

Town of Bourne Zoning Board of Appeals

Meeting Minutes

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

July 20, 2016

TOWN CLERK BOURNE

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I. Call to order

Chmn. Berger called to order the meeting of the Zoning Board of Appeals at 7:00 PM on July 20, 2016. Mr. Berger explained under M.G.L., Section 40A, all appeals must be filed within 20 days of the filing of the decision with the Town Clerk.

II. Members Present: Lee Berger, John O'Brien, Harold Kalick, Wade Keene, Timothy Sawyer and Associate Member, Kat Brennan.

Members Excused: Associate Member, Amy Kullar.

Also Present: Carol Mitchell, Roger Laporte, Jim Mulvey, Kevin Keczkemethy, Deborah Keczkemethy, Erik Bevans, Keli Gates, Brad Bottolo, Tom O'Connor, Diane O'Connor, Paul D'Angelo, David Peterson, Ford O'Connor and Paul Laruso.

Documents: Agenda, documents pertaining to Special Permit, **2016-SP14**, Variance, **2016-V15** and Notice of Appeal of the Building Inspector's Decision, **2016-A13**

III. Agenda Items

1. Approval Of Minutes

Chmn. Berger entertained a motion to approve the minutes of the Executive Session of the June 15, 2016 meeting. **Ms. Brennan made a motion to approve the Executive Session minutes as submitted of the June 15, 2016 meeting. Mr. Kalick seconded.** With no discussion, the Executive Session minutes were approved. 4-0-2, with Mr. O'Brien and Mr. Keene abstaining.

Chmn. Berger entertained a motion to approve the minutes of the regular meeting held on June 15, 2016 meeting. Chm. Berger noted an amendment to the draft minutes. **Mr. O'Brien moved to approve as amended the minutes of the June 15, 2016 regular meeting. Mr. Sawyer seconded.** With no further discussion, the minutes were approved. 6-0-0.

Sitting on the hearings are Wade Keene, Timothy Sawyer, Lee Berger, John O'Brien and Harold Kalick. Also present is Associate Member, Kat Brennan.

Mr. O'Brien will draft the decisions.

2. **91 Williston Road – Special Permit - 2016-SP14**, Requesting a Special Permit per section 4120-4123 of the Bourne Zoning By-law, under M.G.L., Ch. 40A, Sec 9 to add a 1-car garage and a 24'x28' space as an accessory dwelling.

Kevin and Deborah Keczkemethy addressed the board. They are seeking to build a one bedroom in-law apartment with a one car garage for Mrs. Keczkemethy's mother, Beverly Pinney, who requires her daughter's assistance.

Chm. Berger performed a site visit and doesn't foresee any problems with the project.

Public Comment – None.

Board Comment – Mr. Kalick inquired as to whether the Board of Health also needs to grant approval. Chm. Berger stated the By-law indicates the applicant is required to present the ZBA with a passed BOH approval. Mr. Laporte stated the Board of Health agent is out of the country. Chm. Berger stated the Board of Health approval would be a condition of ZBA approval.

A brief discussion transpired pertaining to the plans that were submitted.

Mr. O'Brien asked if the in-law apartment and garage are related. Mr. Keczkemethy stated they are.

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

Chm. Berger moved to approve the application of Kevin and Deborah Keczkemethy to add a one car garage and an accessory dwelling per the submitted plans which include; the plot plan on file, the site plan on file and the proposed mother-in-law addition plan prepared by Kevin Keczkemethy dated 07/20/2016, with the condition that the BOH approves the septic system and a further condition that the sole occupant pursuant to this permit will be Beverly Pinney, the applicant, Deborah's mother. Mr. Sawyer seconded. With no discussion, the motion carried. 5-0-0.

3. **15 Keene Street – Variance - 2016-V15**, Request for a Variance from the following sections of the Bourne Zoning By-law: Section 2500. Intensity of Use

Schedule regarding the minimum requirements for rear yard setback. To construct a 20'x19' addition in the rear of the property to be located within the 12 foot side/rear yard setback.

Erik Bevans and Keli Gates addressed the board. Ms. Gates stated that because their family is expanding, they would like to build an addition on the back of their home. They are seeking a Variance because they don't have enough rear yard setback. The house is currently a 2 bedroom bungalow. The proposed addition would give the homeowners an additional bedroom, a living room and much needed storage space.

Chm. Berger noted it is a two story addition and asked if it would be higher than the current house. Ms. Gates stated it would be.

A brief discussion transpired pertaining to the Lot Coverage Sheet and the total square footage of the proposed project.

Chm. Berger explained why a Variance is needed vs. a Special Permit. A discussion ensued.

Chm. Berger stated there's a 20' buffer of trees on town property. He spoke with the town administrator who confirmed that the town has no plans to build in that area.

Public Comment – none.

A brief discussion transpired with regard to the actual location of the proposed project. One document states the proposed project does not meet the front/side yard setback. This is a typographical error since the proposed project location is at the rear of the existing structure.

Chm. Berger stated there's a rock wall on town owned property that would be very close to the proposed structure. Mr. Kalick expressed concern that the foundation would be extremely close to the rock wall.

Ms. Brennan suggested moving the proposed location to the other side of the house where the existing deck is currently located. Ms. Gates stated that would not be possible because she has a small vineyard and other perennials there; additionally, it would be a financial hardship to rebuild the deck which is right next to the leaching field. A bulkhead to the crawl space is also an obstruction.

Mr. Keene suggested shortening the length of the addition. Ms. Gates asked for an explanation as to why she'd have to submit to shortening the addition. Mr. Keene stated because it's too close to the lot line. A discussion ensued.

Mr. Kalick stated a Variance is difficult for the board to grant because of the various requirements. He feels the proposed project is too close to the property line. Chm. Berger explained the board's hesitation in granting the Variance stating that any maintenance of the addition would have to be done on an abutter's property. He questioned whether or not a compromise might be made by reducing the size of the addition by 5 feet. Mr. Keene and Mr. Sawyer concurred.

Mr. Keene suggested cantilevering the second floor which would give them their requested square footage back. Ms. Gates stated they'd be willing to make adjustments.

Chm. Berger asked for further comments. There weren't any.

Chm. Berger entertained a motion to close the public hearing. **Mr. Keene moved to close the public hearing. Mr. Kalick seconded.** The motion carried. 5-0-0.

Chm. Berger moved to grant the Variance based on the hardships stated in the application; financial hardship, the hardship requiring additional space for their expanding family and a hardship based on the shape of the lot; the southwest corner is angled to the east. He moved that the Variance be approved with a condition that the addition be built in accordance with the submitted plans of Stenbeck and Taylor Inc., dated June 8, 2016, with the exception that the southwest corner rear setback be no less than 5' from the property line with the option of cantilevering the addition toward the north 2 feet and subject to BOH approval of the septic system. Mr. Keene seconded. With no further discussion, the motion carried. 5-0-0.

4. **9R Main Street – Notice of Appeal of the Building Inspector's Decision, 2016-A13.** Request to appeal the Building Inspector's decision under M.G.L. Chapter 40A, Section 8. The applicants are appealing the decision of the Building Inspector of denying a permit application to construct a 6 ft. fence on the perimeter of the applicant's land based on previous Town of Bourne Zoning Board of Appeals decisions from appeal #88-86 & #74-87.

Chm. Berger asked for clarification pertaining to the 88-86 application. He stated it appeared that nothing was completed. Additionally, he asked if the structure had been relocated in accordance with the 74-87 application. Brad Bottolo from JC Engineering stated he had no record as to whether or not the structure had been moved. Chm. Berger asked if anyone in the audience knew whether or not the structure had been moved. Mr. D'Angelo, an abutter, stated the structure had been removed completely sometime in 1987.

Chm. Berger next addressed the applicant's argument that the Special Permit had expired. Mr. Bottolo argued that because the restaurant is no longer in existence; the purpose for the permit is gone. Chm. Berger researched expirations of Special Permits and could only find a building code stating; any permit issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within 6 months after its issuance. Since there is no record of when the building was removed, there is no way of validating this argument.

Chm. Berger then informed the applicant that he waited too long to file the appeal of the building inspector's decision. Any appeal must be filed within 30 days of the decision; which the applicant did not do.

Chm. Berger suggested that the applicant file a declaratory relief action in either Superior Court or Land Court. Once a declaratory judgment stating the rights of the parties has been decided; then the building inspector will follow that decision. He added that the applicant received the denial on January 21, 2016 yet he didn't file the appeal until May 20, 2016.

Mrs. O'Connor addressed the board and stated that she and her husband followed all of the instructions that Mr. Laporte advised them to do. Chm. Berger reiterated that the actual decision was made in writing on January 21, 2016. He asked what happened between January 21st and May 20th. Mrs. O'Connor stated a lot of correspondence between attorneys. Chm. Berger stated that because the appeal was filed untimely, the board would have no choice but to deny their request. He again suggested the applicant take their case to Land Court or file a new petition with the ZBA to amend the Special Permit to declare it abandoned. A discussion ensued.

Mr. Laporte discussed the exceptions in the Building Code for projects that don't require a permit. One of them is fences under 6' high.; however, there's a caveat before that section of the Building Code which states other permits may be needed i.e., Zoning, Board of Appeals, Conservation etc.; because there are two Special Permits on file, the building inspector cannot supersede what the Appeals Board has decided. A brief discussion transpired pertaining to the applicant's delay in filing the appeal.

Public Comment – Jim Mulvey, a resident, asked for the applicant's names. Mr. Bottolo introduced himself and the applicants, Thomas and Diane O'Connor.

Board Comment – The board was in agreement that the applicant should file a petition with the Land Court.

Public Comment – Mr. Mulvey asked for the wording of the appeal. Chm. Berger read the wording of the appeal.

After a brief discussion concerning the petitioner's options, the applicants decided to withdraw their application without prejudice.

Chm. Berger entertained a motion to allow the withdrawal of the application.

Mr. O'Brien moved to allow the withdrawal of the application without prejudice. Mr. Kalick seconded. With no further discussion, the motion carried. 5-0-0.

5. Old Business –

- Discussion of Cape Cod Aggregates filing –

Chmn. Berger stated that he and Ms. Brennan toured the gravel pit. He referred to the Restoration Chart which reflects all of the restored areas of the pit, the Eversource easement, and the areas that are currently being mined or used for stockpiling/blending etc. He discussed the settlement agreement which established a phasing schedule of four targeted estimated restoration completion dates; May 2008, May 2010, May 2012 and December 2015. The agreement states if those dates weren't met, then the \$100,000.00 bond that was taken to insure completion of the restoration would be increased to \$250,000.00. Since there hasn't been any recent complaints and the company is working in good faith, Chm. Berger feels there is no need to ask for an increase in the bond amount at this time.

Mr. O'Brien asked that if by not imposing an increase in the bond amount, does that change a previous board decision. Mr. Peterson of Cape Cod Aggregates clarified the agreement which states if CCA fails to present certified as-builts that document the restoration is taking place, then the bond is supposed to be increased' but they have an opportunity to submit the as-builts and decrease the bond payment. Mr. Peterson agreed that the intent was to try and create a phasing schedule that mark milestones of restoration. He feels it's important that the board understand it's been difficult to meet all the targeted dates because a lot of the restoration takes place in the Eversource easement which was completed approximately 1 year ago. Mr. Peterson reassured the board that the company is working in good faith to complete the restoration; adding that Mr. Laruso is willing to increase the bond, but is hoping there may be relief from that.

Chm. Berger read a section of the agreement and suggested that CCA file an application for an extension of the completion date. A discussion ensued.

Ms. Brennan asked what the purpose of the bond is. Chm. Berger explained that should CCA walk away from the restoration, the bond money would be used to complete the restoration work.

Mr. O'Brien agreed that an application should be filed to increase the completion timeline.

Chm. Berger stated an application should be filed within 30 days. Mr. Peterson agreed.

6. **New Business** – Chm. Berger asked for a volunteer to attend a meeting at the Shell gas station on July 26, 2016 at 4:00 p.m. to discuss the Variance that was issued to Nouria Energy. After a brief discussion, Mr. Kalick agreed to attend the meeting.

Chm. Berger had a discussion with TA Guerino to discuss sending board members to zoning training. Mr. Guerino agreed to fund training for ZBA members. Chm. Berger stated he may also ask Counsel, Bob Troy, to meet with the board and answer board member's questions. A brief discussion ensued.

7. **Public Comment** – None

The next meeting will be held on August 3, 2016.

IV. Adjournment –

Mr. O'Brien moved to adjourn the meeting. Mr. Sawyer seconded. With no further discussion, the motion carried 6-0-0. The meeting adjourned at 8:32 PM.

Minutes submitted by: Carol Mitchell