

# **Town of Bourne Zoning Board of Appeals**

## **Meeting Minutes**

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

June 15, 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 June 15, 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, Associate Members, Amy Kullar and Kat Brennan.

**Members Excused:** None

**Also Present:** Carol Mitchell, Roger Laporte, Michael Rausch, Edward Yadisernia, John Fitch, Griffin Bowden, Charlie Witkus, Brad Bottolo, Tom O'Connor, Diane O'Connor, Paul D'Angelo, David Peterson, Ford O'Connor, Sam Laruso, Sam Laruso Jr. and Paul Laruso.

**Documents:** Agenda, documents pertaining to Variance, **2016-V12** 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 June 1, 2016 meeting. **Mr. O'Brien made a motion to approve the minutes as submitted of the June 1, 2016 meeting. Mr. Kalick seconded.** With no discussion, the minutes were approved. 7-0-0.

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

- 2. 630 MacArthur Blvd. – Variance - 2016-V12**, requesting a Variance from the following sections of the Bourne Zoning By-law; Section 2500, Intensity of the Use Schedule regarding the minimum requirements for rear setback, Lot Coverage and Usable Open Space. To allow expansion of an existing storage business to include a 5,400 square foot new building as shown on the site plan submitted with application.

John Fitch, representing the Yadisernia family, the Project Engineer, Griffin Bowden of Atlantic Design Engineers, and the On-site Manager, Charlie Witkus, addressed the committee. Mr. Fitch explained that the applicant is seeking the board's approval to move forward with an expansion project at an existing storage facility. He stated the project was originally approved in 1983, with a site plan approval. He described the layout of the property; which includes 5 separate storage buildings, adding that it's zoned as Business 4 which requires 150' of frontage, 40,000 sq. ft. of minimum area, front, side and rear yard of 30', a 35% maximum coverage and has a minimum usable open space of 40%.

Mr. Fitch then stated that the project requires Planning Board site plan approval. First, however, the ZBA must grant relief from the strict application of the By-law in the form of Variances which would allow the project to move forward as presented. Additionally, he discussed the need for the Variances and stated the project will meet the Open Space requirement.

Chmn. Berger asked how the usable Open Space would meet the requirement. Mr. Bowden referred to the submitted plan and explained that most of the site is a gravel parking area. They plan to grass the rear of the lot and the sides of the building to meet Open Space requirements.

Mr. Fitch stated that the self-storage business requires minimal municipal services, doesn't put kids in schools, add to traffic, cause pollution or create noise. He added, this particular business has contributed to the town budget through taxes, to the local economy and the convenience to local residents, and has since the 80's. He went on to explain the topography which he states is causing a hardship for the property owner. He supplied the board with a definition of the word topography from the Oxford Dictionary. He offered a history of the property. A discussion ensued.

Chmn. Berger discussed a memo he received from the Town Planner, Coreen Moore, stating this property is in a Water Resource District, so the coverage of the lot is important. He stated he does not feel the board has the authority to grant this petitioner's request. Additionally, he discussed the applicant's claim that they are losing money; yet, they state they are filled to capacity. A discussion transpired pertaining to the size of the proposed building, the age and design of the facility, renovating an existing building and the demand for a climate controlled facility.

Chmn. Berger suggested adding on to the existing buildings to meet the need. Mr. Kalick discussed the possibility of building up or remodeling an existing building to make it a two-story. A discussion ensued.

Chmn. Berger suggested the applicant withdraw their request without prejudice. Mr. Yadisernia, the property owner, addressed the board. He explained it would not be feasible building up and/or expanding due to the cost and loss of income. A discussion ensued.

Mr. O'Brien made an inquiry as to why the distance from the proposed new unit to the old unit is almost 41'. Mr. Bowden explained the fire chief who was concerned about a fire truck having accessibility to the rear of the building. He stated the chief was more concerned about accessibility behind the buildings rather than between the buildings.

A brief discussion transpired pertaining to the proposed material that will be used as ground cover and the disposal of water runoff. Chmn. Berger explained the board does not have grounds under state law to grant a Variance. He also reiterated the town planner's concerns with regard to the proposed project. He recommended the applicant withdraw without prejudice.

Mr. Fitch requested to withdraw without prejudice.

Public Comment – None

Mr. Fitch stated at least 5 abutters are in favor of the proposed project.

Chmn. Berger entertained a motion to allow the applicant to withdraw without prejudice. **Mr. O'Brien moved to allow the applicant to withdraw without prejudice. Mr. Keene seconded.** With no discussion, the motion carried. 5-0-0.

3. **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.

Mr. Laporte explained that back in 1986 and 1987, the applicants came to the ZBA for this project; conditions were made, as they always are, and the decision was filed with the Registry of Deeds. The decision on file reflects right of ways, easements etc., it also includes an area that can't be blocked. The building inspector can't authorize the installation of a fence when a previous decision prevents it. The decision can only be changed by the Zoning Board of Appeals.

Mr. Laporte thought it best that both sides present their case to the ZBA before a decision on the applicant's request is made.

Mr. O'Brien stated it's the ZBA's previous decision that needs to be changed and not the building inspector's denial.

Brad Bottolo from JC Engineering addressed the board. He referred to a site plan that was attached to the Special Permit that was granted. Mr. Bottollo gave a history of the buildings that were formerly on the site, adding, a lot has changed since 1986, including the closure of a restaurant. He stated now only two structures remain on the property.

He discussed the original proposal, the conditions set forth in the two previous Special Permit requests and the current proposed location to erect a 6' fence on the homeowner's property. Mr. Bottolo stated based on the By-law, the fence is not considered a structure; therefore, a building permit should not be required.

Mr. Bottolo clarified that when the Special Permits were previously granted, there were no stipulations that a fence could not be installed. The only requirement was to allow the Fire Department access to the restaurant, which has since closed. The Fire Department has given their approval of the current proposed location of the fence, but asked that gate or two with a Knox-box will be installed in case of an emergency.

Chmn. Berger recommended that a current site plan be submitted to depict the current property layout. A lengthy discussion transpired pertaining to the plan that's on file with the Registry of Deeds and a history of the former buildings that were on the site.

Chmn. Berger asked if anyone else would like to be heard on the matter. Ford O'Connor, representing abutters, addressed the board. He distributed a copy of the decision and stated not only was it written in the way for the Fire Department to have access but to also have a clear and unobstructed right of way. He referred to page three of the document which shows an existing driveway that has been a point of contention between the abutters and the applicants with regard to the easement. He stated the abutters have no objection to a fence being installed as long as it is on the other side of the driveway. Which is what was required with the original decision.

Ms. Brennan inquired as to whether this has been filed in Land Court. Mr. O'Connor stated it has; however, it is not noted on their certificate. Mr. O'Connor asked the board to uphold the decision of the building inspector then, have the applicants file for an amendment to the Special Permit.

Mr. O'Brien asked how Mr. O'Connor's clients will be affected by the fence being installed. Mr. O'Connor referred to the plan and discussed how the proposed location will impact his clients. A lengthy debate transpired between Mr. Bottolo and Mr. O'Connor with regard to whether there is an actual easement

or a proposed easement. Mr. Bottolo states the plan clearly indicates there's "an existing driveway" and "a proposed easement". He states there was never an easement. A discussion transpired pertaining to a cut through the abutters use to avoid using Cranberry Highway. The installation of the fence would block the cut through.

Mr. Bottolo reiterated his initial comments; the purpose of the easement was to allow for fire access around the former restaurant, which no longer exists.

Mr. Bottolo next discussed the 100' of legal frontage that the applicants owns.

A brief discussion transpired pertaining to how the easement was created.

Mr. O'Connor reiterated his request that the board not overturn the decision of the building inspector; rather, allow the Land Court make the decision.

Chmn. Berger feels the proposed easement refers to a utility easement. A discussion ensued.

Mr. O'Brien asked what the abutter's goal is. Mr. O'Connor stated the abutter's goal is to be able to use the driveway easement as a cut through into the subdivision and avoid having to exit their property on the busy Cranberry Highway rotary. A discussion ensued.

Mr. O'Brien asked Mr. Laporte why the applicants came to him for a permit when a 6' fence doesn't require one. Mr. Laporte stated a 6' fence does not require a permit under the state building code; however, the code states there may be a need for other permits or approval; i.e., Zoning, Board of Health, Appeals Board etc. He reiterated that it's not the fence that's in question, it's that the Appeals Board at one time said the area in question couldn't be blocked. He stated that until this board reverses the previous board's decision, he can't grant permission to install the fence in the proposed location.

A lengthy discussion transpired pertaining to the former property owner, Harry Miller, and the plans he submitted to develop the subdivision.

Paul D'Angelo, owner of lots 12 & 15, discussed the easement, which he states he's been using for the last 50 years. Additionally, he discussed fire access, his water supply and the Water Department's easement.

Tom O'Connor, the property owner, stated JC Engineering surveyed the property three different times over a 6 year period. He states there is nothing on record outside of the utility easement; adding that the previous decisions aren't relevant anymore because the land has been subdivided over time and nothing previously recorded exists any longer.

After further discussion, **Mr. Kalick moved to continue the hearing to July 20, 2016 at 7:05 PM. Mr. Keene seconded.** With no further discussion, the motion carried. 5-0-0.

#### **4. Old Business –**

- Discussion of Cape Cod Aggregates filing –

Chmn. Berger gave a history of the gravel pit. He stated many years ago, several neighbors complained about the amount of dust being created from the expanding gravel pit. The ZBA made a decision to close the gravel pit which was appealed, the Land Court remanded it back to the ZBA to reconsider their decision. The two parties came to an agreement to restore land once they finished excavating it. Another requirement was that a dust report be filed by an inspector to verify that the dust amounts were diminishing.

Chmn. Berger thought it was best to revisit this to see the progress being made.

Mr. O'Brien asked if the board would be making any decision with regard to the dust. Chmn. Berger stated they would only be reviewing the progress.

Mr. Kalick asked if there have been any recent complaints. Chmn. Berger stated there have not been any recently.

Chmn. Berger noted the dust reports are required to be filed every January and July, but only sees one has been filed.

Mr. Keene asked if the bond is still in effect. Chmn. Berger noted that it is.

Chmn. Berger discussed target dates that the various restoration stages were to have been completed by and asked about the progress.

David Peterson of Cape Cod Aggregates addressed the board. He stated the phasing schedule was difficult to gauge because much of it was dependent the economy and demand of the product. Components such as the power easement that went through the middle of the pit also played a factor in the timeline. Mr. Peterson stated that the parts of each phase that were dependent on NSTAR (Eversource) completing their utility work were not able to be done because NSTAR (Eversource) did not finish their work.

He stated that the majority of the outside slope restoration work has been completed. The only sections that haven't been completed are areas that are currently being mined and the area of the easement.

Mr. Laruso addressed the board. He stated Cape Cod Aggregates is working with Holmes and McGrath to finish the phasing. He is requesting two more years to

finish the phasing which was supposed to have been completed by December 2015. He stated the economy turned which nearly bankrupted the company and slowed down the restoration progress. Mr. Laruso offered to increase the bond. Chmn. Berger said that wouldn't be necessary at this time. A discussion ensued.

Chmn. Berger requested a current dust / noise report. Mr. Peterson stated they are being worked on and the board will have them in approximately two weeks.

Mr. Keene asked since NSTAR (Eversource) did not complete their work, is there an erosion plan to prevent sand around the towers from washing away. Mr. Peterson stated all the slopes around the towers will be graded and seeded.

Mr. Laporte asked if the report would be ready for the July 20<sup>th</sup> meeting. Mr. Peterson said it would be. Chmn. Berger asked that a copy of the restoration plan be emailed to the board.

Mr. Peterson referred to a visual board depicting the restoration phases and the operation of the facility. A discussion ensued.

Mr. Peterson briefly discussed a constant problem the facility faces with dirt bike riders. He stated they have an agreement with the Environmental Police to ticket / tow riders who disobey their keep out postings.

Chmn. Berger asked if it would be possible for some of the board members to tour the facility. Mr. Peterson stated a tour would be possible.

A brief discussion transpired with regard to how the land may be used in the future. The Ingersoll family and the Laruso family own over 300 acres collectively.

Cape Cod Aggregates will return on July 20, 2016 at 7:30 to present their report.

- Discussion of Canal Bluffs at Harmony Hill filing – Chmn. Berger stated this filing should be handled by the Board of Assessors not the Zoning Board of Appeals.

**5. New Business – None**

**6. Public Comment – None**

**IV. Adjournment –**

**Mr. O'Brien moved to adjourn the meeting. Mr. Sawyer seconded.** With no further discussion, the motion carried 7-0-0. The meeting adjourned at 9:09 PM.

Minutes submitted by: Carol Mitchell