

Town of Bourne Zoning Board of Appeals

Meeting Minutes

Virtual Hearing via Zoom

May 19, 2021

Meeting ID: 1 929 205 6099

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TOWN CLERK BOURNE

1. Call to order

Chair Jim Beyer called to order the meeting of the Zoning Board of Appeals at 7:00 PM on May 19, 2021. Mr. Beyer 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.

Mr. Beyer announced the meeting was being recorded and some attendees are participating by video conference. He explained the ground rules associated with conducting the remote meeting, he confirmed the members of the board who were present, identified the building inspector and verified a representative was present for each filing listed on the agenda.

Members Present: Jim Beyer, Chris Pine, John O'Brien, Harold Kalick, Wade Keene, and Associate Member Pat Nemeth.

Members Excused – None.

Also Present: Ken Murphy, Doug Troyer, Peter Freeman and all members of the team for Cape View way.

Agenda Items

- 1. Approval of Minutes** – Approval of meeting minutes for hearing 04.07.2021 & 05.05.2021. **Mr. Pine made a motion to approve the meeting minutes for hearing dates 04.07.2021 and 05.05.2021. Ms. Nemeth second the motion. Roll call vote: Mr. Pine- Yes, Mr. Keene- yes, Mr. O'Brien- yes, Mr. Kalick- yes, and Mr. Beyer- yes.**
- 2. 4&6 MacArthur Blvd- Requesting an extension of a Variance per section 2500 of the Bourne Zoning Bylaw, under M.G.L., Ch. 40A, Sec. 10 to permit the construction of a convenience store more than thirty-five (35') feet in height for a post-construction height of thirty-eight and one half (38.5') feet.**

Materials: Letter to the Board requesting a six-month extension of Variance Final Decision 2016-V21.

Mr. Doug Troyer represented Cumberland Farms, of 1 Adams St. Mr. Troyer reviewed the history and status of the appeal of the Special Permit and the upcoming hearing before Land Court.

Mr. O'Brien noted some typos on the dates referenced in Mr. Troyer's letter.

Mr. Kalick made the stated he felt the requested height will not be in line with a "Cape Cod look", and expressed his concern with the amount of accidents in this area. He requested the Board look at the height of the building in regards to how it looks as you cross the bridge. He asked if the final plans have been submitted. Mr. Troyer confirmed they had been approved, and explained the reason for the increased height due to the grade of the area and the need for fill.

Mr. O'Brien expressed that if the Board does not grant the continuance variance, it will not grant the Board the ability to review the project again. Mr. Beyer stated the Board can deny the variance. Mr. Troyer explained this was not a request for a variance, but a request to extend the already granted variance. He then explained the process if the Board were to deny the request to extend the variance.

There was further discussion in regards to this between the applicant and the Board.

Mr. Beyer asked if there were any questions from the Zoning Board of Appeals members. There were none.

Mr. Beyer asked if there were any members of the public with questions or comments. There were none

Mr. Beyer entertained a motion to close the public hearing. Mr. Keene made a motion to close the public hearing. Mr. Pine Seconded. Roll call vote: Mr. Pine- Yes, Mr. Keene- yes, Mr. O'Brien- yes, Mr. Kalick- yes, and Mr. Beyer- yes.

Mr. Beyer asked if there were any Board members with questions or comments. There were none.

Mr. Beyer Entertained a motion to approve the request for extension of a per section 2500 of the Bourne Zoning Bylaw, under M.G.L., Ch. 40A, Sec. 10 to permit the construction of a convenience store more than thirty-five (35') feet in height for a post-construction height of thirty-eight and one half (38.5') feet at 4&6 MacArthur Blvd. **Mr. O'Brien made a motion. Mr. Pine seconded the motion. Roll call vote: Mr. Pine- Yes, Mr. Keene- yes, Mr. O'Brien- yes, Mr. Kalick- no, and Mr. Beyer- yes.**

Mr. Pine will be writing this decision.

3. Cape View Way 40B, Comprehensive Permit (#2021-CP06) to construct and operate 51 affordable rental units on 2.94 acres. Discussion and possible vote of Peer Review Quotation.

Materials: Comments from North Sagamore Water District dated 05.13.2021, Further Details regarding the requested Subdivision Regulation waivers dated 05.13.2021, Site Plan revised 05.10.2021, Project Narrative dated 05.13.202, Letter from Bourne Housing Authority dated 05.14.2021, Lighting Photometric Plan and Specs dated 03.30.202, and public comment.

Mr. Beyer outlined the three key items being discussed tonight; the disposition of the peer review, progress on the outstanding items identified at the last hearing, and discussion of any other items that had been raised. Public commentary will only take place after those items had been addressed, and public comment will be limited to questions only in regards to those three topics. There will be further date for general public comment.

Mr. Peter Freeman, of 86 willow St. Hyannis, MA, is representing the applicant. Mr. Freeman identified the items recently submitted for this hearing.

Mr. Beyer requested the applicant and Board discuss the peer review proposal first. Mr. Freeman agreed.

The proposed fee was discussed between Mr. Beyer, and Mr. Freeman as there were concerns it was too high and the timeline presented for the peer review.

Mr. Beyer asked what the timeline for the traffic assessment including all necessary details would be available. Mr. Freeman confirmed they have received it and will get it to the Zoning Board of Appeals that week.

Mr. Beyer suggested the Board could approve the proposal, approve a \$10,000 deposit, and have the peer reviewer notify when that has been reached and give an update on the status.

Mr. Freeman stated he still feels the proposal is quite high, and agreed to an initial deposit of \$10,000 and ensure the team, the Board, Mr. Murphy and Mr. Houston will try to keep the fees low.

Mr. Beyer confirmed the peer review will start with the Stormwater management plan and then add on the traffic impact assessment which covers a pedestrian assessment and public transportation access assessment once they are received. Mr. Freeman confirmed.

Mr. Beyer asked if there were any questions from the Zoning Board of Appeals members. There were none.

Mr. Beyer entertained a motion to approve the Peer Review Proposal to include Stormwater management plan, traffic impact assessment, pedestrian assessment, and public transportation access assessment in the amount not to exceed \$18,000 dated April 30, 2021; with a condition that there be a \$10,000 deposit and agreement to monitor hours up to that amount. Mr. Kalick made a motion. Mr. Pine Seconded. Roll call vote: Mr. Pine- Yes, Mr. Keene- yes, Mr. O'Brien- yes, Mr. Kalick- yes, and Mr. Beyer- yes.

Mr. Beyer asked Mr. Murphy to oversee the signing and management of this proposal.

Mr. Beyer asked for a follow up on the outstanding items from the last hearing. He brought attention to the letter which addressed each item as follows;

1. Rental structure for the units. No discussion or comments from the Board.
2. Rendering along the north wall of the project. Mr. Beyer anticipated a presentation in regards to this later in this hearing. Mr. Freeman confirmed. No discussion or comments from the Board.
3. Receive and respond to water department comments specifically in regards to the extension of the water main, the capacity of the system and to provide a letter indicating the water company's ability to provide water connection. Mr. Beyer indicated he felt these items had been addressed. Mr. Freeman stated they are still working with the North Sagamore Water District and will keep the Board informed. Ms. Nemeth stated they had received an extensive report from the Water District and understands there will be a 12 inch main to be built and there are ongoing discussions on whom will pay for this. She indicated the Water District expects the applicant to pay for this and asked Mr. Freeman if the applicant has agreed to this. Mr. Freeman stated they have not agreed to this, and they are working together in good faith to determine if that is needed. Ms. Nemeth stressed that without agreeing to do this they are putting the residents at risk with inadequate fire suppression flow or they would be asking the local tax payers to subsidize the cost of this extension. Mr. Freeman said he felt this was a premature question.
4. Health Department comments. Mr. Beyer indicated he had not received updated Health Department comments. Mr. Freeman had Mr. Kuchar of Horsely Whitten Group respond to this item. Mr. Kuchar stated they did attend a hearing before the Board of Health and since the hearing they are

looking at adjusting the design to eliminate some of the variances requested and they are looking at different options for the waste water. He indicated they will also be going to peer review. There was a discussion between Mr. Beyer and Mr. Kuchar about when to have the peer review of the wastewater management. Mr. Beyer then asked Mr. Murphy to advise the peer reviewer adequately. Mr. Murphy confirmed. No discussion or comments from the Board.

5. Traffic impact assessment, pedestrian assessment, and public transportation availability assessment. Mr. Beyer indicated he felt this had been addressed above. No discussion or comments from the Board.
 6. Provide a construction schedule for the project. He indicated this had been done. No discussion or comments from the Board.
 7. Subdivision table for the variances required. Mr. Beyer indicated he had not reviewed this enough at this time. Mr. Freeman said he would have Mr. Kuchar review the table when the Board is ready. He also mentioned it may be revised due to the possible revisions for the Board of Health. No discussion or comments from the Board.
 8. Provide lighting plan for the parking. Mr. Beyer indicated the applicant had provided this. He asked if the Tudor Cherry Investors entity review this lighting plan. Mr. Freeman stated he had provided it to them, and in return Mr. Sabbot had submitted a letter to the Board and the applicant. Mr. Freeman indicated there would be no formal response to that letter that evening. No discussion or comments from the Board.
 9. Provide Fire Engine Access Plan. Mr. Beyer stated this has been done and the Fire Department has acknowledged this. No discussion or comments from the Board.
 10. Peer Review of the Stormwater Management Plan. Mr. Beyer indicated he felt this was well at hand. No discussion or comments from the Board.
 11. Design studies. Mr. Beyer indicated he understood there would be a presentation on this that evening. No discussion or comments from the Board.
- Mr. Kuchar shared his screen to give a project update, site design revisions, landscape update, and architectural renderings. He reviewed where the drop off zone would be and the increased size of the walkway. He said they had increased the green spaces for the residents. He reviewed the screening to assist with the lighting concerns and the lighting plan.

Mr. Pine asked if the applicant had addressed the concern brought up by abutters and the request for a fence. Mr. Kuchar replied they are discussing this.

Mr. Freeman, Mr. Kuchar and Mr. Beyer discussed the type of light to be used in the project, and specifically Mr. Beyer asked if the applicant had made the abutters aware. He stated he had and anticipates a further discussion.

Michelle Waldon, of Icon Architecture, reviewed the Site Rendering. She shared her screen and showed the two different views from the road of the two different roof types, at and under 35' ft. She also displayed the different views from Cherry Hill Apartments with a 15' setback vs. 7.5 setback. There was a discussion about the different roof styles and the view of the HVAC/ mechanical units.

Mr. Beyer inquired what the design ramifications would be to meet the 15' setbacks. Ms. Waldon stated that the required amount of space to accommodate the fire turn around space. She suggested pushing the site forward but that would decrease the amount of vegetation.

Mr. Beyer asked if there are any Board members with questions or comments.

Ms. Nemeth stated the Board has been asked to approve 4 waivers on the use intensity; a waiver on the minimum front yard, waiver on the minimum back yard, waiver on maximum lot coverage, and a waiver on the building height. She stated these are all required since the unit is so large on the site.. She stated that this is a 2 story community and this is a 3 story project. She stated she appreciates the presentation but feels the density for this project is wrong and too large.

Mr. Freeman asked to respond. He stated there is a reason for 40B and feels these projects need to be economically feasible. He mentioned the fact this space was designated for affordable housing by the town and was originally designated for 60 units and they chose 51. Mr. Beyer asked if Mr. Freeman was stating the project was nonviable financially if the number of units is reduced, and the only way to reduce the size is to remove a floor of rooms, and he asked Mr. Freeman if that would make the project nonviable financially. Mr. Freeman confirmed.

Mr. Keene stated he supports reducing the amount of units by 20%. As he feels it is too much for the area. He stated this would allow for increased guest parking.

Mr. Kalick stated he feels Bourne needs affordable housing. He questioned the desire to put that many units in that space with limited parking and green space. He encouraged

more compassion to these families to have a desirable place to live. He questioned the density of the project. Mr. Freeman replied that he feels this should not be a debate and appreciates his point of view from being on a Board. He again stated he feels it is premature to be talking about some of these conclusions.

Mr. Beyer referenced a comment from an abutter at the past hearing questioning the need for affordable housing. Mr. Beyer stated 40B is the law of the land in Massachusetts due to lack of affordable housing in the commonwealth.

Mr. Beyer addressed the two requests outlined from the Cherry Tutor investors. One was the request for a stockade fence along the north property line and the second was the light pole vs. Ballard. He indicated the light pole vs. Ballard had already been addressed. He questioned the applicant's feelings towards the stockade fence. Mr. Freeman said they still need to discuss and review this and talk with Mr. Sabbot. Mr. Beyer stated he felt it was a valid concern to reduce children attempting to access the playground.

Mr. Beyer referenced the Town Planners comments advise the applicant should file with the Massachusetts Historical Commission and asked what the applicant's position on this was. Mr. Freeman stated he is unsure why this is being requested as it is not typically requested at this stage in the project. Mr. Freeman indicated he would complete this but feels it should be done later in the timeline of the project. Mr. Beyer confirmed Mr. Freeman is not against this.

Mr. Beyer asked if Mr. Freeman if he had planned on preparing a proposed comprehensive permit for this project. Mr. Freeman was thankful for the question, and explained he will often draft these with the Board and would be happy to do this. Mr. Beyer asked if there is a template, Mr. Freeman said he does not know of one; however he has developed many of these permits. Mr. Beyer suggested Mr. Freeman begin the draft for this comprehensive permit as the peer reviewer has often edited this on the Board Members behalf.

Ms. Nemeth addressed the abutters concerns in regards to the Eastern Box Turtle that lives in the flood zone 10. Although the site is not mapped habitat, the Eastern Box Turtle is listed as a Species of Special Concern and is protected by state law against killing, harassing, collect or possess this turtle. She acknowledge that there will be grading taking place and that children will naturally be prone to explore the area. She asked Mr. Freeman how they plan to prevent violating this state law to not kill, harass, collect or possess this turtle. Mr. Freeman said they intend to comply with the regulations. Mr. Kuchar stated the site is not mapped for habitat and feels it wouldn't be. He said if a turtle was seen on site, construction would stop and they would do a turtle

sweep and will pick up turtles and move them to the other side of the construction barrier. Ms. Nemeth thanked him for his response. Mr. Beyer asked if there are any Board members with questions or comments. There were none.

Mr. Beyer asked if there are any members of the public with questions and reminded the public the Board is not entertaining any public comment at that hearing.

Eileen Fitzpatrick, 6 Homestead Rd Ext, Sagamore Beach MA, asked if there would be an additional Traffic Impact study done for the summer months. Mr. Freeman stated there will be seasonally adjustments shown on the study. Mr. Beyer stated the peer reviewer will address that area.

Cassandra Sullivan, 7 Andrew Rd, Sagamore Beach, MA, asked how bright the lighting on the patio behind the building will be as it abuts her property. Mr. Freeman offered meeting with this abutter to discuss if needed. Mr. Kuchar stated the lighting in the rear of the building will be bollard and will be kept low and close to the building. Ms. Sullivan asked with the new design showing the flat roof and exposed HVAC systems would this cause them to be louder. Ms. Waldon replied they would be acoustically treated so they would not be louder. Ms. Sullivan asked about the rendering that was from her yard and showed trees and asked if all the trees would be removed. Ms. Waldon stated they discussed an evergreen buffer in that area. Mr. Kuchar shared his screen to show where the existing trees will remain. Ms. Sullivan asked if there will be fencing going up alongside the landscaping. Mr. Kuchar stated there will be a retaining wall and fencing. Mr. Beyer directed Mr. Sullivan to view the plans showing what areas will be cleared and suggested a stockade fence between her property and the proposed project. Ms. Sullivan suggested removing the storage units to allow for less units on the property overall.

Matt Sawicki, Superintendent with the North Sagamore Water District, asked if the Board has any further questions in regards to their review of the plans. He stated they had reviewed the application, he stated there are concerns with the fire flow and are working with the developer on that. Ms. Nemeth asked when the next hearing is. Mr. Sawicki stated they are waiting on more information from the applicant and expect it to be mid-June.

Charles Sabbot, 540 Main St, Representing Tuddor Cherry Investors, asked if the applicant is prepared to provide a detailed landscape itemization and maturity as to the type of plantings and a regime or program for the maintenance of those plantings to ensure they will survive. Mr. Kuchar stated they have not gone into detail on size and types at this time which is typical for a project of this size. He did provide a recommended plant list which included native species. He stated there is a one year plant

warranty from the landscape contractor and the landscape contractor is retained for the first year to ensure survival.

Ms. Sabbot stated he will be in contact with Mr. Freeman in regards to the plantings and the fence.

Eileen Fitzpatrick, 6 Homestead Rd Ext, Sagamore Beach MA, had a question in regards to the box turtles and stated if the developers were to do any work they were required to do an impact study. She felt that at the time of year that the conservation agent did his site visit, there would not have been eggs or turtles present. She asked if there is another impact study being planned. Mr. Freeman stated they will comply with the law. Mr. Kuchar stated that since the site is not a mapped habitat, they are not required to do an impact study. Ms. Murphy stated he had spoken with the applicant and he had stated that area is not being impacted by the turtles.

Ms. Nemeth asked Mr. Sabbot about the fence and the plans and reminded him that earlier in the presentation it had been stated that bollard lighting doesn't work in parking lots and asked him if he changed his request. Mr. Sabbot stated he understands there had been miscommunication in the bollard lighting and has learned it was in error and has not had the chance to investigate if the proposed lighting will have an impact on the residents at Tudor Cherry Hill. He stated they still have concerns about the lighting impacting his residents. Ms. Waldon stated there are minimum foot candles that needs to be provided by the Building Code that would not be met by bollard lighting. Mr. Beyer identified two areas of lighting that still needed to be addressed. The lighting for the interior parking areas and the lighting designed for the outdoor recreation area. Ms. Waldon indicated that bollard lighting in proposed in the recreation area. Mr. Kuchar confirmed. Mr. Murphy confirmed the building code requires illumination and the board will suggest lighting and anything that doesn't meet or effect the neighbors he will have to enforce. Mr. Beyer again stated there is still some development required on the plans. Mr. Freeman confirmed.

Mr. David Quinn, Housing Assistance Corporation, stated he had been the presenter at the hearing and had mentioned that bollard lighting was proposed on walkways and around the back of the building..

Mr. Beyer asked if there are any members of the public with questions or comments. There were none.

Mr. Beyer asked if there are any Board members with questions or comments. There were none.

There was a discussion in regards to hearing dates and what date to continue the hearing to.

Heather Hogan, member of the audience, made a statement that she lives at a similar housing development and shared her support for this project and the lack of concern with the lighting.

Mr. Beyer entertained a motion to continue the request Comprehensive Permit 40B, (#2021-CP06) to construct and operate 51 affordable rental units on 2.94 acres as Cape View Way. **Mr. O'Brien made a motion to continue this item to the hearing on July 7, 2021. Mr. Keene seconded the motion. Roll call vote: Mr. Pine- Yes, Mr. Keene- yes, Mr. O'Brien- yes, Mr. Kalick- yes, and Mr. Beyer- yes.**

4. Discussion and vote on revised Zoning Board of Appeals Decision Forms.

The Board Members and Ken Murphy discussed the difference between a special permit and supportive finding.

Mr. Beyer Entertained a motion to continue this item to the next hearing.

Old Business – None.

New Business – None.

Public Comment – None.

Adjournment –

Mr. Beyer entertained a motion to adjourn the hearing. Mr. Kalick moved, Mr. Keen seconded to adjourn the meeting. Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. O'Brien- yes, Mr. Keene- yes, Mr. Kalick- yes, and Mr. Beyer- yes. The meeting adjourned at 9:07pm.

Respectfully submitted,
Cassie Hammond