

**Town of Bourne
Zoning Board of Appeals
Meeting Minutes
April 19th, 2023**

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TOWN CLERK BOURNE

PRESENT: Chairman James Beyer, Vice Chairperson Chris Pine, Wade Keene, Harold Kalick, John O'Brien, Elza Bystrom (Associate), Karl Spilhaus (Associate).

ABSENT: None.

STAFF: Ken Murphy, Brian Bertram.

PUBLIC: Michael Rausch, Kevin Klauer, William Galvin, Sheila Galvin, Kevin Geaney, Zac Basinski, Terri Guarino, Barbara Princiotta.

Chairman Beyer called the meeting to order via Zoom at 7:04pm.

Minutes: 4.5.23

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

Roll Call Vote As Follows:

Mr. Pine – YES. Mr. Kalick – RECUSED. Mr. Keene – YES. Mr. O'Brien – YES. Chm. Beyer – YES.

The Motion Passes.

Public Hearing for Supportive Finding #2023-SF02 and Special Permit #2023-SP02: 16

Worcester Ave, Monument Beach. William Galvin III. Request to add two second floor additions.

Kevin Klauer introduces himself as representative of the applicants. They are seeking to put a modest addition on a pre-existing non-conforming dwelling. It is a 3600sqft lot in the R40 zoning district. The applicants are trying to make some modifications so this can be their primary residence. There is currently no storage closets on the first floor, and two of the bedrooms do not have closets. The existing house is a two-story house with five bedrooms. The footprint is just over 1900sqft. It is non-conforming in many ways. The front yard setback is only 8.7ft where 40 is required, the side yard is 4.7ft to the east and less than a foot to the west where 15 is required. The lot coverage is currently 53.2% where 20% is allowed, and the GFA is 70.5%. The ridge height is 31ft 7 in where 25 ft is presently allowed. However this is a legally non-conforming structured built approximately in 1890. The applicants want to make modest alterations to the structure,

and the lot coverage will remain the same. The modifications change the layout of the front porch, there is an addition over the kitchen in the rear of the home, and a small expansion over the bay window on the second floor of the home. These modifications will allow the applicants to reorganize the living space in a more practical manner, provide amenities such as closets, and allow them to use this as their primary residence. They will eliminate a bedroom, bringing the bedrooms from five to four. The additions are small, equaling 245sqft within the existing footprint. There will be no change in the non-conforming setbacks.

Chm. Beyer states that there are some things that must be read into the record. In summary, from the Board of Health: The current septic application for 16 Worcester Ave, dated from October 2022 meets the definition of a 5-bedroom dwelling. The current septic installed in 1998 was red stamped by the Board of Health indicating that it is not valid for any additions of habitable space or renovations/reconstructions. The applicants must meet all requirements for Title V for new construction if they would like to construct another bedroom. If they would like to apply for a waiver to use the current septic system, the number of bedrooms must not exceed four. As submitted, the Board of Health will not approve the application without a septic plan for a five-bedroom dwelling.

The second thing that must be read into the record is a letter of support from Lynn and Tom Perry. These neighbors live directly across the street from the applicants, and they are in complete support of the alterations.

Mr. O'Brien and Mr. Pine discuss the applicants plans for the addition and lot coverage and GFA. The 10% limit would mean that the applicants cannot add more than 90sqft of additional non-conformity to the square footage. Mr. Pine also says that he believes this application would require a variance.

Chm. Beyer agrees that he believes that they cannot approve this application as submitted because the square footage is more than what they're allowed to approve. He states that they could withdraw the application and apply for a variance or they can deny the application and they can file an appeal.

Atty. Klauer states that the existing non-conformity of the structure with a supportive finding allows an extension or an alteration provided that it is not more detrimental than what already exists.

Chm. Beyer disagrees with Atty. Klauer and does not believe that the Board has that discretion to approve anything over the 10% increase. Chm. Beyer says that the applicants could also request a continuance.

Mr. O'Brien states that he is uncomfortable approving applications that have not been approved by the Health Department because everything is supposed to be in line when they get the application. Atty. Klauer states that they are planning a four-bedroom house and there are no plans for a new septic.

Chm. Beyer responds that because of all the issues, the applicants may want to continue to the next meeting.

Mr. Keene asks if an erosion control plan has been made because the dwelling is so close to the property lines. Atty. Klauer responds that they will be building over the existing dwelling so no foundations will be constructed.

Ms. Bystrom asks if the structure has been able to provide useful and practical use for the owners in its current condition. Atty. Klauer responds that it has been used as a summer cottage for the applicants and they want to make it their permanent residence.

Chm. Beyer asks how much they are looking to add on to the house. Atty. Klauer responds 245sqft. Chm. Beyer responds that only 91sqft would be allowed. Chm. Beyer says that they will need at least a septic design, and Atty. Klauer responds that they can make some small changes to the design so that is not necessary.

Mr. Pine adds that if they can do the addition within the existing GFA then there wouldn't be this issue. Atty. Klauer responds that there is some case law he would like to submit to the board. In this case law, when there is a non-conformity already existing, you can increase that non-conformity as long as it is not substantially more detrimental. Chm. Beyer responds that this is true but they do not have constraints on certain things like setbacks, but they do have constraints when it comes to GFA.

Atty. Klauer responds that they would like to request a continuance until May 17th.

Mr. Keene makes a Motion to Continue the Public Hearing. Mr. Pine seconds the Motion.

Roll Call Vote as Follows:

Mr. Keene – YES. Mr. Kalick – YES. Mr. Pine – YES. Mr. O'Brien – YES. Chm. Beyer – YES.

The Motion Passes.

Public Hearing for Appeal of the Building Inspector's Decision #2023-APP01: 60 Arlington Drive. Appeal of the Building Inspector's Decision to issue a Building Permit.

Kevin Geaney introduces himself as representative of this application. He is representing Barbara Princiotta, an abutter to the property at 54 Arlington Drive. Atty. Geaney states that the building permit was issued in error because the applicants did not go to the Board of Health to get their modifications of the plans approved. The Board of Health initially approved modifications in April of 2022, that approval was based on plans dated February 2022. The plans submitted to the building department are dated October 2022 and include a number of differences from the February 2022 plans. Citing the Conversion Addition Regulation, Atty. Geaney states that necessary approval was not obtained. Because these modifications were not approved by the Board of Health, Atty. Geaney

asserts that the building permit is defective and this issue should be remanded back to the Board of Health for reconsideration.

Chm. Beyer states that a memo received this afternoon must be read into the record. From Terri Guarino, Health Agent: The applicant's reasons for appeal due to local and state public health rules are largely amiss here. The subject property is served by an existing Title V compliant septic system, granted variances and approved by the Bourne Board of Health in 1992. It is an erroneous assumption that properties that are in compliance with the state and local septic system regulations would be subject to Conversion Act Regulation. The Building Permit in question was issued for restoration of water damage subsequent from an insurance claim from the homeowners. The suggestion for the need of approval by the Board of Health is not within their jurisdiction. Hearings that were conducted by the Board of Health were for other purposes other than this Building Permit, and are being handled separately as that has been subject to litigation.

Mr. Murphy states that the homeowner split the permit up, and the Health Department has no jurisdiction over a Building Permit. Mr. Murphy states that he explained that this is not a zoning matter to the complainant, and directed her to the correct website to contact the state should she not agree with a permit that Mr. Murphy issued. Mr. Murphy states that he had a conversation with the owners of 60 Arlington as well, and knows what's going on with both parties. Mr. Murphy states that he issued a permit based on his review.

Chm. Beyer asks for clarification. He states that apparently there are some improvements to 60 Arlington that is up for litigation. Chm. Beyer asks if the building permit is for water damage, and Mr. Murphy responds yes from a storm. Chm. Beyer asks if the permit would permit any enlargement or aggrandizement of the existing premises and Mr. Murphy replies no. Chm. Beyer says that as long as the house isn't being enlarged, there should be no need to change the septic system. Mr. Murphy agrees. Mr. Murphy states that the Health Department has no jurisdiction over a building permit by Mass general law. Mr. Murphy states that this seems to be a state issue because they didn't extend any zoning at the property. However they do have plans to add on but this permit is only for water damage. Mr. Murphy states that the plans were hand drawn so he requested that the applicant label them "Phase One" for interior work only, but a new permit would be needed for any additional renovations ("Phase Two"). Chm. Beyer clarifies that Mr. Murphy has issued a permit to restore the house to it was before the storm damage and the applicants have to go get another permit for the renovation of the house, and in order to do that they're going to have to take those plans back before the Board of Health. Mr. Murphy confirms this is true.

Atty. Geaney states that he believes that the suggestion that the presently existing septic system is compliant is incorrect and the point of going before the board initially was a condition of upgrading a non-compliant septic system which brought them to the

alternative system proposal. Atty. Geaney states system is not presently in compliance with the standards to be passing, but Chm. Beyer replies that it doesn't need to be passing if there is no additional burden to be put on the system. Atty. Geaney points to the Conversion Addition Regulation, stating that it does not include any exception for water damage, it says "no building shall be remodeled, replaced, or altered in any manner unless the septic system complies with the Board of Health has given written approval" which didn't happen. Chm. Beyer replies that the Board of Health disagrees, but Atty. Geaney replies that the statement is from a Health Agent, not the Board of Health.

Mr. O'Brien notes that the only thing that is before them tonight is Mr. Murphy's permit for water damage, not the addition to the house, and this seems to be asking to stop a permit that was issued for something that has nothing to do with any zoning relationship.

Atty. Bertram confirms there is open litigation for an active lawsuit right now involving the Board of Health. The Board of Health issued a variance in anticipation of an expansion of the home which would have required an upgrade of the septic system. The variance was granted and appeal was taken. He suggests that if the holder of the building permit is present tonight that they speak in defense of themselves. Atty. Bertram also suggests that they figure out how this board deals with the Board of Health regulations.

Zac Baskinski introduces himself as representative of the permit holders. He states that the existing septic system is a Title V compliant system, and they should not trigger the conversion requirements because they're not increasing the habitable space for any of the bedrooms in the property.

The Board members discuss what they are making a decision on tonight. Chm. Beyer clarifies that all they're hearing is an appeal on Mr. Murphy's decision to issue the permit for the water damage. The Conversion Addition Regulation states that any alterations requires an approved Title V septic system. Atty. Geaney states that there is not an approved Title V Septic, but they have a civil engineer telling them that it is approved.

Atty. Geaney states that this is not the only basis for their objections. The other objection is the approval from the Health Department which says that any modifications need to go before the Board of Health first. Chm. Beyer responds that Mr. Murphy has addressed this by phasing the permit so he doesn't see what basis the Board would have for reversing the Building Inspector's decision.

Terri Guarino, a Health Agent for the Town of Bourne, introduces herself to the Board. She states that this septic system in question is a Title V compliant septic system. It was approved in 1992 and was subject to the same regulations that are in effect today so it's not something that would be applicable to a Conversion Addition Regulation.

Barbara Princiotta introduces herself as the abutter at 54 Arlington, and also the current chair of the Board of Health. She states that the regulation in which Atty. Geaney is talking about was promulgated in September 2022. It says that any modifications or renovations must go before the Board of Health for approval. She states that if you walk through the house it is a complete gut job; it's not just remodeling there have been ten dumpsters. Chm. Beyer asks Mrs. Princiotta if she believes that there is an approved septic system on the property. She states that she believes the septic system is not compliant based on new regulations because it requires a variance, and also they have submitted a new septic system and they would not have done so if their current septic system was compliant.

Mr. Murphy states that when there is water damage, you have to go all the way back, so yes there will be a lot of dumpsters including walls and cabinets being ripped out. Mr. Basinski also states that this is a repair not a renovation to the structure. He reiterates that they haven't triggered any of the Board of Health regulations that require the upgrade of the existing septic system based on this work.

Mrs. Princiotta states that the building inspector told her that they were trying to move around interior doors and change the interior structure which was a big basis of the appeal in general. She also states that no one is reading the regulation from September of 2022. Chm. Beyer states that they understand it, but they have conflicting interpretations.

Mr. Keane makes a Motion to Close the Public Hearing. Mr. Keene seconds the Motion.

Roll Call Vote as Follows:

Mr. Pine – YES. Mr. Kalick – YES. Mr. Keene – YES. Mr. O'Brien – YES. Chm. Beyer – YES.

The Motion Passes.

Chm. Beyer asks for comments from the board and states that he believes he has made his position clear. Mr. O'Brien states that it appears to him that he's being asked to make a decision on whether or not he believes what the building inspector said or what somebody else said. The board discusses what a vote to approve this application means versus what a vote to deny this application means.

Mr. Pine makes a Motion to Deny the Appeal of the Building Inspector's Decision #2023-APP01. Mr. Kalick seconds the Motion.

Roll Call Vote as Follows:

Mr. Pine – YES. Mr. Kalick – YES. Mr. Keene – YES. Mr. O'Brien – YES. Chm. Beyer – YES.

The Motion Passes.

New Business:

None.

Old Business:

The board members inquire about the progress of Capeway in Sagamore and Chase Estates. Mr. Murphy states that there has been no new progress on either one of these projects.

Public Comment:

None.

Adjournment

Mr. O'Brien makes a Motion to Adjourn, seconded by Mr. Kalick.

Roll Call Vote as Follows:

Mr. Pine – YES. Mr. Keene – YES. Mr. Spilhaus – YES. Mr. O'Brien – YES. Chm. Beyer – YES.

The Motion Passes.

With no further business before the Board, the meeting was adjourned at 8:25PM.

Respectfully Submitted,
Ina Sullivan

