcels 49.35 in a R80 zoning district. Proposal: Applicant seeks to enlarge existing deck by 6 feet and wishes to relocate the stairs to the center of the deck.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene

Fred Nural for applicant.

Fire Department letter dated September 2, 2009 commented that there was a safety issue: the location of the stairs was fine, but the size of deck made it so close to the abutting house that it created a fire exposure to the abutting house.

Applicant requested a continuance and will come back with clearer drawings to scale, and he would also try to obtain a letter from the fire department approving the project.

J. Priestly, Jr. **moved** and **seconded** by J. Riordan to continue #09-22 Special Permit to October 7, 2009 at 7:40 pm. **Vote 5-0.**

**09-23 - Special Permit, extension or alteration of a pre-existing non-conforming structure**

Wayne R. Larkin. Location: 21 A Thompson. Map 14, Parcels 49.18 in a R80 zoning district. Proposal: Applicant seeks to change their existing screen porch into a three-season room.

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene

Applicant stated information on application was incorrect, but that he wants to have a three-season porch. No heating or insulation will be put in.

Fire Department approved the application, as did the Hideaway Village Condominium Association.

J. Priestley, Jr. **moved** and **seconded** by R. Gaynor to close public hearing #09-23 Special Permit. **Vote 5-0.**

J. Priestley, Jr. **moved** and **seconded** by J. Riordan to grant application for Special Permit #09-23 provided there be no insulation or heating system. **Vote 5-0.**

**#09-24-Variance Under Mass General Laws, Chapter 40A, sections 8 & 10**

Steve Good, c/o J. Ford O'Connor. Location: 1340 County Road, Cataumet. Map 54, Parcels 53 in a B-2 zoning district. Proposal: Applicant seeks a variance to construct a building, portion of which is 12.5 feet from a residential district. (footnote: "h" of section 2500, which requires a 25-foot setback)

Sitting on the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan, Robert Gaynor. Also present: Wade Keene

Planning Board granted a Special Permit but conditioned it upon obtaining a Variance from the Board of Appeals.

The Planning Board determined that the location of the building was in the best interests of the neighborhood. The building will be used for storage.

Statutory issues – lot is located in both a residential zone and a business zone. If the building is built in a different location on the lot, it can comply with the zoning bylaw.

Planning Board representative stated applicant agreed to most comments by the Planning Board (downsized, wood building, blends in with area). Location had to do with lot line.

Parking lot is existing and will stay as is. Chm. Berger commented that the building could be used to rent storage space, as well as storage for the dance studio building on the front part of the lot.

Frank McGrory, abutter roughly 100 feet from building, objects to the Variance. Under the bylaw 25' buffer between a building in a business zone and the residential lot line is required. He cannot find the hardship, except for taking down trees, and that is not a basis for a Variance. He submitted plans that showed the building in compliance with the bylaw, before the plans were revised at the request of the Planning Board.

James Towe, 1336 and 1334 County Road, is a direct abutter, owning 5 acres. He believed the building was too large for the lot size, and that the project would detract significantly from the greenery currently there. He would like to see the 25-foot buffer remain.

Both abutters want the building moved back toward the business district so that the 25-foot buffer would remain. Applicant is requesting 12.5-foot buffer.

Chm. Berger stated the issue is whether or not there is a hardship that qualifies for a Variance.

John Priestley commented that the applicant has tried to design a building where the architecture makes it look like a rural, domestic, agricultural building. Where the motor vehicle traffic is located so as not to interfere with the peace and quiet desired in a residential zone is most important to fulfilling the purpose of the buffer zone that the bylaw is trying to protect.

Atty. Ford O'Connor, for the applicant, commented that only a portion of the building is in issue. In the event abutting land in the residential zone gets developed, it will be a driveway or a road. Any buffer of greenery would be lost.

Applicant stated any greenery will be added and none will be removed within the 12.5-foot buffer.

Chm. Berger questioned if there is a way to redesign the plans so that a variance would not be needed. Applicant stated they went through all of that with the Planning Board.

Peter Meier stated the Planning Board reviewed plans for six months to finally cut the plan down by 1/3 for the neighborhood.

Atty. Ford O'Connor stated that if the Board denied the variance, the applicant would have to go back to the Planning Board. Applicant argued that the plan "as is" is better for the abutter Mr. Towe than moving the building toward the business zoned side because moving it would require all the motor vehicle traffic to use the side of the lot closest to the residential zone.

The Planning Board decision requires adequate screening between the residential and business zones next to the proposed building.

Chairman Berger asked Attorney O'Connor to address the issue of hardship under the statute. Attorney O'Connor argued that the long and narrow rectangular shape of the lot was unique and made it difficult to build a building sufficient in size that would make economic sense, and the lot was also unique because it was located in two zones (business and residential). He also argued that while the applicant could build the same building on the site without a variance, but doing so would create a greater hardship on the residential zone because it would bring motor vehicle traffic closer to the residences abutting the lot. Further, moving the building forward would interfere with the parking lot used by the dance studio. The best screening of the loading docks is provided by having the entrances to the garage bays on the side of the lot away from the residences. Thus, the plan approved by the Planning Board is in the best interests of all involved parties.

Mr. McGrory still felt that the 25-foot buffer should be enforced.

Mr. Towe withdrew his original objection, and agreed that the plan as approved by the Planning Board is in his best interests.

J. Priestley, Jr. **moved and seconded** by J. Riordan to close the public hearing. **Vote 5-0.**

J. Priestley, Jr. **moved and seconded** by R. Gaynor move that Variance 09-24 at 1340 County Road, Cataumet be granted, the hardship being the shape (long and narrow) of the lot, and the fact that the plan developed by the Planning Board serves the best interest of the abutting neighborhood, and fulfills the purpose of the bylaw, which is to protect the residences from the noise that may be created by a business located next to a residential zone. **Vote 5-0.**

Advertising for this public hearing was done in the Cape Cod Times, due to the need to have the advertisement published in a timely manner. The applicant had agreed before the publication that he would pay for the additional cost of the advertising. Chm. Berger gave copy of the bill for the advertisement to Atty. O'Connor, who stated he would drop a check off at the Town Hall the following day.

**New Business**

None

**Adjournment**

J. Priestley, Jr. **moved** and **seconded** by R. Gaynor to adjourn. Meeting adjourned at 9:15 pm. **Unanimous vote.**

Respectfully submitted,  
Lisa Groezinger, sec.

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

2009 SEP 8 PM 1 09  
TOWN CLERK'S OFFICE  
BOURNE, MA

**AGENDA**

**DATE**

**TIME**

**LOCATION**

Wednesday September 16, 2009

7:30 P.M.

Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #08-18 – COMPREHENSIVE PERMIT, 40B**

Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Foretop Road, Buzzards Bay, MA, 02532 to construct 32 residential units, 8 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called "Chase Estates" on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36.

**Old Business**

**New Business**

**Members Present**

_____	_____	_____
_____	_____	_____
_____	_____	_____

**Zoning Board of Appeals Minutes – September 16, 2009**  
**Bourne Town Hall**  
**Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien

**Meeting called to order:**

Meeting called to order at 7:30 pm.

**Approval of minutes**

J. Riordan **seconded** by J. Priestly, Jr. to approve minutes of September 2, 2009 as submitted. **Vote 4-0-1** with abstention from J. O'Brien.

**#08-18 – Comprehensive Permit, 40B**

Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Foretop Road, Buzzards Bay, MA, 02532 to construct 32 residential units, 8 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called "Chase Estates" on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36.

Sitting on the Board: Lee Berger, John Priestley, Jr., Tim Sawyer, Judith Riordan, Robert Gaynor  
Also present: Wade Keene and John O'Brien

Paul Attea, Attorney for the applicant, presented a new proposal: building the development in two phases, 6 units with one being affordable in the first phase, and an additional 22 units in the second phase after access to a traffic light is in place, at which time 25% of all of the units would be affordable. Quite some time ago there were very preliminary discussions with Upper Cape Tech School concerning access over their property to tie into the proposed access road. There was no talk of the specific cost of access over an easement at this time.

The plans presented to the Board for the first phase show 4 units in the front part of the land built by converting the 4 garage units into 4 2-bedroom units; and 2 units build where the present foundation is located above the garage units.

Phase II would include changing the exit for all units to access the light. Instead of a slab foundation, the units have basements with walkouts and most units don't have retaining walls in the back.

Phase I has its own septic system – Phase II has 2 septic systems accommodating the additional 22 units.

Phase I – the driveway will have a 14 degree grade. Phase II will change the grade to a 12 degree grade. The applicant is not asking for relief for the 14 degree grade because he does not consider the driveway to be a road in a subdivision. Only a road in a subdivision requires a maximum of a 12 degree grade.

Major changes: 1) Reduction of units and 2) Reduction of retaining walls.

Chm. Berger inquired what controls the 12 degree number. The Building Inspector replied: roadway subdivision regulations, depending on number of units.

Chm. Berger commented on his discussion with Mr. Cubellis, who sent Chm. Berger an email re: negotiations with Upper Cape Tech and doesn't look feasible at this point to have bypass road go to where he hoped it would go. Mr. Cubellis asked how he should proceed in a modification for his permit so bypass road can exit completely on his property and not go on Upper Cape Tech property.

Chm. Berger asked the Board was being asked to approve a temporary scenario for six units - or is it going to be permanent, and was told there is still potential for negotiations.

Judith Riordan inquired about rental concept, which the applicant had been raised at the last meeting. The applicant responded that the rental concept is not part of the present proposal.

Applicant remains willing to be cooperative to come up with a solution to work for everyone.

Chairman Berger stated that the first phase would have to include at least 2 affordable units in order to comply with chapter 40B's requirement of 25% affordables.

#### Discussion

High retaining wall between roadway and upper unit - 26 feet of slope between retaining wall and unit.

Retaining wall – lower side of the new roadway, proposed of two at 5' each. Tandem of 5' each.

Turning radius – traffic light will be more than 30. Turning radius is also 30. This is subject to the light. There is no fire truck access on Phase I. Applicant's engineer suggested that an area of grassy pavers to allow fire trucks to turn around would be in place during Phase I, and would be removed during Phase II. Fire Department has not seen concept – only the original plans that were submitted one year ago.

Concerning the exit onto Sandwich Road during Phase I – what is the plan to discourage left turns. No obstacle is proposed, an angled curved island (solid surface so fire truck could drive over).



Grade on Phase I – same grade of 13.7 degrees from original design. Planning Department stated 12 degrees for four-lot subdivision is acceptable – applicant's argument is that this is not a subdivision. To reduce it to 12 degrees, they would have to bring back more retaining walls.

T. Sawyer questioned how winter weather conditions would affect the ability of fire trucks to drive up such a high grade. Atty. for applicant stated that based on amount of traffic that uses that road, it seems a reasonable approach based on the circumstances. This property will need to be properly treated and managed.

Affordable units – Atty. for applicant stated if they provided 2 affordable units in the first phase, they would have to increase total number of units. Chm. Berger stated applicant could reduce number of units to 4 in the first phase and keep one unit affordable.

J. Priestly, Jr. stated the question is how many units can be tolerated to access and egress the property. Atty. for applicant sees logic with approach, but doesn't know what the tolerance approach would be from the Board.

J. Riordan stated that she is not comfortable with an additional Phase bringing total units above 22, given traffic and safety issues. Chm. Berger commented on how Mr. Cubellis could still negotiate the traffic light and access issues.

R. Gaynor is in agreement with the six (6) units provided there is some positive discouragement that no one can turn left while exiting the property. Atty. for applicant stated the applicant would assume the burden of coming up with a plan to prevent the left turn exit, and bring it back to the Board for discussion. R. Gaynor also stated the need for two (2) affordable units if there are to be six (6) units total to be built.

J. Riordan asked the applicant to consider making the homes energy efficient by meeting the requirements for a LEEDS certification. Atty. for applicant stated he would analyze the expense and let the Board know if it was financially feasible.

A split driveway, one way in and one way out, could significantly change the right turn area. Applicant is willing to work with something that would be safe.

T. Sawyer would like to see no more than four (4) units.

W. Keene would like to see no more than four (4) units at the bottom in Phase I.

J. O'Brien said he would have to see more specific plans before deciding on a specific number.

Chm. Berger commented that it seemed more cost effective to proceed with Phase I with 4 units and leave open the possibility of a Phase II or additional building requiring exiting at a traffic light with a future amendment to the permit.

The consensus seems to be three (3) votes that would tolerate six (6) units in the first phase.

The Applicant then stated that he would propose a total of eight (8) units to be built now, to be connected to the access road at a traffic light sometime in the future if the light and road materialized, and not coming back for a Phase II.

The consensus of the Board was favorable to this proposal, and the Board members stated they are willing to review a design that encompassed no more than of eight (8) units without a traffic light at this time provided there was no further development on the property. Atty. for applicant stated applicant will come back to the Board with a plan that addresses all of the board's concerns.

Public comment

Pete Muller – 16 Weather Deck – inquired about enforcing right turn only.

Jim Mulvey – inquired if right turn only moves traffic problem further down Sandwich Road. He also inquired about the split entrance – mechanical way to prevent a left hand turn.

Veronica Hubbie – Port O'Call – raised concerns about changing plans.

Owen Howard – Port O'Call – would be agreeable to the eight (8) units.

J. Priestley, Jr. – commented if the applicant is willing to take down the garage to obtain a better result (eliminate grading issues, retaining walls, etc.), the value would be far more than the cost of the garage right now.

Dave Green – 17 Mizanine Lane – happy about no access road through Port O'Call.

Atty. for applicant will get the plans to the Board in advance of the next meeting so that we can move to the point of a decision. Applicant would still need a comprehensive permit for 8 units that requests all of the waivers from zoning that he requires to build the development.

Abutter inquired about the history of the traffic light.

Atty. for applicant signed extension form, suspending all time constraints concerning a decision during the period of the continuance until the next meeting.

J. Priestley, Jr. **moved and seconded** by J. Riordan to continue hearing #08-18 comprehensive permit to October 21, 2009 at 7:35 pm. **Vote 5-0.**

**Old business**

Planning Board members met with Cumberland Farms, Town Counsel, Lee Berger, a couple of Selectmen, and Tom Guerino, to discuss the site plan. Concerns about bringing fuel trucks onto the property was discussed. Cumberland Farms will go back and address those concerns. Intent is to try to get the lawsuit resolved and a future meeting will be held.

**New Business**

None

**Adjournment**

J. Priestley, Jr. **moved** and **seconded** by J. Riordan to adjourn. Meeting adjourned at 9:00 pm. **Unanimous vote.**

Respectfully submitted,  
Lisa Groezinger, sec.

# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#09-25- Special Permit** – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:**     Jack Doherty & Deidre Flack

**LOCATION:**       11 Cove Lane, Pocasset

Map 43.1   Parcel 9   R-40 zoning district

**PROPOSAL:**       Applicant seeks to construct a 4'9" x 14'9" extension to existing screen  
porch.

**DATE & TIME:**    Wednesday, October 7, 2009 at 7:35 p.m.

**PLACE:**           Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

September 16, 2009

September 23, 2009

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TOWN CLERK'S OFFICE

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# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#09-27– Special Permit** – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:**     Donald Duberger

**LOCATION:**       35 Bell Buoy Road, Pocasset

Map 43.3   Parcel 250   R-40 zoning district

**PROPOSAL:**       Remove portion of existing structure built over slab, and replace with  
smaller gross floor area over a 4 ft. crawl space.

**DATE & TIME:**    Wednesday, October 7, 2009 at 7:50 p.m.

**PLACE:**           Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

September 23, 2009

September 30, 2009

2009 SEP 16 AM 9 44  
TOWN CLERK'S OFFICE  
BOURNE, MASS.

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**Agenda**

<u>DATE</u>	<u>TIME</u>	<u>LOCATION</u>
<u>Wednesday, October 7, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – 09-25 SPECIAL PERMIT, EXTENTION OR ALTERATION OF A PRE-EXISTING NON CONFORMING STUCTURE**

Jack Doherty & Deidre Flack Location: 11 Cove Lane, Pocasset. Map 43.1, Parcel 9 in a R40 zoning district. Proposal: Applicant seeks to construct a 4'9" x 14'9" extension to existing screen porch.

**7:40 p.m. – #09-22 – SPECIAL PERMIT, EXTENTION OR ALTERATION OF A PRE-EXISTING NON CONFORMING STUCTURE... CONTINUANCE**

Mary K. Noll. Location: 15 B Wild Rose Drive. Map 14, Parcels 49.35 in a R80 zoning district. Proposal: Applicant seeks to enlarge existing deck by 6 feet, and wishes to relocate the stairs to the center of the deck.

**7:45 p.m. – #09-26 – SPECIAL PERMIT, EXTENTION OR ALTERATION OF A PRE-EXISTING NON CONFORMING STUCTURE**

Donald Duberger. Location: 19 Penobscot Ave, Pocasset. Map 43.3, Parcels 150 in a R40 zoning district. Proposal: Rebuild existing garage on existing slab. Raising ridge six foot for storage only.

**7:50 p.m.- #09-27– SPECIAL PERMIT, EXTENTION OR ALTERATION OF A PRE-EXISTING NON CONFORMING STUCTURE**

Donald Duberger. Location: 35 Bell Buoy Road, Pocasset. Map 43.3, Parcels 250 in a R-40 zoning district. Proposal: Remove portion of existing structure built over slab, and replace with smaller gross floor area over a 4 ft. crawl space.

Old Business  
New Business  
Members Present

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# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#09-26- Special Permit** – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:**     Donald Duberger

**LOCATION:**       19 Penobscot Ave., Pocasset

Map 43.3   Parcel 150   R-40 zoning district

**PROPOSAL:**       Rebuild existing garage on existing slab. Raising ridge six foot for storage  
only.

**DATE & TIME:**    Wednesday, October 7, 2009 at 7:45 p.m.

**PLACE:**           Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

September 16, 2009

September 23, 2009

2009 SEP 9 PM 1 57  
TOWN CLERK'S OFFICE

**Zoning Board of Appeals Minutes - October 7, 2009**

**Bourne Town Hall  
Buzzards Bay, MA 02532**

2009 OCT 22 AM 10 39

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**TO ATTENDANCE OFFICE**

~~Lee Berger~~ Chairman (excused), John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes**

J. Riordan **moved** and **seconded** by R. Gaynor to approve minutes of September 16, 2009 as submitted. **Vote 5-0.**

V. Chm. Priestly, Jr. reclused himself from the meeting. T. Sawyer will conduct business for the next hearing.

**7:35 p.m. – 09-25 Special Permit, extension or alteration of a pre-existing non conforming structure**

Sitting for the board: Tim Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien

Jack Doherty & Deidre Flack Location: 11 Cove Lane, Pocasset. Map 43.1, Parcel 9 in a R40 zoning district. Proposal: Applicant seeks to construct a 4'9" x 14'9" extension to existing screen porch.

Barbara Coach for applicant submitted plans and photographs. Applicant is 7.6 sq. ft. over and lot coverage is 9.7 sq. ft. Project as proposed was approved by Conservation Commission.

Letters of support of proposed project from abutters are submitted for the file. One abutter opposed (12 Cove Lane, Pocasset), claiming it obstructs their water view from the second story. Applicant claims it would be diminished, not obstructed.

Discussion held on views.

John O'Brien **moved** and **seconded** by R. Gaynor to close public hearing #09-25. **Vote 5-0.**

J. Riordan **moved** and **seconded** by J. O'Brien grant SP #09-25 11 Cove Lane to construct a 4'9 x 14'9 extension. **Vote 3-2** with opposing votes from T. Sawyer and R. Gaynor.



Applicant will exercise a re-petition within two (2) years – first Planning Board consent and demonstrate substantially different and then come to the Board of Appeals.

T. Sawyer **moved and seconded** by W. Keene to reconsider the option to withdraw without prejudice. **Vote 4-1** with opposing vote from R. Gaynor.

W. Keene **moved and seconded** by J. O'Brien to allow to reconsider vote and to allow applicant to withdraw without prejudice. **Vote 4-1** with opposing vote from R. Gaynor.

W. Keene **moved and seconded** by J. O'Brien to allow applicant to withdraw without prejudice. **Vote 4-1** with opposing vote from R. Gaynor.

**7:40 p.m. – #09-22 – Special Permit, extension or alteration of a pre-existing non conforming structure... continuance**

Mary K. Noll. Location: 15 B Wild Rose Drive. Map 14, Parcels 49.35 in a R80 zoning district. Proposal: Applicant seeks to enlarge existing deck by 6 feet, and wishes to relocate the stairs to the center of the deck.

J. Riordan **moved and seconded** by J. O'Brien to move hearing #09-22 to the end of the meeting. **Vote 5-0.**

**7:45 p.m. – #09-26 – Special Permit, extension or alteration of a pre-existing non conforming structure**

Donald Duberger. Location: 19 Penobscot Ave., Pocasset. Map 43.3, Parcels 150 in a R40 zoning district. Proposal: Rebuild existing garage on existing slab. Raising ridge six foot for storage only.

Sitting for the Board: J. Priestley, Jr., T. Sawyer, J. Riordan, R. Gaynor and W. Keene. Also present: J. O'Brien.

Applicant requesting current metal garage to be converted to a wood frame and raise height by six feet for storage only.

J. O'Brien **moved and seconded** by J. Riordan to close hearing #09-26. **Vote 5-0.**

J. Riordan **moved and seconded** by J. O'Brien to make a finding there is no significant or detrimental impact on the neighborhood. **Vote 5-0.**

**7:50 p.m.- #09-27– Special Permit, extension or alteration of a pre-existing non conforming structure**

Donald Duberger. Location: 35 Bell Buoy Road, Pocasset. Map 43.3, Parcels 250 in a R-40 zoning district. Proposal: Remove portion of existing structure built over slab, and replace with smaller gross floor area over a 4 ft. crawl space.

Sitting for the Board: J. Priestley, Jr., T. Sawyer, J. Riordan, R. Gaynor and J. O'Brien.  
Also present: W. Keene.

Applicant seeking to reduce non-conformality of the non-structure.

R. Gaynor **moved** and **seconded** by J. Riordan to close public hearing for Special Permit #09-27. **Vote 5-0.**

R. Gaynor **moved** and **seconded** by T. Sawyer to make a finding there is no significant or detrimental effect on the neighborhood and proposed extension is less non conforming.  
**Vote 5-0.**

**7:40 p.m. – #09-22 – Special Permit, extension or alteration of a pre-existing non conforming structure... continuance**

Mary K. Noll. Location: 15 B Wild Rose Drive. Map 14, Parcels 49.35 in a R80 zoning district. Proposal: Applicant seeks to enlarge existing deck by 6 feet, and wishes to relocate the stairs to the center of the deck.

J. O'Brien moved and seconded by J. Riordan to allow continue special permit #09-22 to May 19, 2010 at 7:35 pm

#### **Adjourn**

John O'Brien **moved** and **seconded** by R. Gaynor to adjourn. Meeting adjourned at 8:20 pm. **Unanimous vote.**

Respectfully submitted,  
Lisa Groezinger, sec.

# TOWN OF BOURNE

## *Board of Appeals*

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

TOWN CLERK'S OFFICE  
EDITH A. BROWN  
2009 SEP 18 PM 12 00

## PUBLIC HEARING NOTICE

**APPEAL:** #09-28– Special Permit – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:** Richard W. Reed

**LOCATION:** 11 B Wild Rose Drive, Hide Away Village, Buzzards Bay

Map 14 Parcel 49.31 R-80 zoning district

**PROPOSAL:** The applicant seeks a special permit or a finding under Section 2320, if applicable in order to raze the existing condominium unit and to rebuild the existing unit in accordance with the plans filed with this application.

**DATE & TIME:** Wednesday, October 21, 2009 at 7:40 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

September 30, 2009

October 7, 2009

**TOWN OF BOURNE  
BOARD OF APPEALS  
24 Perry Avenue  
Buzzards Bay, MA 02532**

**AGENDA**

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<u>Wednesday October 21, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #08-18 – COMPREHENSIVE PERMIT, 40B**

Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Foretop Road, Buzzards Bay, MA, 02532 to construct 32 residential units, 8 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called "Chase Estates" on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36.

**7:40 p.m. - #09-28 – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Richard W. Reed. Location: 11 B Wild Rose Drive, Hide Away Village, Buzzards Bay. Map 14 Parcel 49.31 in an R-40 zoning district. Proposal: The applicant seeks a special permit or a finding under Section 2320, if applicable in order to raze the existing condominium unit and to rebuild the existing unit in accordance with the plans filed with this application.

**Old Business**

**New Business**

**Members Present**

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_____	_____
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TOWN CLERK'S OFFICE  
BOURNE, MA



**TOWN OF BOURNE**  
**BOARD OF APPEALS**  
**24 Perry Avenue**  
**Buzzards Bay, MA 02532**



**AMENDED AGENDA**

<u>DATE</u>	<u>TIME</u>	<u>LOCATION</u>
<u>Wednesday October 21, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #08-18 – COMPREHENSIVE PERMIT, 40B**

Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Foretop Road, Buzzards Bay, MA, 02532 to construct 32 residential units, 8 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called "Chase Estates" on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36. At the applicant's request, this hearing has been rescheduled for November 18, 2009 at 7:40 pm.

**7:40 p.m. - #09-28 – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Richard W. Reed. Location: 11 B Wild Rose Drive, Hide Away Village, Buzzards Bay. Map 14 Parcel 49.31 in an R-40 zoning district. Proposal: The applicant seeks a special permit or a finding under Section 2320, if applicable in order to raze the existing condominium unit and to rebuild the existing unit in accordance with the plans filed with this application.

**Old Business**

**New Business**

**Members Present**

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TOWN CLERK'S OFFICE  
BOURNE, MASS.

Zoning Board of Appeals Minutes – October 21, 2009  
Bourne Town Hall  
Buzzards Bay, MA 02532

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes**

J. Riordan **moved** and **seconded** by J. Priestley, Jr. to approve minutes of October 7, 2009 as submitted. **Vote 5-0.**

**#08-18 – COMPREHENSIVE PERMIT, 40B**

Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Forétop Road, Buzzards Bay, MA, 02532 to construct 32 residential units, 8 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called "Chase Estates" on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36.

Sitting for the board: Lee Berger, John Priestley, Jr., Tim Sawyer, Judith Riordan and Robert Gaynor. Also present: Wade Keene and John O'Brien.

Applicant requested more time for revised plans and to continue hearing.

J. Riordan **moved** and **seconded** by R. Gaynor to continue hearing for Comprehensive Permit 40B #08-18 Chase Developers, Inc. at 230 Sandwich Road, Bourne, to November 18, 2009 at 7:40. **Vote 5-0.**

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TOWN CLERK'S OFFICE  
BOURNE, MA

**#09-28 – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Richard W. Reed. Location: 11 B Wild Rose Drive, Hide Away Village, Buzzards Bay. Map 14 Parcel 49.31 in an R-40 zoning district. Proposal: The applicant seeks a special permit or a finding under Section 2320, if applicable in order to raze the existing condominium unit and to rebuild the existing unit in accordance with the plans filed with this application.

Sitting for the board: Lee Berger, John Priestley, Jr., Tim Sawyer, Judith Riordan and Robert Gaynor. Also present: Wade Keene and John O'Brien.

The cottage is a single standing unit, and over the years the weather has taken a toll on the building.

Chm. Berger stated he viewed the property and the structure should be taken down. He also said that the proposed plans would increase the amount of living space, called storage space in the plans to get around the sewer regulation prohibition of increasing habitable space at Hideaway Village. According to the plans, the so-called "storage area" has a deck and beautiful water views.

Roger LaPorte inquired and was told by the applicant there is a basement with all utilities. The first floor includes a kitchen and day bed. Under the bylaws, an area can be considered a storage area if the headroom is 6' or less. The applicant was not aware of this. Mr. LaPorte also inquired if applicant is in a flood zone, and was told no.

Applicant included pictures for the Board to review. Presently, one enters and exits the building from the deck.

Roger LaPorte told the applicant that the Board is not concerned with a de minimus increase in floor space, but an entire second floor is another matter. Extra storage is not an issue, but a second story of livable space is the issue.

Applicant stated he could eliminate the second floor by raising the foundation, and still put the deck off the living area and park his car under the deck. Chm. Berger told applicant he needs to come back before the Board with detailed plans that don't significantly increase habitable space.

After the Board members expressed their views that the Board could not approve the plans as submitted, Chm. Berger recommended applicant withdraw his application without prejudice, and the applicant agreed.

Applicant did not bring proposed changes to the Fire Department, and was told to bring his new plans to the Fire Department before submitting them to the Board.

J. Riordan **moved** and **seconded** by J. Priestley, Jr. to allow the applicant to withdraw his application #09-28 without prejudice. **Vote 5-0 in favor of the motion.**

**Old business**

None.

**New business**

None.

**Adjourn**

John O'Brien **moved and seconded** by R. Gaynor to adjourn. Meeting adjourned at 8:30 pm. **Unanimous vote.**

Respectfully submitted,  
Lisa Groezinger, sec.



# **TOWN OF BOURNE**

## ***Board of Appeals***

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611

## **PUBLIC HEARING NOTICE**

**APPEAL:**     **#09-29– Special Permit** – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:**     Laurence Spector & Ursula Garfield

**LOCATION:**       273 Circuit Ave, Pocasset

Map 43.3   Parcel 129   R-40 zoning district

**PROPOSAL:**       Applicant seeks to construct an attached 75 sq.ft. garden shed to the south  
west corner of the existing dwelling adjacent to their driveway.

**DATE & TIME:**     Wednesday, November 04, 2009 at 7:35 p.m.

**PLACE:**           Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

October 21, 2009

October 28, 2009

2009 SEP 23 AM 11 15  
TOWN CLERK'S OFFICE  
BOURNE, MASS



**TOWN OF BOURNE**  
**BOARD OF APPEALS**  
**24 Perry Avenue**  
**Buzzards Bay, MA 02532**



**AGENDA**

**DATE**

**TIME**

**LOCATION**

Wednesday November 4, 2009

7:30 P.M.

Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532

• **AGENDA ITEMS**

7:30 p.m. – Approval of minutes

7:35 p.m. - #09-29 – EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE

Laurence Spector & Ursula Garfield. Location: 273 Circuit Ave, Pocasset. Map 43.3 Parcel 129 in an R-40 zoning district. Proposal: Applicant seeks to construct an attached 75 sq.ft. garden shed to the south west corner of the existing dwelling adjacent to their driveway.

Old Business

New Business

Members Present

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TOWN CLERK'S OFFICE  
BOURNE, MASS.

**Zoning Board of Appeals Minutes – November 4, 2009**

**Bourne Town Hall  
Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger, Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, and John O'Brien. Wade Keene was excused

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of Minutes**

Minutes were not available, and will be reviewed at the next meeting. Chairman Berger will contact Tom Guerino concerning secretarial coverage when Lisa is unavailable.

**Old business**

Chm. Berger briefly discussed with the Board documents he had received re: Answer to Ocean Pines complaint, and a newsletter discussing the chapter 40B Housing Appeals Committee decision that the Bourne ZBA had won.

**#09-29 – Extension or alteration of a pre-existing non-conforming structure or use**  
Laurence Spector & Ursula Garfield. Location: 273 Circuit Ave., Pocasset. Map 43.3 Parcel 129 in an R-40 zoning district. Proposal: Applicant seeks to construct an attached 75 sq.ft. garden shed to the south west corner of the existing dwelling adjacent to their driveway.

Sitting for the board: Lee Berger, John Priestley, Jr., Tim Sawyer, Judith Riordan and Robert Gaynor. Also present: John O'Brien.

Letter from Fire Department dated October 15, 2009, states that building the shed would create a fire exposure problem to the neighborhood because it would reduce the distance between the buildings.

Chm. Berger told the applicant that, due to the small size of the lot, the Town's bylaw doesn't allow coverage of more than 25% of the lot. Lot coverage is already 29%, and the shed would increase the lot coverage even more.

Chm. Berger stated in order to grant permit for departure of more than 25% - all of the following must be shown: 1) good and sufficient cause, 2) exceptional hardship and 3) why the shed is essential to have.

Applicant stated there is no basement in dwelling. A four-foot high crawl space is accessible from the garage. The home was built in 2004.

Chm. Berger questioned whether the Board of Appeals has authority to grant the request. Building Inspector Roger LaPorte and Vice-Chairman John Priestley stated the Board did

not have authority under the bylaw to grant the request. Also, Chairman Berger felt the location of the shed would be an encroachment on the road – way too close.

The lot is not grandfathered by the State since it is less than 5,000 square feet, and is under the total control of the bylaw. A variance is not appropriate.

Chm. Berger suggested the applicant might want to enter into a long-term lease with the owner of the empty abutting property, since the bylaw would not prohibit the applicant from putting a shed on the abutting property.

J. Riordan **moved** and **seconded** by R. Gaynor to allow applicant to withdraw without prejudice in appeal 09-29 extension or alteration of pre-existing non-conforming structure or use for 273 Circuit Ave., Pocasset. **Vote 5-0.**

#### **Adjourn**

J. Priestley, Jr. **moved** and **seconded** by J. Riordan to adjourn. Meeting adjourned at 8:00 pm. **Unanimous vote.**

Respectfully submitted,  
Lisa Groezinger, sec.



## TOWN OF BOURNE

### *Board of Appeals*

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611



## PUBLIC HEARING NOTICE

**APPEAL:**

**#09-30-VARIANCE**

**UNDER MASS GENERAL LAWS, CHAPTER 40A, SECTION 8& 10**

**APPLICANT:**

Stephen P. Mahoney

**LOCATION:**

11 Central Place, Buzzards Bay

Map 23.1 Parcel 113 R40 zoning district

**PROPOSAL:**

Applicant requests a variance from the 12 foot side setback requirement on our right side property line to enable us to erect a shed within 4 feet of that side property line. The shed would be professionally built and installed on the site meeting or exceeding all code requirements. The design and exterior finish would match the existing house.

**DATE & TIME:**

Wednesday, November 18, 2009 at 7:35 p.m.

**PLACE:**

Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Cape Cod Times Publishing Dates:

November 4, 2009

November 11, 2009

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**TOWN OF BOURNE**  
**BOARD OF APPEALS**  
**24 Perry Avenue**  
**Buzzards Bay, MA 02532**



**AGENDA**

**DATE**

**TIME**

**LOCATION**

Wednesday November 18, 2009

7:30 P.M.

Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. - #09-30 – VARIANCE**

Stephen P. Mahoney. Location: 11 Central Place, Buzzards Bay. Map 23.1 Parcel 113 in an R-40 zoning district. Proposal: Applicant requests a variance from the 12 foot setback requirement on our right side property line to enable us to erect a shed within 4 feet of that side property line. The shed would be professionally built and installed on the site meeting or exceeding all code requirements. The design and exterior finish would match the existing house.

**7:40 p.m. – #08-18 – COMPREHENSIVE PERMIT, 40B... CONTINUED**

Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Foretop Road, Buzzards Bay, MA, 02532 to construct 32 residential units, 8 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called "Chase Estates" on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36.

**Old Business**

**New Business**

**Members Present**

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TOWN CLERK'S OFFICE  
BOURNE, MASS

**Zoning Board of Appeals Minutes – November 18, 2009**  
**Bourne Town Hall**  
**Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**#09-30 – VARIANCE**

Stephen P. Mahoney. Location: 11 Central Place, Buzzards Bay. Map 23.1 Parcel 113 in an R-40 zoning district. Proposal: Applicant requests a variance from the 12 foot setback requirement on our right side property line to enable us to erect a shed within 4 feet of that side property line. The shed would be professionally built and installed on the site meeting or exceeding all code requirements. The design and exterior finish would match the existing house.

Sitting for the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Robert Gaynor and Wade Keene. Also present: Judith Riordan and John O'Brien.

Applicant handed out document "Attachment B-1" proposed shed location dated 11/18/09. Applicant is requesting to build a second shed 12'x20'. There is already an existing shed on the left side of the property, which was present when the property was purchased by the applicant.

Applicant states the hardship is the shape of the lot, somewhat triangular making it difficult to place the new shed on the lot without making the yard unusable. Further, the shed is essential for storage space since the house does not have a basement (and cannot have a basement since it is in a flood plane zone) and does not have an attic. The Board discussed where the best location for the shed. The applicant believes the shed in the proposed location as set forth on the plan dated 11/18/09 is optimal for their purposes.

Roger LaPorte stated that lot coverage is not an issue since even with the shed it is well below the maximum allowed under the bylaw.

J. Priestley, Jr. **moved** and **seconded** by R. Gaynor to close public hearing for 09-30.  
**Vote 5-0.**

J. Priestley, Jr. **moved** and **seconded** by R. Gaynor to grant variance #09-30 on the basis of extreme lot shape inhibiting the use of the yard, and that the shed is to be located no less than four (4) feet from side line as proposed in plans dated November 18, 2009.  
**Vote 5-0.**

BOURNE, MASS  
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**#08-18 – COMPREHENSIVE PERMIT, 40B... CONTINUED**

Chase Developers, Inc. Location: 230 Sandwich Road, Bourne. Map 25, Parcels 9 & 36 in a R40 zoning district. Proposal: Being all persons deemed interested or affected by the Board of Appeals, under Chapter 40B Massachusetts General Law, Section 20 through 23, as amended, you are hereby notified of a petition for a Comprehensive Permit authorizing the applicant, Chase Developers, Inc., 10 Foretop Road, Buzzards Bay, MA, 02532 to construct 32 residential units, 8 being affordable under the New England Fund Program of the Federal Home Loan Bank of Boston. This is to be called "Chase Estates" on the site located at 230 Sandwich Road, Bourne, Massachusetts. Premises affected: Map 25 Parcels 9 & 36.

Sitting for the Board: Lee Berger, John Priestley, Jr., Tim Sawyer, Robert Gaynor and Judith Riordan. Also present: Wade Keene and John O'Brien.

Atty. Paul Attea (for Chase Developers, Inc.) requested by email to allow applicant to continue public hearing in the above-referenced matter from November 18, 2009 "to a date which you can provide to me when able." Further, the applicant has agreed to a continued suspension of the running of the applicable statutory time period for closing of the public hearing and decision by the board pursuant to MGL c. 40B.

J. Priestley, Jr. **moved** and **seconded** by J. Riordan to continue Comprehensive Permit #08-18 to January 20, 2009 at 7:40 pm. **Vote 5-0.**

**Approval of Minutes**

J. O'Brien **moved** and **seconded** by J. Riordan to approve minutes of October 28, 2009 as submitted. **Vote 5-0.**

J. Riordan **moved** and **seconded** by R. Gaynor to approve minutes of November 4, 2009 as submitted. **Vote 5-0.**

**Old business**

Chm. Berger read a letter from David Wilcot, dated 10/20/09, with regard to the Special Permit request of his neighbor concerning 11 Cove Lane, stating he is now in favor of the project, reversing his previous objection at the last hearing. Chm. Berger will draft a letter on behalf of the Board and cc the applicant, to the effect that the applicant will have to apply for the Special Permit again, as he withdrew his prior application without prejudice.

**New business**

1. Chm. Berger on update re: Cubelis Canal Side: Mass Highway sent a letter to Cubelis stating they were willing to work with him to have the traffic light located in accordance with his new plan, although they would prefer the original location since they would prefer Upper Cape to utilize the light as well. Cubelis forwarded the letter to UCT Superintendent Kevin Farr with the hope of continuing negotiations.



2. On December 2, 2009, the continued hearing re: Colona is scheduled, but a new variance request is included in the Board's packet. Agenda will include all matters (three issues) concerning 0 Cedar Point and Variance (#09-34) at 102 Cedar Point.

**Adjourn**

J. Priestley, Jr. **moved** and **seconded** by J. Riordan to adjourn. Meeting adjourned at 8:00 pm. **Unanimous vote.**

Respectfully submitted,  
Lisa Groezinger, sec.



**TOWN OF BOURNE**  
**BOARD OF APPEALS**  
**24 Perry Avenue**  
**Buzzards Bay, MA 02532**



**AGENDA**

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<u>Wednesday December 2, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

7:30 p.m. – Approval of minutes

7:34 p.m. – #09-16 – **BUILDING INSPECTOR APPEAL & VARIANCE**  
**UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 40A, SECTION 8&10**  
...CONTINUANCE

Stephen Colonna. Location: 0 Cedar Point Drive. Map 47.1, Parcel 47 in a R-40 zoning district. Proposal: Specifically the applicant is requesting a variance from the frontage and minimum area requirements for the R-40 Zoning District, as more particularly described in the attached narrative. This narrative is on file with the Town Clerk and the Zoning Board of Appeals for review.

Old Business

New Business

Members Present:

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BOURNE, MASS



**TOWN OF BOURNE**  
**BOARD OF APPEALS**  
**24 Perry Avenue**  
**Buzzards Bay, MA 02532**



**AMENDED AGENDA**

<u>DATE</u>	<u>TIME</u>	<u>LOCATION</u>
<u>Wednesday December 2, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:34 p.m. – #09-16 – BUILDING INSPECTOR APPEAL & VARIANCE  
UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 40A, SECTION 8&10  
...CONTINUANCE**

Stephen Colonna. Location: 0 Cedar Point Drive. Map 47.1, Parcel 47 in a R-40 zoning district. Proposal: Specifically the applicant is requesting a variance from the frontage and minimum area requirements for the R-40 Zoning District, as more particularly described in the attached narrative. This narrative is on file with the Town Clerk and the Zoning Board of Appeals for review.

**7:40 p.m. - #09-34 Variance**

James Patrick Colonna. Location 102 Cedar Point Road. Map 47.1 Parcel 48 in a R-40 zoning district. Proposal: Applicant seeks a variance for relief from the side setback requirements of the Zoning Bylaw for the existing single family dwelling located on the property. Please see file for further information.

**Old Business**

**New Business**

**Members Present:**

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TOWN CLERK'S OFFICE  
BOURNE, MASS

**Zoning Board of Appeals Minutes – December 2, 2009**  
**Bourne Town Hall**  
**Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, John Priestley, Jr. – Vice-Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene and John O'Brien.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of minutes**

J. Riordan moved and seconded by W. Keene to approve minutes of November 8, 2009 as submitted. **Vote 5-0.**

**#09-16 Building Inspector Appeal & Variance – Continuance**

Stephen Colonna. Location: 0 Cedar Point Drive. Map 47.1, parcel 47 in a R-40 zoning district. Proposal: Specifically the applicant is requesting a variance from the frontage and minimum area requirements for the R-40 Zoning District, as more particularly described in the attached narrative. This narrative is on file with the Town Clerk and the Zoning Board of Appeals for review.

Sitting for the Board: Lee Berger, John Priestley, Jr., Timothy Sawyer, Judith Riordan and Robert Gaynor. Also present: Wade Keene and John O'Brien.

Atty. Flores and Atty. Cox for defendant; Matt Costa, Project Engineer.

Chm. Berger stated #09-34 is dependant on the outcome of the above-mentioned matter.

Chm. Berger stated that the applicant at the last hearing was told that a decision on a variance would not be made without any plans. Applicant has submitted plans.

Town Engineer letter dated December 1, 2009, was submitted.

**Major issues:**

Even if the property was at all times separate, how was it ever buildable since it did not have sufficient frontage?

Merger issue - from 1957 until 1968 property was owned exclusively by Mr. & Mrs. Colonna: In 1956 zoning changed from 70 foot frontage to 80 foot frontage; In 1967 zoning changed from 80 foot frontage to 100 foot frontage – transfer of Trust occurred in 1968.

Chm. Berger discussed the applicant's argument that the Town may have issued a variance in 1952. He felt that it is pure speculation to suggest that documentation of the variance might be missing. Furthermore, the Building Inspector located the 1952 building permit; found another permit to convert the garage to a bedroom; and found

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BOURNE, MASS

another permit allowing an upstairs addition (no plot plan – but a 2<sup>nd</sup> story addition did not require a plot plan). No building permit was found for the shed or for the addition that extended the house to within 3 feet of the lot line.

Another major issue is that the SJC overruled the Appeals Court in the Tsongronis case concerning the requirements for a variance.

Tim Sawyer stated his concern that the addition to the original house was built so close to the lot line, it appears that the owners considered the lots to be one lot at that time. He was also concerned that there was insufficient frontage.

Chm. Berger also stated his opinion that he did not agree that the proposed house would diminish the value of anyone's property or block anyone's view, stating those arguments are not convincing.

Atty. Stephanie Kiefer, attorney for some of the residents opposing the applicant's proposal, argued that if the lots merged, a variance is a mute point due to the doctrine of infectious invalidity.

Chm. Berger stated that Building Inspector's reasons, while guiding to the Board, are not controlling. The Board can uphold the Building Inspector's decision for any legitimate reason whatsoever, and not only for the reasons articulated by the Building Inspector in his written decision.

Atty. Flores claims the lot is buildable because the recorded sub-division plan has the lots numbered, and a numbered lot means that it is a buildable lot. Also, the language in the deeds show the developer's intent to make the lot buildable when the subdivision plan was filed and approved by the Planning Board.

Chm. Berger submitted into the record a 1957 subdivision plan filed by Mackedon, but not approved by the Planning Board.

Atty. Flores – 1950 zoning bylaw and subdivision calls for 80 foot frontage. 1952 subdivision plan depicts lot with less than 70 foot frontage. There is a disconnect, as developer planned on making separate lots. Deed from 1952 recites lot should be used for residential construction only. This indicates to her that lot is buildable.

Atty Flores submitted a 2009 Land Court case (copies provided to the Board), arguing that the intention to keep the lot's separate identity was a controlling factor. Atty Flores argued that Dorothy Colonna was of the belief that the land was her own – assessed as a buildable lot. Chm. Berger questioned Atty. Flores' point on lot being assessed as a buildable lot, since the assessor's card stated it was undevelopable land. Atty Flores responded that taxpayers don't see the assessor's card, only the tax bill, and it was not noted on the tax bill that the land was undevelopable.

Frank Gasson, 46 Spruce Drive, submitted documentation classifying property as undevelopable in 1991; 1999, 2000 – 2009. Atty. Flores stated Town does not have an

assessor review lots. Pat Colonna, Lot 81, questioned what the Assessing Department's actions meant.

Atty. Flores emphasized that the two lots have always been assessed separately. Atty. Flores concluded her argument saying that the parties could not come to an agreement, and therefore the Board needed to first make a decision as to whether or not to uphold or overrule the decision of the Building Inspector.

Atty. Stephanie Kiefer stated Building Inspector's decision cites two reasons as being unbuildable (lots merged; and lot not subject to grandfather protections). 40A, Section 6 states that at the time lot was created, the zoning required 70 feet and lot did not meet requirement.

Mr. Costa discussed the frontage description of the lot.

Chm. Berger questioned whether the lots were grandfathered since before 1957 there was no freezing of zoning for sub-division purposes. Sub-divisions now have eight (8) year protection against zoning changes, and isolated lots are different than sub-division lots.

Atty. Stephanie Kiefer argued that the lot did not conform to the then existing frontage requirement. Therefore, applicant cannot take advantage of 40A, Section 6.

Building Inspector stated lot does not meet zoning – it is not an isolated lot, and would require a variance and Planning Board action to be buildable. For the lot to have isolated status, it had to be at one time legal.

J. Priestly, Jr. **moved** and **seconded** by J. Riordan to close public hearing for #09-16 temporarily for purpose of discussion concerning the appeal of the Building Inspector's decision. The Board will reopen the public hearing to discuss the variance request after a decision is made on the appeal of the Building Inspector. **Vote 5-0.**

J. Priestly, Jr. stated the subdivision plan was approved by the Planning Board at a date when the Planning Board had authority to grant exemptions if in their judgment those exemptions were not detrimental to the zoning code. He understands how the Planning Board could have considered a 40 foot wide way (instead of a cul-de-sac for multiple lots that would have conformed the lot to the frontage requirements) to be the best method for access to only one lot. Mr. Priestley is concerned that someday a huge house will be built on the lot if the Board does not act at least to grant a variance. His recollection was that the immediate abutters who were most affected approve of the proposed new home.

R. Gaynor stated he agreed that sooner or later the lot will have a big home. He supports the decision of the Building Inspector as to the lot being unbuildable due to insufficient lot frontage.

J. Riordan stated her opinion that the house is not detrimental to the neighborhood. However, sorting through the arguments she agrees with the Building Inspector that the lot is unbuildable because of insufficient frontage.

T. Sawyer agrees about a future house. The 70 foot frontage isn't there, and he supports the Building Inspector's decision based on the frontage issue.

R. Gaynor **moved and seconded** by J. Riordan to deny the appeal and affirm the decision of the Building Inspector. **Vote 4-0-1** with abstention by J. Priestly, Jr.

The Board voted a brief recess. Chm. Berger became ill and excused himself. No further evidence was taken. Vice-Chm. Priestly, Jr. took over meeting.

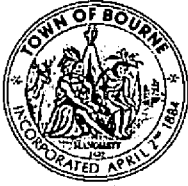
J. Riordan **moved and seconded** by R. Gaynor to continue hearing #09-16 to January 6, 2010 at 7:35 pm. **Vote 5-0.** *[Applicant will waive time limits concerning constructive grants, and will waive the time limit for the filing of a decision so that only one decision need be written, after the decision on the variance, if he has the legal ability to do so.]*

J. Riordan **moved and seconded** by R. Gaynor to continue hearing #09-34 to January 6, 2010 at 7:40 pm. **Vote 5-0.**

#### **Adjourn**

J. O'Brien **moved and seconded** by J. Riordan to adjourn. Meeting adjourned at 9:45 pm. **Unanimous vote.**

Respectfully submitted,  
Lisa Groezinger, sec.



## TOWN OF BOURNE

### *Board of Appeals*

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611



## PUBLIC HEARING NOTICE

**APPEAL:** #09-31- Special Permit – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:** Jack Doherty & Deidre Flack

**LOCATION:** 11 Cove Lane, Pocasset

Map 43.1 Parcel 9 R-40 zoning district

**PROPOSAL:** Applicant seeks to construct a 4'9" x 14'9" extension to existing screen porch.

**DATE & TIME:** Wednesday, December 16, 2009 at 7:35 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Bourne Courier Publishing Dates:

November 25, 2009

December 2, 2009

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BOURNE, MASS





## TOWN OF BOURNE

### *Board of Appeals*

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611



## PUBLIC HEARING NOTICE

**APPEAL:** #09-32- Special Permit – EXTENTION OR ALTERATION OF A PRE-EXISTING  
NON-CONFORMING STRUCTURE OR USE

**APPLICANT:** Joe Ferolito & Sandra Ferolito

**LOCATION:** 7 Buttermilk Way, Buzzards Bay

Map 23.3 Parcel 4 R-40 zoning district

**PROPOSAL:** Applicant seeks to construct a farmers porch to front of home.

**DATE & TIME:** Wednesday, December 16, 2009 at 7:40 p.m.

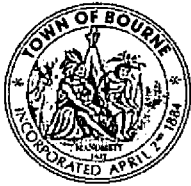
**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

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TOWN CLERK'S OFFICE  
BOURNE, MASS.

Bourne Courier Publishing Dates:

November 25, 2009

December 2, 2009



## TOWN OF BOURNE

### *Board of Appeals*

Bourne Town Hall

24 Perry Avenue

Buzzards Bay, MA 02532

Phone: (508) 759-0615

Fax: (508) 759-0611



## PUBLIC HEARING NOTICE

**APPEAL:** #09-33-VARIANCE  
UNDER MASS GENERAL LAWS, CHAPTER 40A, SECTION 8& 10

**APPLICANT:** Bryan D. Wilde

**LOCATION:** 6 Weetamoe Road, Pocasset  
Map 38.3 Parcel 289 R-40 zoning district

**PROPOSAL:** Applicant seeks a variance for relief from the side setback requirement to allow construction of steps to service side entrance to house.

**DATE & TIME:** Wednesday, December 16, 2009 at 7:45 p.m.

**PLACE:** Bourne Town Hall, Lower Conference Room  
24 Perry Ave, Buzzards Bay, MA 02532

Cape Cod Times Publishing Dates:

December 2, 2009

December 9, 2009

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TOWN CLERK'S OFFICE  
BOURNE, MASS



**TOWN OF BOURNE**  
**BOARD OF APPEALS**  
**24 Perry Avenue**  
**Buzzards Bay, MA 02532**



**AGENDA**

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>LOCATION</u></b>
<u>Wednesday December 16, 2009</u>	<u>7:30 P.M.</u>	Bourne Town Hall 24 Perry Avenue Buzzards Bay, MA 02532

• **AGENDA ITEMS**

**7:30 p.m. – Approval of minutes**

**7:35 p.m. – #09-31 – SPECIAL PERMIT, EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Jack Doherty & Deidre Flack. Location: 11 Cove Lane, Pocasset. Map 43.1, Parcel 9 in a R-40 zoning district. Proposal: Applicant seeks to construct a 4'9" x 14'9" extension to existing porch.

**7:40 p.m. - #09-32 SPECIAL PERMIT, EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Joe Ferolito & Sandra Ferolito. Location 7 Buttermilk Way. Map 23.3 Parcel 4 in a R-40 zoning district. Proposal: Applicant seeks to construct a farmers porch to front of home.

**7:40 p.m. - #09-33 SPECIAL PERMIT, EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Bryan D. Wilde. Location 6 Weetamoe Road, Pocasset. Map 38.3 Parcel 289 in a R-40 zoning district. Proposal: Applicant seeks a variance for relief from the side setback requirement to allow construction of steps to service side entrance house.

**Old Business**  
**New Business**  
**Members Present:**

_____	_____	_____
_____	_____	_____
_____	_____	_____

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TOWN CLERK'S OFFICE  
BOURNE, MASS

**Zoning Board of Appeals Minutes – December 16, 2009**

**Bourne Town Hall  
Buzzards Bay, MA 02532**

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**Attendance:**

Lee Berger – Chairman, Timothy Sawyer, Judith Riordan, Robert Gaynor, Wade Keene, John Priestley, Jr. – Vice-Chairman (excused), and John O'Brien (excused).

Robert Gaynor writing decisions tonight, where applicable.

**Meeting Called to Order:**

Meeting called to order at 7:30 pm.

**Approval of minutes**

J. Riordan moved and seconded by R. Gaynor to approve minutes of December 2, 2009 as submitted. **Vote 5-0.**

**#09-31 – SPECIAL PERMIT, EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Jack Doherty & Deidre Flack. Location: 11 Cove Lane, Pocasset. Map 43.1, Parcel 9 in a R-40 zoning district. Proposal: Applicant seeks to construct a 4'9" x 14'9" extension to existing porch.

Sitting for the Board: Lee Berger, Timothy Sawyer, Judith Riordan and Robert Gaynor and Wade Keene.

Atty. John Fitch and Barbara Frappio for applicant.

The original application was withdrawn without prejudice. After the original application was withdrawn without prejudice, the abutter withdrew his original objection by letter submitted to the Board of Appeals.

Applicant back tonight with new application filed. "Plot Plan" with Proposed Porch Addition for 11 Cove Lane dated 8/10/09 by Warwick & Associates, Inc., reviewed.

R. Gaynor moved and seconded by J. Riordan to close public hearing #09-31. **Vote 5-0.**

J. Riordan moved and seconded by W. Keene to grant SP #09-31 to construct a 4'9" x 14'9" extension to existing porch at in accordance with plans submitted dated 8/10/09. **Vote 5-0.**

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TOWN CLERK'S OFFICE

**#09-32 SPECIAL PERMIT, EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Joe Ferolito & Sandra Ferolito. Location 7 Buttermilk Way. Map 23.3 Parcel 4 in a R-40 zoning district. Proposal: Applicants seek to construct a farmers' porch on the front side of their home.

Sitting for the Board: Lee Berger, Timothy Sawyer, Judith Riordan, Robert Gaynor and Wade Keene.

Joseph Madden, Project Manager for applicant, reviewed lot cover issue. Paperwork handed to the Board tonight.

Conservation Commission granted permit. Abutters notified by certified mail and no objection. Add 180 sq. feet with the porch totaling 1332 and go as high as 1675 leaving 343 sq. feet under the maximum lot coverage allowed.

J. Riordan moved and seconded by R. Gaynor to close hearing #09-32 Special Permit. Vote 5-0.

R. Gaynor moved and seconded by J. Riordan to approve Special Permit #09-32 at 7 Buttermilk Way as proposal will not be substantially detrimental to the neighborhood as a pre-existing non-conforming structure or use to construct farmers' porch on the front side of the house. Vote 5-0.

**#09-33 SPECIAL PERMIT, EXTENSION OR ALTERATION OF A PRE-EXISTING NON-CONFORMING STRUCTURE OR USE**

Bryan D. Wilde. Location 6 Weetamoe Road, Pocasset. Map 38.3 Parcel 289 in a R-40 zoning district. Proposal: Applicant seeks a variance for relief from the side setback requirement to allow construction of steps to service side entrance house.

Sitting for the Board: Lee Berger, Timothy Sawyer, Judith Riordan, Robert Gaynor and Wade Keene.

While the application is for a variance, the applicant does not need a variance, but does need a special permit. The Board will treat the application as if it is for a special permit under section 1331, and a request for a supportive finding under section 2320 of the Bourne Zoning Bylaws.

Letter addressed to Tom Guerino, Town Administrator, dated September 29, 2009, from abutters Frederic and Victoria Mulligan, stating these abutters' opposition to the proposed project, was submitted into evidence.

The applicant, without the required building permit, had constructed steps and a small porch leading to an entrance to the premises, approximately 3 feet from the lot line.

Chm. Berger inquired why the steps and door had to be moved from the rear of the house to the side of the house, and why they could not be put in the front of the house. The

applicant felt the aesthetics of the house prevented the entrance from being sited at the front of the house.

Marianne Malloy, abutter at 86 Tahanto Road diagonally, spoke in support of proposed project. She also stated that her house was not close to the location where the addition has already been built, and did not affect her premises.

J. Riordan **moved** and **seconded** by T. Sawyer to close hearing #09-33 Special Permit. **Vote 5-0.**

T. Sawyer **moved** and **seconded** by J. Riordan to deny the request for Special Permit and Supportive Finding on the grounds that the interference with the privacy of the residents at 92 Tahanto Road results in the extension or alteration being substantially more detrimental to the neighborhood than the existing non-conforming use.

**Vote 5-0 in favor of the motion.**

#### **Old business**

Chm. Berger discussed phone conversations he had with Bob Engler about Mr. Papas and Chase Development.

One of Mr. Cubellis' corporations has filed for bankruptcy. It is uncertain whether that will affect Canalside's 40B project. The bypass road and negotiations with Upper Cape Tech for the easement is still a major issue. If it cannot be resolved, the Board will likely receive an application to amend the 40B to change the location of the bypass road so that the easement will not be needed (and Upper Cape will not be able to use the bypass road or the traffic light at the end of the bypass road to exit the school.

Colonna decision – Atty. Flores will waive time constraints and is requesting one decision on both the appeal of the Building Inspector and the request for a Variance. The Board has already upheld the decision of the Building Inspector that the lot was unbuildable; the Board will decide whether or not to grant a variance in the future, probably at the hearing in January, 2010. The Chairman, after contacting Town Counsel for advice, sent a letter to Atty. Flores agreeing to write only one decision after the decision on the variance is made.

On January 6, 2010 meeting, #07-30 Canal Road – Court Order Remand will be before the Board.

#### **Public comment**

Cubellis development rights timeframe questioned by Mr. Mulvey. Chm. Berger stated that the 40B Comp. Permit was good for 3 years, and could be renewed if an application for an extension is filed within the 3 years.

#### **Adjourn**

R. Gaynor **moved** and **seconded** by W. Keene to adjourn. Meeting adjourned at 8:35 pm.  
**Unanimous vote.**

Respectfully submitted - Lisa Groezinger, sec.