

Town of Bourne
Zoning Board of Appeals
Meeting Minutes

Zoom Meeting Platform
Meeting ID: 810 6695 1893
March 16, 2022

I. Call to Order

Chm. James Beyer called to order the meeting of the Zoning Board of Appeals at 7:00PM on Wednesday, March 16, 2022, held via Zoom Platform. Chm. Beyer explained all reviews, unless otherwise stated are joint reviews. Chm. Beyer explained under M.G.L., Section 40A and 40B. All appeals must be filed with the Town Clerk, within 20 days of the filing of the decision.

Note: The meeting was being held via the Zoom platform, and was being recorded, as noted per the “Recording in Progress” icon that was displayed. The proceeding listing of matters are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may be discussed, and other items not listed may be discussed due to the limited extent permitted by the Open Meeting Law. All items within the meeting agenda are subject to deliberation and vote(s) by the Zoning Board of Appeals.

Members present: James Beyer, Chris Pine, Pat Nemeth, John O’Brien, Wade Keene, Associate Member Karl Spilhaus

Excused members: None

Others in attendance: Ken Murphy; “danslem@yahoo.com”; Roger Forget; Drew Hoyt; David Keery; “Nancy’s iPad”; Brian Nixon; Jim Pavlik; David Pelonzi, BFD; “saggybeach@aol.com”

Approval of Meeting Minutes:

- March 2, 2022, meeting minutes
 - Chm. Beyer confirms that all members have received the minutes from this hearing date. All members confirm receipt of the minutes. Multiple corrections are being requested. Members unanimously agree to table the minutes to the next meeting on April 6, 2022.

Agenda Items:

1. Public Hearing for Special Permit 2022-SP04:
Address: 15 Hawes Road
Applicants: Brian and Sarah Nixon

Request for a renovation and addition to an existing one-family dwelling resulting in an upward and lateral expansion of a non-confirming structure.

Materials reviewed: Application for Special Permit, Table 2456, and Part 2457 of the Zoning Bylaw, Driving Directions with Map, Property Map, Certified Site Plan, Architectural Plans, and Design Development Square Footage Plans

Mr. Brian Nixon, property owner at 15 Hawes Road, introduced Mr. David Keery to present the proposed project. Mr. Keery offered to share his screen. Chm. Beyer requested that Mr. Keery wait to share his screen in order to address and correction that needs to be made to the Gross Floor Plan calculation on the plan. Mr. Keery explained how the calculations were made. Mr. Keery stated his calculations were made using Table 2456 in the Zoning Regulations. Chm. Beyer stated that he does not believe this calculation conforms to the aforementioned Table. Chm. Beyer reviewed the Maximum Lot Coverage calculation, calculated by taking the footprint of the structure and dividing it by the area of the site. He noted that this calculation was denoted correctly on the plan and that it does conform to the requirement to not exceed 25% of the lot coverage. Chm. Beyer then reviewed the Gross Floor Area Ratio (GFA), calculated by taking the entire area of the building and dividing it by the area of the site. He noted that the maximum requirement for this calculation should also not exceed 24% of the lot coverage. Chm. Beyer noted that per the proposed plan, it appears as though the calculation for the Gross Floor Area Ratio is “somewhere around 40%.” Mr. Keery reviewed the portion of the Zoning Regulation that he believed pertained to this project. He discussed a portion of the regulations:

“Departure: The Board of Appeals may for ‘good cause’ grant a Special Permit for departure from Table 2456, but only in the case of Maximum Gross Floor Area and Maximum Lot Coverage in either case provided that all of the following are shown: Good and sufficient cause; Failure to grant the departure would result in exceptional hardship to the applicant; or conflict with existing laws.”

Mr. Keery reviewed how he came to the calculations. Chm. Beyer reviewed the allowed GFA in this situation is 2,110 ft². He compared it to the proposed GFA of 3546ft², prior to the additional 211ft² that is being proposed, for a total new GFA of 3757ft². Chm. Beyer reviewed that neither the existing 3546ft² area calculation, nor the newly proposed 3757ft² area calculation are within the Zoning regulations. Mr. Keery agreed with Chm. Beyer’s findings, and he also reviewed additional portions of the proposed project that are non-conforming to the Zoning regulations: setbacks, height of the structure, and square footage. Mr. Keery stated that the project is in front of the Zoning Board of Appeals for request for a Special Permit for relief of the aforementioned non-confirming aspects of the proposed plan. Chm. Beyer stated that there is already a Special Permit in place for this property to do renovations to the house, but confirmed with Mr. Keery that the current application for a Special Permit is being requested to further increase the square footage of the dwelling. Mr. Keery confirmed this

information. Chm. Beyer responded stating that he could not support the request for increase in square footage of the home. He opened discussion to the other board members. Mr. O'Brien stated he has reviewed the project, and he noted that it was not mentioned whether the Board of Health approved seven bedrooms. Mr. Keery stated that the septic has already been redone to comply with seven bedrooms. Chm. Beyer confirmed that there is already a Special Permit in place that has been approved for the applicants to do interior renovations on the house, and presumes that with the approval of that Special Permit, there was an approval from the Board of Health. Ms. Nemeth agreed with Chm. Beyer's previous statements regarding the proposed square footage calculations, as well as Mr. O'Brien's comment regarding Board of Health approval. Chm. Beyer stated that he does know what "hardship" would be imposed if the home could not be expanded. In his opinion, it looks like the renovations could be done to the home without expanding the existing footprint. Mr. Pine commented regarding the GFA, stating that the calculated GFA is far over the allowance outlined in the table (Table 2456). He noted that the board cannot approve anything more than 10% greater than the Maximum Gross Floor Area to Lot Area. Chm. Beyer further clarified Mr. Pine's explanation, stating that the maximum square footage home for this property that could be brought in front of the board would be 2321ft², and the proposed square footage for the home is 3757ft², and reiterates that the board would not be able to approve the request based on that information alone. Chm. Beyer reviewed alternative options for the applicant: apply for a variance; revise the current plan and not extend the boundaries of the enclosed space. Mr. Keery stated that when he submitted the plans, he was directed to the Zoning Board for decision regarding a Special Permit. Mr. O'Brien shared that he is unsure why that was, and Mr. Pine agreed. Chm. Beyer informed Mr. Keery that he has the option to withdraw the plan, or move the plan forward with the option to appeal the decision of the board. Mr. Keery reviews the reasoning behind the application, and briefly reviews specific aspects of the plan. He requests guidance from the board regarding possible amendments that could be made to the plan to allow the plans to be presented to and reviewed by the board to come to a decision. Discussion ensued. Mr. O'Brien questioned that if the plan stayed within the existing square footage of the house, would the applicants need any kind of permit? Chm. Beyer confirmed that a finding by the board would be needed. Mr. Spilhaus provided input that if the exterior of the house is proposed to be altered, it would need to be brought before the Historic Commission. Mr. Keery confirmed that the plan has been approved by the Historic Commission. Mr. Spilhaus stated that if the exterior plans are altered in any way, they would need to be brought back before the Historic Commission. Mr. Keery confirmed understanding. Mr. Keery shared photos of the home, and briefly reviewed the proposed plans. Discussion ensued regarding footprint of the home, as well as whether or not there was any input provided by any abutters. Mr. Keery confirmed that Mr. Nixon did have a discussion with an abutter, and resolved questions that arose regarding possible obstruction of the abutter's view from part of the proposed addition, and the deck. The abutter's concerns were resolved following the phone conversation with Mr. Nixon. Mr. Keery did

suggest to Mr. Nixon that he get something in writing pertaining to the conversation he had with the abutter, and the board agreed with Mr. Keery's recommendation. Mr. Pine suggested the submission of a notification of the abutters, along with any amended plans, at the notification of the abutters was not submitted with the original application. He also suggested a completed GFA form filled out by the Town Planner is submitted with any amended plans.

Public comment: Mr. Andrew Anderson, an abutter at 33 Sagamore Road, requested provide comment. He confirmed that he did receive notice of this hearing, and also stated that he is in full support of the proposed renovation. After further discussion, the applicant agrees to withdraw the application.

Motion made by Mr. O'Brien and seconded by Ms. Nemeth to close the hearing. **Mr. Pine – yes, Ms. Nemeth – yes, Mr. O'Brien – yes, Mr. Keene – yes, Chm. Beyer – yes. Hearing is closed.**

Chm. Beyer entertained a motion to allow the applicant to withdraw the application for Special Permit 2022 SP-04 without prejudice. Mr. O'Brien stated he would make the motion, as long as it would be the applicant's intent to withdraw the application. Mr. Nixon confirmed it would be his intent to withdraw the application. Motion seconded by Mr. Pine. **Ms. Nemeth – yes, Mr. O'Brien – yes, Mr. Keene – yes, Mr. Pine – yes, Chm. Beyer – yes. Application for Special Permit 2022 SP-04 is withdrawn without prejudice.**

Chm. Beyer stated he will take care of the withdrawal form for this application.

2. Public hearing for Amendment to Comprehensive Permit No. 08-18
Address: 230 Sandwich Road
Applicant: Chase Estates

Materials reviewed: Certified Site Plan (including Existing Plan Conditions, Grading and Drainage Plan, Utility Plan, Layout and Materials Plan, Sediment and Erosion Control Plan, Emergency Vehicle Turning Movement Plan, Construction Detail Sheet), Drainage Report, Requested Waivers, USGS Locus Map, Flood Map, Natural Heritage Map, Critical Areas Map, Soil Resource Report, Stormwater Report, and Stormwater Operation and Maintenance Plan and Pollution Prevention Plan

Mr. Drew Hoyt addressed the board, and introduced the applicant Mr. Jim Pavlik. Mr. Hoyt addressed previously discussed issues:

- a. Radius of the entry and fire vehicle access from the proposed development to the state road
- b. Issues involving the grade

Mr. Hoyt reviewed the suggestion made by the board to discuss the above issues with the Fire Department, the Town of Bourne Engineer Mr. Timothy Lydon, and MassDOT to obtain their input on a layout. Chm. Beyer commended the efforts of the representative made in obtaining the requested information and input. Mr. Hoyt appreciated the commendation, and stated that he believes there is a now a

layout available that he and Mr. Pavlik would like to present to the board. He turned the presentation over to Mr. Pavlik. Mr. Pavlik requested to share his screen and review the updated plans. He first reviewed the issues regarding the Fire Department's concern of the turning radius of the entry. Chm. Beyer asked if Mr. Pavlik believed this issue has been resolved with the Fire Department. Mr. Pavlik confirmed that there is updated information that he will share with the board that has not yet been brought before them confirming resolution. He shared details regarding the resolution. Ms. Nemeth questioned if there are further revisions that have been made to the proposed plan that the board would need to see. Mr. Pavlik confirmed the change is minor and will review it with the board. Chm. Beyer asked if "the Fire Department is insisting that the [fire] truck clear on the way in and the way both on the property and off the property." Mr. Pavlik confirmed that that was his understanding. He also stated that he believes the "Fire Department regulations covered under 527 CMR do not pertain to single-family or duplex style home developments such as this, except when there is a proposed Community Building," and confirmed that there is a proposed Community Building with this plan. He reviewed the details of the updated plan. He stated that MassDOT would not approve anything wider than a 24ft wide roadway with 30ft radii, and that was is being proposed for the entrance on the plans. Mr. Pavlik then reviewed the changes made to allow for the emergency vehicle (fire truck) to enter and exit the site. He reviewed the details regarding a proposed turning apron as well. Mr. Pavlik requested permission from Chm. Beyer to allow Asst. Chief of the Fire Department, David Pelonzi to comment on the amended plans. He reviewed Mr. Pavlik's previous statement regarding his authority to enforce the Fire Code due to the fact that there is a Community Building involved with this development. Asst. Chief Pelonzi states he would approve these amended plans, pending approval from MassDOT. Chm. Beyer questioned whether MassDOT would object to the extension of the tail of the truck into a non-driving lane. Asst. Chief Pelonzi inferred that since the lane has been updated from an "opposite lane of travel" to a non-driving lane, it would likely not be objected. Mr. Pine questioned if there would be any restrictions with the pattern of traffic when existing or entering the development (i.e. no left-hand turn into or out of the development). Mr. Pavlik provided clarification, stating that there was no specification by MassDOT regarding restrictions of left-hand or right-hand turn lanes, and he stated that the existing striped median would be removed in the area of the entrance. Ms. Nemeth asked if MassDOT requested any type of stop light in this location. Mr. Pavlik stated there was some discussion regarding this matter, but it was not noted to be required. Ms. Nemeth suggested re-discussing this matter when getting into the peer review. Mr. Hoyt provided further clarification and stated that to his recollection of previous conversations, MassDOT would not permit a stop light in this location. Chm. Beyer responded stating there are larger developments along the same road that did not require stop lights, and he does not see why a development of this size would require one. Mr. Keene asked if school buses will be going up this roadway. Mr. Hoyt provided clarification and stated that the format for the development has changed to a "condominium style," and the roadway will

actually be a driveway, so it would be likely that there would be a bus stop at the bottom of the driveway, not necessitating buses to actually enter the development, but he is uncertain how the town would come to that decision. Mr. O'Brien responded, stating that with his experience, he does not believe that with the policy in place in the Town of Bourne, it would not result in a bus going into the development. Further discussion ensued regarding the school buses, and children waiting in their parents' vehicles at the entrance of this development. Mr. Keene also questioned who would be responsible for the salting and sanding of the development. Mr. Hoyt responded stating that there would be an association responsible for the maintenance of the roads during storms. Ms. Nemeth questioned if there would be a possibility to increase the size of the truck apron up the hill. Mr. Hoyt discussed this possibility with Mr. Pavlik, and Mr. Pavlik stated it was proposed to have "No Parking" signs on one side of the road to allow for one lane to be open for traffic at all times. Chm. Beyer suggested the possibility of parallel parking spaces. Mr. Pavlik appreciated the suggestions. Mr. Pavlik then turned his attention to addressing the concerns that were brought up by the Mr. Lydon, most of which had to do with erosion control, and cutting into the existing slope of the site. He reviewed the additional erosion control notes, as well as the proposal for an erosion control monitor. Detailed construction sequencing notes are reviewed as well. The breakout elevation for the septic system is discussed. Chm. Beyer commented that there appears to be some disagreement regarding the water line, stating that the plans show the water line to be "looped," to which Mr. Lydon had commented that he preferred this looping did not happen. Mr. Pavlik stated that he understood Mr. Lydon's comment was requesting no permanent access through the site, which has been discussed amongst the applicant, and Mr. Lydon, but the looped water line has been proposed all along. Chm. Beyer reviewed comment provided by Mr. Lydon in an email, which does discuss the access that Mr. Pavlik discussed, but not the water line. Ms. Nemeth asked Mr. Pavlik if there are any cross-sections provided in the Application Packet depicting how the first two buildings will sit on the land. Mr. Pavlik stated there is no drawing depicting this information, but provided details regarding how the buildings are proposed to be configured. Ms. Nemeth understood the explanation, and requested a cross-section still be provided. Mr. Pavlik reviewed the proposed grading for the site, with only three retaining walls proposed, which will all be at a height of four feet or less. The proposed septic systems are then reviewed. There will be two systems proposed for the site: one will be in the location of the existing house foundation, which will serve the first two homes, and is sized for a three bedroom unit; the second will be at the rear of the site that will serve the remaining ten units, and will be a gravity sewer system. Chm. Beyer asked where the pumps will be. Mr. Pavlik shared the location of the pumps on the plan, near a visitor parking area. Mr. Pine asked if these plans have been brought before the Board of Health as of yet. Mr. Pavlik stated they have not yet, but can be done at this point, knowing there will need to be additional design updates. Mr. Keene questioned whether each unit would have their own holding tank. Mr. Pavlik reviewed the plan for the septic system, reiterating that the front two buildings will have one holding tank, and the

rear ten units will have a separate tank. Mr. Keene asked if there will be any form of generators or backup power for the septic system. Mr. Pavlik stated that can be reviewed and looked into. Ms. Nemeth requested for Mr. Pavlik to review the plans for both pool area and community building. Mr. Pavlik reviewed these parts of the plan, including pump locations for the pool, as well as the plan for a proposed bathroom and fitness room in the community building. Ms. Nemeth requested clarification regarding the dimensions of the pool. Mr. Pavlik stated the pool is about 18ft x 32ft. Discussion again ensued regarding the updated turning radius for the fire trucks. Ms. Nemeth commended the updates to the plans. Mr. Pavlik appreciated the commendation. He then reviewed the drainage plans including the locations of the proposed catch basins. Mr. O'Brien questioned whether there would be an issue with any setbacks from abutting property lines. Mr. Pavlik reviewed the proposed ten foot setback from the property line to the deck on the structure, as well as a proposed fence. Mr. Murphy commented stating that there is a required 12 foot setback. Mr. O'Brien questioned if the applicants would be requesting a waiver for the setback. Mr. Murphy confirmed this would be the case. Mr. Pappas responded stating that dimensions of the structure can be adjusted if necessary. Chm. Beyer requested Mr. Hoyt discuss the review made by the Board of Health. Mr. Hoyt reviewed the possibility of being able to request meshing the peer review with reviews that will be made by other departments, such as the Board of Health, as well as the finances involved in obtaining the formal peer review. Chm. Beyer reviewed the reasoning behind the request for the peer review, specifically for the traffic, storm water drainage control, and grading erosion control. Further discussion ensued regarding peer review. The board came to a conclusion that excluding questions regarding the septic, and grading and erosion control, everything should be ready to submit to the peer reviewer. The representative is amenable to continuing the hearing to April 6, 2022.

Chm. Beyer entertained a motion to continue the hearing for Comprehensive Permit Number 08-18 to April 6, 2022. Motion made by Ms. Nemeth and seconded by Mr. O'Brien to continue the hearing to April 6, 2022. **Mr. O'Brien – yes, Ms. Nemeth – yes, Mr. Keene – yes, Mr. Pine – yes, Chm. Beyer – yes. Hearing is continued to April 6, 2022.**

Ms. Nemeth will write this decision when the time comes.

New Business: None.

Old Business:

- Mr. Murphy stated that Mr. Doug Troyer questioned whether the board would like for him to come before the board regarding a 25ft sign that was approved for the proposed MacArthur Blvd gas station. He modified the sign, but did maintain the 25ft height limit. Mr. Murphy stated that the sign remains within the size requirements. The board agreed unanimously that Mr. Troyer would not need to come back before the board with the updated sign modifications.

Public comment:

- Mr. Roger Forget addressed the board. He stated that “the school concurs with the soft soil approach to the retainage of the property (Chase Estates).” He also stated that Mr. O’Brien was correct in his assertion regarding setbacks between Chase Estates, and Upper Cape Tech. He thanked the board for their efforts regarding this application as well.

II. Adjournment:

Chm. Beyer entertained a motion to adjourn. Motion made by Mr. O’Brien and seconded by Ms. Nemeth to adjourn. **Mr. Keene – yes, Mr. Pine – yes, Ms. Nemeth – yes, Mr. O’Brien – yes, Chm. Beyer – yes.** Meeting adjourned at 9:00PM.