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**Town of Bourne
Zoning Board of Appeals
Meeting Minutes
September 6th, 2023**

PRESENT: Chairman James Beyer, Vice Chairperson Chris Pine, John O'Brien, Elza Bystrom (Associate).

ABSENT: Harold Kalick, Wade Keene.

STAFF: Ken Murphy.

PUBLIC: Kevin Klauer, Peter Flynn, Zac Basinski, David Reid, Tom Mulcahy, William Belanger, Peter Flynn, Peter McDiarmid, Susan McDiarmid, Jillian Hogan.

Chairman Beyer called the meeting to order via Zoom at approximately 7:00pm.

Minutes: 8.2.23, 8.16.23

Mr. Pine makes a Motion to Approve the Minutes. Mr. O'Brien seconds the Motion.

Roll Call Vote As Follows:

Mr. Pine – YES. Mr. O'Brien -- YES. Ms. Bystrom – YES. Chm. Beyer – YES.

The Motion Passes.

Public Hearing for Supportive Finding #2023-SF06: *Continued from 7.19.2023. 56 Samoset Rd. Peter Flynn. Request for a supportive finding to raze and rebuild pre-existing, non-conforming structure with detached garage and pool on non-conforming lot under section 2320.*

Attorney Kevin Klauer introduces himself as representative of this project. He states that the plans have been revised since the last meeting to address concerns of the board and the abutters. He states that there was a letter submitted addressing the appropriateness of the supportive finding, but in this case there is no change in use, and believes that the supportive finding is appropriate given that the board will decide that this plan is not substantially more detrimental. The retaining walls and fences will now be separate entities and all under six feet. Vegetation will cover the retaining walls from view and the runoff will be improved. Atty. Klauer states that although the house is large, it is under the maximum allowed by right in GFA and footprint. The pool is allowed by right, but the only question is that if this proposed dwelling is substantially more detrimental to the

neighborhood than what currently exists. In this application they are improving setbacks, removing encroachments, improving runoffs and aesthetics, which Atty. Klauer suggests makes this less detrimental to the neighborhood.

Atty. David Reid introduces himself as representative of the Andersons at 33 Sagamore Rd. He states that he still has some questions from the new plans. On the engineer's plans over the new garage, there is still a bedroom. However on the architect's plan, it shows a gym and office. He asks if this will remain a three-bedroom home. Secondly, on the architect's plans it shows a row of evergreen trees closest to his client's property. However, the dimensions of these trees are not mentioned. Atty. Reid questions if these trees will provide privacy immediately or will need years to mature. He asks that the board include details to assure that what is planted is an effective buffer from the beginning. Thirdly, on the surveyor and engineer's plan it is indicated that this is an R40 zoning district, but the table and plans show a side yard setback of 12ft. Atty. Reid's reading of section 2500 states that the side yard setback should be 15ft. The proposed pool is only 12ft from the southerly boundary, and 13ft from the easterly boundary. These create new non-conformities, which either must be made to conform or need a variance. Lastly, during the last hearing Atty. Reid raised the question of their true height. The plans show the finished grade of the retaining walls, but in the definition section of the by-law, it says that buildings and other structures must be measured from the natural grade. The natural grade along that boundary line ranges from 23ft to 25ft. That would make those walls 8-10ft tall, when only 6ft is allowed, and must be setback 15ft from the boundary line. Atty. Reid states that in their opinion, this design is substantially less conforming than the existing house because they are creating new non-conformities.

Atty. Klauer responds that the room above the garage will meet the definition of a bedroom whether or not it is labelled a bedroom. The septic system that is installed in the house is for a four-bedroom house. However, the intent of that room is not a bedroom, it is instead going to be used as a workout room or office, but whatever it is called, it will still meet the Title V definition of a bedroom and the Board of Health has indicated that this is not an issue on their end. In regards to the existing structure's porch and the proposed structure, the structure is the structure whether it is part of the house or part of the porch. They will now be eliminating a non-conformity and increasing the setback.

Zac Basinski of Bracken Engineering speaks to the side yard setback issue that Atty. Reid brings up. He states that the side yard setbacks are from when the lot was created. Historically they reach out to the town engineer Tim Leyden, and Mr. Basinski shares his screen and shows an email from Mr. Leyden showing that when the lot was created it was in the R13 zoning district, so the town honors a 30ft front yard setback and 12ft side yard setback. Mr. Basinski adds that the 6ft wall height does not count as structures after meeting with Mr. Murphy, and the fences have been separated off the walls so they do not meet the structure definition, therefore they do not meet the average grade height requirement because they are less than 6ft.

Tom Mulcahy, the landscape designer for the project, states that they will be planting an arborvitae hedge row. The sizing will be based on availability at the time, but it will most likely go in at a height greater than the proposed wall.

Atty. Reid responds that putting in arborvitae that are about the height greater than the proposed wall is about a third of what is shown on the plans. It was represented that the wall and the pool would not be visible to the neighbors. This will not be the case if 6ft trees are planted and his clients would find this unsatisfactory. In regards to the setback, Atty. Reid states that under 40A section 6, current bylaws must be honored on new structures. If not, they must receive appropriate relief. In the case of new non-conformities, the appropriate case is a variance.

Ms. Bystrom points out that the landscape architect stated that they will plant trees that are the height of the retaining wall, but the height of the retaining wall is still in question. She also wonders if the abutters do not want to see the retaining wall because of a verbal agreement, but the retaining wall is not a structure that concerns the ZBA. Mr. Murphy confirms that a retaining wall is not a zoning bylaw concern. Chm. Beyer adds that maybe they should be asking what sizes the abutter would like the trees to be.

Atty. Reid responds that they would like to see plant sizes as shown in the plan because the abutters are looking down on to the lowest part of the property. The concern is not primarily the retaining wall but the pool, because it will be the main source of loss of privacy and noise. Chm. Beyer summarizes that they are looking for plant sizes as they are shown on the plan. Atty. Reid confirms.

Ms. Bystrom adds that putting in a pool is the right of the property owner, and she believes that this is something they cannot be against. She asks from what area of the property is the abutter looking down upon the pool. Atty. Reid responds that it is the entire backyard and the backside of the house.

William Belanger of 1 Hawes Rd makes a comment as a direct abutter. He states that they had some questions at the last meeting but they have been satisfied and they are supportive of the request and they think it would improve the neighborhood overall. Chm. Beyer asks if they have one neighbor that is objecting and two neighbors that are in support. Peter Flynn, the applicant, states that they have three neighbors that support the project and have written letters of support. He adds that they want privacy screening for their property and for the abutters. Chm. Beyer adds that they will have privacy as long as they enforce the height of the evergreen privacy screening. Mr. Flynn adds that they are limited by what is available at the time of planting, but they want as much privacy as possible at the get-go.

Mr. O'Brien states that he cannot remember a time when the made decisions based on what someone wanted to see on someone else's property. He adds that he is unclear on whether the old zoning district's setback is honored or the new zoning bylaw must be honored. If that is the case, he agrees with the attorney that they are in a variance situation. Chm. Beyer responds that the town has taken the position that the 12ft is a requirement. Mr. Murphy states that in the past that they had a structure on a lot that was grandfathered on a 12ft setback, they would honor that setback, whether it is an addition or a new structure in the past. Therefore, if the town engineer states that it is a 12ft setback and clearly knows that it is a new structure, then that is what the setback should be.

Chm. Beyer asks Mr. Murphy what his view is on the retaining wall height. Mr. Murphy responds that he met with Mr. Basinski and Mr. Flynn to go over what the bylaws state regarding retaining walls or fences, and based on the plans, they have met those requirements from the new grade and not the existing grade.

Mr. O'Brien makes a Motion to Close the Public Hearing. Mr. Pine seconds the Motion.

Roll Call Vote as Follows:

Ms. Bystrom – YES. Mr. O'Brien – YES. Mr. Pine – YES. Chm. Beyer – YES.

The Motion Passes.

Chm. Beyer asks for the board's view on this. Mr. Pine states that he spent some time around the property and this is most likely a fantastic project and the neighborhood would benefit from it. However, his concerns stem from altering a pre-existing structure. He agrees that the existing covered porch is located at a certain point and that is different from a structure with a foundation. He adds that he would have an easier time with this if they were rebuilding on that exact footprint. He states that he is struggling to understand how this is less non-conforming when from everything he can see, this is more non-conforming. He states that he is leaning towards not approving this because it is not the same footprint. He adds that an acceptable setback would be 8ft. Chm. Beyer adds that the Samoset Ave. side of the house is not the part of the house that anyone is objecting to. However as it is proposed, Mr. Pine feels that this is a variance.

Mr. O'Brien states that he does not have a problem with this, but agrees with Mr. Pine that lessening the setback is a problem because it requires a variance and not a supportive finding.

Ms. Bystrom states that she is not completely comfortable voting on this unless they know for sure that it is allowed because of the setbacks. Chm. Beyer responds that the 12ft setback is for the easterly side, and the house is on the property line of the westerly

side. While he is aware that the westerly side is a non-abutting side, he agrees that this is a variance.

Atty. Klauer responds that the covered porch remains part of the structure. The setback is an encroachment of one foot over the property line into the street. He does not believe that the board can decide what is part of the structure and what is not. What they are proposing is a lessening of that encroachment. Mr. Pine adds that the intent of the protection of pre-existing non-conforming structures is to give the property owners the ability to put back what was once there. He states that he has a hard time recognizing how increasing the size and moving the structure forward complies with the intent of the existing structure.

Atty. Klauer responds that the by-law states that the board must decide if the change is substantially more detrimental. Their position is that the increase in the setback and the elimination of the encroachment is not more detrimental than what currently exists. Chm. Beyer responds that currently the porch is one foot over the property line, and what they are proposing is that the house will be one foot from the property line. The proposed condition has more structural mass which is closer to the property line. In his view, this is more non-conforming. Atty. Klauer responds that they are eliminating an encroachment and improving a setback, so they are making this more conforming. Mr. Basinski adds that the GFA is based on porches over 200sqft, and this porch is 367sqft, so they are bringing GFA space that is over the lot line back onto the lot.

Chm. Beyer responds that they can put this to a vote or they can withdraw this and reapply as a variance. Mr. Basinski suggests that they request a continuance so they can decide how they would like to proceed.

Mr. O'Brien makes a Motion to Continue the Public Hearing for #2023-SF06 to September 20th. Mr. Pine second the Motion.

Roll Call Vote as Follows:

Mr. Pine – YES. Mr. O'Brien – YES. Ms. Bystrom – YES. Chm. Beyer – YES.

The Motion Passes.

Public Hearing for Variance #2023-V2: *Cont'd from 8.16.23. 51 Canal Drive, Unit 3, Sagamore Beach. Gregory Roche. Request for a variance to build a deck to the left of home.*

Gregory Roche identifies himself as the applicant. He states that he obtained a letter from the condominium association. Chm. Beyer states that if the condo association is okay with this then they should not interfere, and it is fair to say that they do have the approval of the condo association.

Mr. Pine states that he was absent during the last hearing, but viewed the recording. He states that he is struggling for the request for a variance because of the hardship requirement. Chm. Beyer informs Mr. Roche that he will need a unanimous vote in order for this to pass as a variance. The other option is to come back and ask for a special permit with the case that this is no more detrimental to the neighborhood. Mr. Pine continues that there are ways that this could be constructed so it is more conforming, and maybe he is missing an element of hardship, but does not want to go down this road of approving the variance without hardship. Chm. Beyer responds the basis of the claim for not being more detrimental is that the condominium and they are looking at the condominium as a whole as opposed to any single unit in the condominium.

Mr. Murphy states that the reason the applicant applied for a variance is that this is what was required at the time. They were not aware the homeowner was part of an association. Had he known that the applicant was part of an association, he would have told the applicant to apply for a special permit. Mr. Pine adds that if the condominium is considered as a whole, a supportive finding would be appropriate.

Mr. Pine makes a Motion to Close the Public Hearing. Mr. O'Brien seconds the Motion.

Roll Call Vote as Follows:

Ms. Bystrom – YES. Mr. Pine – YES. Mr. O'Brien – YES. Chm. Beyer – YES.

The Motion Passes.

Mr. O'Brien states that there are a lot of requirements for a variance. If they go down the road, they will have a hard time meeting those criteria. Although it is inconvenient, it would be better for this to be a supportive finding. Chm. Beyer adds that he does not see a hardship, which is a requirement for a variance. Mr. Murphy suggests that the applicant pursues a withdrawal without prejudice, and returns with a supportive finding.

Chm. Beyer explains to Mr. Roche the repercussions of the board voting this down. Mr. Roche states that he believes the board would not vote favorably.

Mr. Pine makes a Motion to Withdraw without Prejudice the Application for #2023-V2. Ms. Bystrom seconds the Motion.

Roll Call Vote as Follows:

Mr. O'Brien – YES. Ms. Bystrom – YES. Mr. Pine – YES. Chm. Beyer – YES.

The Motion Passes.

Public Hearing for Supportive Finding #2023-SF08 and Special Permit #2023-SP9: 435
Circuit Ave, Pocasset. Seven Stens Trust, Paul and Madeline Stenberg. Request to raze and rebuild a pre-existing non-conforming single family dwelling on a pre-existing non-conforming lot under section 2320.

Zac Basinski of Bracken Engineering states that they would like to request a continuance.

Mr. O'Brien makes a Motion to Continue the Public Hearing for Supportive Finding #2023-SF08 and Special Permit #2023-SP9 to October 18th. Mr. Pine seconds the Motion.

Roll Call Vote As Follows:

Mr. Pine – YES. Mr. O'Brien – YES. Ms. Bystrom – YES. Chm. Beyer – YES.

The Motion Passes.

Public Hearing for Supportive Finding #2023-SF07 and Special Permit #2023-SP10: 457
Circuit Ave, Pocasset. Bryan and Kelly Stenberg. Request to raze and rebuild a pre-existing, non-conforming single-family dwelling on a pre-existing non-conforming lot under section 2320.

Zac Basinski of Bracken Engineering introduces himself as representative of this project. He shares his screen via zoom. He states that the existing structure was built back in the late 1800s, and the lot was created in 1840. The master lot is about 8500sqft and is comprised of a single-family house and a detached garage, which was reviewed and approved by the Board of Appeals under a special permit back in 2018 to be converted in a shed/rec room. Currently the property is a four-bedroom house. They will maintain that four-bedroom septic system, which both Conservation and the Board of Health has approved. The parcel has a secondary parcel located across Circuit Ave, so this application is based on two combined lots. He states that this is similar to what the board approved back in 2001 at 573 Circuit Ave. At this time, the board requested that any parcel that was on the same deed under the same ownership could be concluded on the same application. Therefore, the proposed project is based on a combined total of lot area from the two parcels. This secondary lot brings the whole project into conformance with lot coverage. They're not asking for any increase over what would be allowed by the by-law. The structure is being elevated to bring it into FEMA compliance, and making it a more coastally resilient home. This property was also converted from a seasonal use to year-round use previously, and they are looking to keep this a year-round property.

From this proposed project, the on-site parking and pedestrian access is greatly improved. They are pulling the structure further off Circuit Ave to meet the zoning setbacks in the area. There are no impacts on utilities, so by maintaining use, they do not believe this is any more detrimental for the neighborhood. They are putting in a new nitrogen loading

septic system. The GFA and lot area calculations were reviewed and approved by the planning staff. They are not impacting any view lines and they are in harmony with the area.

The board discusses that all the properties on Circuit Ave are on both sides of the road. Mr. O'Brien states that he can't recall using the secondary lot as part of the GFA and lot coverage. Mr. Pine states that he has some concerns that this secondary property could be sold some day, even if it could not be built upon. He states that he would feel better if there was a deed restriction that tied the two together. Mr. Murphy confirms that this can be done. Mr. Basinski states that they can put a deed restriction that reads that they cannot be sold off separately. They could make that a condition and then provide legal documentation back to the board if the project is approved.

Chm. Beyer asks if this is two lots. Mr. Basinski states that it is two parcels on one deed. He restates that they can put a deed restriction at the registry of deeds that shows that these two parcels will never be sold separately. They could supply that as a condition as part of the approval so a building permit cannot be issued without this being recorded in the registry of deeds.

Mr. O'Brien makes a Motion to Close the Public Hearing for Supportive Finding #2023-SF07 and Special Permit #2023-SP10. Mr. Pine seconds the Motion.

Roll Call Vote as Follows:

Mr. Pine – YES. Mr. O'Brien – YES. Ms. Bystrom – YES. Chm. Beyer -- YES.

The Motion Passes.

The board discusses their feelings on this project, and they all feel that it is acceptable.

Mr. Pine makes a Motion to Approve the Application for Supportive Finding #2023-SF07 and Special Permit #2023-SP10 with the condition that a deed restriction is created so the properties will be considered one lot in perpetuity, and evidence of this provided to the Building Inspector before a building permit is issued. Ms. Bystrom seconds the Motion.

Roll Call Vote As Follows:

Ms. Bystrom – YES. Mr. O'Brien – YES. Mr. Pine – YES. Chm. Beyer – YES.

The Motion Passes.

Public Hearing for Special Permit #2023-SP11: 20 Spurr Rd, Pocasset. Robert F. McDiarmid.
Request to grant 8.2% to GFA calculation.

Robert McDiarmid introduces himself as the applicant. He shares his screen via Zoom and shows images of his property in the back of the house where they are requesting the special permit. He states that when they designed the second-floor extension and put a deck underneath it, he did not realize that the deck would be called a porch and be included into the calculation for GFA. He states that this was entirely a mistake. However, an 8.2% increase in his GFA would allow him to build this project.

Chm. Beyer asks if he is proposing to extend the deck. Mr. McDiarmid responds that there is no deck on the back of the house at all. There is just a covered entrance to the house. What they want to do is come 12ft off the back of the home to create a two-level deck. That whole deck area is 12x22. He states that he has mobility issues so the two-level deck would be beneficial for him.

Mr. Pine clarifies their plans. He recaps that they are extending the bedroom on the second floor, and the proposed deck underneath will now be a covered porch because of this overhang. Mr. McDiarmid adds that they have approval from the Conservation Department and the Board of Health.

Jillian Hogan introduces herself as the applicant's daughter and states that her father will be building this deck for her young children and hopes this will be approved.

Mr. O'Brien asks if the 10% over GFA criteria for hardship has been met. Chm. Beyer asks Mr. McDiarmid to explain how this alleviates the hardship. Mr. McDiarmid explains that he is getting old and has tremendous arthritis which has caused a double knee replacement in the last two years. He also states that he has a fused ankle and wears a boot over it. The grade change in the back of the house is about 3ft and it causes him pain to walk up. He wants to have a level deck to play with his grandchildren.

Mr. O'Brien makes a Motion to Close the Public Hearing for Special Permit #2023-SP11. Mr. Pine seconds the Motion.

Roll Call Vote as Follows:

Ms. Bystrom – YES. Mr. O'Brien – YES. Mr. Pine – YES. Chm. Beyer – YES.

The Motion Passes.

Mr. O'Brien makes a Motion to Approve the Application for Special Permit #2023-SP11. Ms. Bystrom seconds the Motion.

Roll Call Vote as Follows:

Mr. Pine – YES. Ms. Bystrom – YES. Mr. O'Brien – YES.

The Motion Passes.

New Business:

The board discusses that on October 4th, neither Chm. Beyer nor Mr. Pine will be present. Chm. Beyer asks Mr. O'Brien to run the meeting. Chm. Beyer also discusses cancelling that meeting.

Mr. Murphy wishes to discuss the deadlines for getting information in before the hearings. He states that they are still getting things after the deadline, but they cannot refuse anything, so they are going to put a bigger statement on the website regarding late materials.

Chm. Beyer says that they cannot stop people from dropping off things the Tuesday or Wednesday before a meeting, but they can say that they have not had time to review it, they have the right to continue the hearing.

Old Business:

None.

Public Comment:

None.

Adjournment

Mr. O'Brien makes a Motion to Adjourn. Mr. Pine seconds the Motion.

Roll Call Vote As Follows:

Ms. Bystrom – YES. Mr. O'Brien – YES. Mr. Pine – YES. Chm. Beyer – YES.

With no further business before the Board, the meeting was adjourned at approximately 8:45 PM.

Respectfully Submitted,
Ina Sullivan