

**Town of Bourne
Zoning Board of Appeals
Meeting Minutes
July 5th, 2023**

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TOWN CLERK'S OFFICE

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

ABSENT: Wade Keene.

STAFF: Ken Murphy.

PUBLIC: Kevin Klauer, William Galvin, John Blanchard, Karen Blanchard, Coreen Moore, Christopher Kirrane, Michael Kennefick, Cheryl Wightman, Walter Wightman, Paul Alfano

Chairman Beyer called the meeting to order via Zoom at 7:00pm.

Minutes: 5.17.23, 6.21.23

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

Roll Call Vote As Follows:

Mr. Pine – YES. Mr. O'Brien – YES. Ms. Bystrom – YES. Mr. Kalick – YES. Chm. Beyer – YES.

The Motion Passes.

Public Hearing for Supportive Finding #2023-SF02 and Special Permit #2023-SP02: *Cont'd from 6.7.23. 16 Worcester Ave, Monument Beach. William Galvin III. Request to add two second floor additions.*

Atty. Kevin Klauer introduces himself as representative of this project. Atty. Klauer gives a summary of the project, stating that this is a 3600sqft lot and the Galvins are seeking to make some modifications to make this their primary residence. It is currently a two story, five-bedroom 1900sqft home. It is non-conforming as to setbacks, lot coverage, and GFA, but was constructed in 1890. Since the last meeting, there was an inspection by the Health Department, and they confirmed that the existing four-bedroom system passed. They revised the plans so there is clearly only four bedrooms, and narrowed the scope of the proposed additions. The additions have been revised from 245ft to 70ft. At the prior hearing, the board stated that the most they could only approve is 90sqft. What they propose now won't affect footprint, lot coverage, or setbacks. There are no new non-conformities created. The modifications change the layout of the front porch and there is a small expansion of an existing bay window on the second floor. Atty. Klauer states that this proposal allows more useful and practical space for the applicants.

Chm. Beyer and the board confirm that the only GFA sheet they have is from April, but Atty. Klauer states that he submitted the updated GFA sheet on the 13th. Chm. Beyer says that this property is almost double the allowable GFA, and cannot understand asking for more. Atty. Klauer answers that there are no closets currently in the dwelling, and the changes are entirely within the existing footprint. Chm. Beyer responds that according to the April GFA worksheet, the GFA is approximately 2000 sqft, when 900 should be allowed and they are asking for more. Chm. Beyer responds that he cannot support this.

Mr. Pine adds that he understands that the lack of closet space is limiting, but adding to the GFA, which by their bylaws is already too great, is not something that he can support.

Mr. Kalick states that the applicants have the right to add for a 10% increase regardless of the non-conformity, but this dwelling is already on a very small lot. Mr. Kalick states that it is up to the discretion of the board to decide if this 10% can be approved. Chm. Beyer responds that there has to be a hardship, and he does not consider the lack of a closet to be a hardship. Chm. Beyer does agree with Mr. Kalick that the applicants are within their rights to apply for the 10%, but he cannot support it. Mr. Kalick states that he just wanted to make this point for the record.

Mr. Pine states that the ZBA, under good cause, may grant a special permit from a departure of requirements but only in the case of maximum gross floor area and maximum lot coverage but cannot be more than 10%. Mr. Pine states that he does not interpret that as they can go 10% over anything. Mr. O'Brien adds that he agrees with Chris that they can go 10% over the 900sqft, not 10% over what currently exists.

Bill Galvin, the applicant, makes a comment. He asks for clarification on the meanings of lot coverage and GFA. Chm. Beyer explains and summarizes that this building is bigger than it should be for the lot, and the applicants are still asking for more. Mr. Galvin responds that nothing about the house will change, they are just trying to make it more livable for them. They have to put in heat and ducts, and the livable space will shrink because of that. He states that they are not trying to take advantage of anything, but they are asking for this because they cannot ask for any less and make the house someplace where they can live year-round. He states that all the houses in Monument Beach violate GFA and lot coverage, and he has lived in the neighborhood since he was five years old. Mr. Galvin states that he is frustrated because they did everything the board asked for at the last meeting, including getting the additions under 90ft. He adds that all of his neighbors are supportive of this. He also adds that he is frustrated that this is the second time he has come to a meeting and the paperwork he and his lawyer submitted is not available.

Mr. Kalick asks if they can show the drawings. Atty. Klauer shares his screen via Zoom, and shows that the only addition is expanding over a bay window. Atty. Klauer adds that the board seemed to have indicated at the last meeting that if they got the addition under 90sqft, it could be considered, but that does not seem to be the case now. Atty. Klauer states that a non-conformity can be increased and case law supports that. He says that the

board does have the ability to approve this increase as long as it is not substantially more detrimental to the neighborhood than what is existing. Atty. Klauer adds that the lot coverage is 60%, not 100%. Chm. Beyer apologizes for intimating that the lot coverage was 100%.

Mr. Kalick says that after seeing the drawings and that the lot coverage isn't going to change, he doesn't think the lot coverage is objectionable and it is nothing to the overall appearance of the house. Chm. Beyer states that they have enough information to pass a judgement upon. The applicants will need three votes for the supportive finding and four votes for the special permit.

Ms. Bystrom asks if the property has stayed the same minus the 70ft addition since Mr. Galvin bought it in 1998. Mr. Galvin responds that yes it has stayed the same, but they did a renovation of the kitchen. It has been a seasonal use because there is no heat. Mr. O'Brien asks why there has to be a special permit and a supportive finding. Atty. Klauer responds that he believes that a supportive finding would be sufficient. Mr. O'Brien and Mr. Kalick agree that a supportive finding seems more appropriate.

Mr. Pine responds that whether or not they agree with the zoning bylaws, those laws are in place and it is their job to interpret these things. In this case where they are increasing the non-conformity by increasing the GFA, the zoning bylaws require them to address this with a special permit. If they were altering the structure but not increasing it, a supportive finding would be fine. In Mr. Pine's view, just a supportive finding is not appropriate because they are increasing the GFA, not just altering the structure. Mr. Pine asks where would they be if they approved the supportive finding but not the special permit.

Chm. Beyer responds that the supportive finding addresses if this is detrimental to the neighborhood, but the special permit goes beyond that because it addresses visual compatibility, impact on other developed premises, pedestrian and vehicular flow and safety. The supportive finding would only address a raze and rebuild, which this is not. This increases the non-conformity.

Atty. Klauer asks for Mr. Murphy's opinion. He responds that they should be applying for a special permit because they are staying within the same footprint, but they are increasing a little bit so that puts them in the special permit category. Mr. Murphy adds that he does not believe that they are adding detrimentally to the neighborhood by the addition. Chm. Beyer responds that it sounds as if Mr. Murphy believes that a special permit is required.

Ms. Bystrom asks about the closet on the first floor plan. She inquires about the purpose of the closet, and Atty. Klauer confirms that since it is in the entry way, it is to hang coats and the like. It is not a closet for a bedroom. Mr. Galvin responds that this closet is really only 2' x 6" and it is a closet really only in name only. He adds that the biggest closet that they have in the house is 3' x 1.5' and that is only in one room. The closet space they want for the two biggest bedrooms does not exist right now. If they only lived there

seasonally, the lack of closets would not be a big deal, but if they are to live there year-round, the lack of closets does not leave any space for coats or other clothes. The addition over the bay window allows for a little more space for these closets.

Atty. Klauer requests a chance to discuss with his client what a denial would mean, and wishes to request a continuation instead.

Mr. Pine makes a Motion to Continue the Public Hearing. Mr. O'Brien seconds the Motion.

Roll Call Vote as Follows:

Mr. Pine – YES. Mr. Kalick – YES. Mr. O'Brien – YES. Ms. Bystrom – YES. Chm. Beyer – YES.

The Motion Passes.

Request for Special Permit #2023-SP06: 27E Nautical Way, Buzzards Bay. To raze and rebuild cottage.

John (Jack) Blanchard introduces himself as the owner of the property. They want to rebuild the cottage which was built in the 1930s. Mrs. Blanchard states that they have been trying to work with their condo association for seven years within their constraints and have been turned down many times. Eventually they were granted a court-order to rebuild. They are keeping the foundation, putting up real walls, and putting up a shed roof. Chm. Beyer asks if they are increasing the size of the cottage at all. Mr. Blanchard states that there will be a two-foot cantilever in order to make it more square, and this was approved by the association.

Chm. Beyer states that they have a letter from the association saying that this is approved. They also have a letter of objection from a neighbor at 25E Nautical Way. Chm. Beyer notes that the abutter's issues may not be ZBA issues but more building/inspection issues. Because the Blanchard's were not aware of this letter, Chm. Beyer reads the letter into the record. The letter states that this construction goes against the bylaws of their association. Their concern involves the final height of the building and drainage. The abutter wants to know how the rebuild will impact drainage. They are concerned that the final elevation may not meet what is in the plans (19ft). The abutters are also concerned that the rebuild will encroach upon common area beyond the foundation. Also the size of the proposed deck seems to be larger than the existing deck. The abutter would also like to know if the basement will be habitable space once the build is concluded.

Mrs. Blanchard states that they are moving a staircase and the deck extension goes where the old staircase was. She adds that none of the rebuild will encroach on common area, and the five feet of space between the properties is common land.

Chm. Beyer states that typically they defer to the condo association of Hideaway Village, and they have a letter of support from the condo association. He adds that Mr. Murphy's job is to enforce that the plans will be built as they are drawn, which addresses that the plans may not meet the elevations cited by the plans. He adds that if the rebuild encroached upon the common area, the condo association would have objected to that. Mr. Murphy states that he will work with the association and the neighbors to be sure that the drainage is acceptable. He adds that the whole neighborhood has drainage issues but the association is working to address those issues.

Mr. Pine states that he has plans dated Dec 21st 2022 that are approved by the condo association, but the most recent plans are from May 2023. He wonders if the board of trustees have approved that set of plans. Mr. Murphy states that he verified that these new drawings are meeting the same standards as what was approved by the board of trustees.

Mr. Kalick states that if the condo association approved it, there is nothing more for the ZBA to do because they have always deferred to the association. Mr. O'Brien adds that not only has the association said its okay, but the court has also said it's okay.

Mr. O'Brien makes a Motion to Close the Public Hearing for Special Permit #2023-SP06. Mr. Kalick seconds the Motion.

Roll Call Vote as Follows:

Mr. Pine – YES. Mr. O'Brien – YES. Mr. Kalick – YES. Ms. Bystrom – YES. Chm. Beyer – YES.

The Motion Passes.

Mr. O'Brien makes a Motion to Approve Special Permit #2023-SP06 with compliance to the plans presented. Mr. Pine seconds the Motion.

Roll Call Vote as Follows:

Mr. Pine – YES. Mr. O'Brien – YES. Mr. Kalick – YES. Ms. Bystrom – YES. Chm. Beyer – YES.

The Motion Passes.

Request for Special Permit #2023-SP07: 65 Adams St, Sagamore. For a Residential Kennel for five dogs.

Coreen Moore introduces herself as the applicant. She states that all the dogs are chihuahua mixes and range from 6lbs to 22lbs. They are rescue dogs, and two of the dogs are products of the other dogs mating, which have since been fixed. They are kept in the house and the back yard is fenced in. She has two large dog houses for when it rains, but they are inside most of the time. The names of the dogs are Macho, Milo, Maggie, Meka, and Molly. Ms. Moore states that there will be no more dogs.

Mr. O'Brien makes a Motion to Close the Public Hearing for Special Permit #2023-SP07.
Mr. Kalick seconds the Motion.

Roll Call Vote as Follows:

Mr. Pine – YES. Mr. O'Brien – YES. Mr. Kalick – YES. Ms. Bystrom – YES. Chm.
Beyer – YES.

The Motion Passes.

Mr. Pine makes a Motion to Approve Special Permit #2023-SP07. Ms. Bystrom seconds
the Motion.

Roll Call Vote As Follows:

Mr. Pine – YES. Mr. O'Brien – YES. Mr. Kalick – YES. Ms. Bystrom – YES. Chm.
Beyer – YES.

The Motion Passes.

Public Hearing for Supportive Finding #2023-SF03: *Cont'd from 6.21.23. 165 Jefferson Rd, Bourne. To make alterations to an existing single-family home including expanding the existing dwelling, adding a deck, and adding a 12' x 12' patio to the existing cottage.*

Atty. Christopher Kirrane recaps the modifications the applicants wish to make on their home. There are five in total. First they would like to close off an entryway on the main house. Second they would like to add a covered porch and steps on the main house. Third they would like to add a deck and a second story addition to the main house. Fourth they would like to raise the height of the cottage, and fifth add a bathroom to the second floor of the cottage. They are seeking a supportive finding because they are not going to increase the GFA or lot coverage over the amounts allowed by the bylaw. Atty. Kirrane states that he has an email from Health Agent Terri Guarino that certifies that there are five bedrooms. Chm. Beyer disputes this and states that the email says that they still need approval from the Board of Health. Atty. Kirrane states that the board asked for something from the Board of Health showing that the septic was sized for five bedrooms. Chm. Beyer responds that they have an email from Terri Guarino stating that it is an acceptable septic system but they need Board of Health approval. Atty. Kirrane responds that if they board approves this application, it will be conditional upon all permits required.

Atty. Kirrane states that they provided the existing condition plans for the main house and the existing conditions for the cottage were previously provided. Atty. Kirrane states that he believes that this board has everything that they need to make a decision. He disagrees with the abutter's letter of objection that once again came in at the last minute before the meeting. He adds that he believes that the majority of the neighborhood

supports this project. Chm. Beyer confirms that they have sixteen letters of support from the neighborhood.

Mr. Kalick wishes to reiterate his feelings on this project. He states that it has been going on for a long time. The neighborhood supports this. The applicants pay taxes, they're residents, and this is their home. So much money has been spent because one neighbor is upset. As a board, they cannot grant views. If someone wants a water view, they must buy waterfront property. Mr. Kalick states that they must make a decision and it can't be postponed again. They can have the decision contingent upon the Board of Health as they have done many times in the past. Mr. Pine states he does not have a problem with this going to a vote. Chm. Beyer agrees that they have provided everything they asked for. He adds that he stands against this project. He believes that Gray Gables is overbuilt. He states that he had a house there 30 years ago and looks that the neighborhood now with violations of setbacks and height and it has been a detriment to the neighborhood. He states that he cannot stand behind something that doubles the height of a dwelling that does not meet setback requirements. However, he believes that they should not delay and vote on this tonight and make it conditional upon Board of Health approval.

Atty. Kirrane replies that they are not increasing any pre-existing non-conformities. Yes, the height is going up, but it is within what is allowed under the bylaw. He states that they must make a decision that it is not substantially more detrimental to the neighborhood than what already exists.

Atty. Michael Kennefick speaks, who is a representative of an abutters at 163 Jefferson. He states that only a few of the letters of support were from legally acknowledged abutters, which are properties that are within 300ft. Atty. Kennefick states that the applicants bought this property in 2017, and at that time there were two summer houses on their lot. Four years ago this board allowed the cottage to become a year round dwelling. Atty. Kennefick states that the applicants converted the main house into a year round property without the support of the ZBA, which is required. There were permits pulled for heating systems on the property and other work done. Atty. Kennefick states that they provided several exhibits that show that when the applicants bought this property in 2017, they were summer residences such as an MLS Listing, correspondences, and water usage that shows very little water usable during the winter before the applicants bought the property. Atty. Kennefick says that it is pretty evident that this is an unlawful conversion without a special permit. Also, under the zoning bylaws, there cannot be two principal structures on one lot. Finally, Atty. Kennefick argues that this is more detrimental to the neighborhood because when the applicants bought this property, it was two seasonal homes that were lived in for three or four months a year. Now, through lawful and unlawful conversions, there are now two year-round residences on this property in an already congested neighborhood.

Cheryl Wightman, a neighbor in Gray Gables, states that the applicants have done nothing but improve their property. They are trying to make their property more habitable. She expresses her support for the applicants.

Atty. Kirrane addresses some comments from the previous attorney. He states that there is already a second floor, so they are not adding a second floor. They are simply raising the height and adding a bathroom. The applicants have been using this as a year round residence ever since they bought the property. The permits they obtained have been approved, and there have been no zoning enforcement action by the Building Inspector that would prevent them from using this as a year round residence.

Atty. Kennefick responds that in 2017 the property clearly didn't have any heating or cooling. Well after the property was purchased, heat was installed. He tells the board that this is about the intensity of use. The applicants are more than doubling the intensity of use in less than six years. Mr. Kalick asks why the Atty. Kennefick's client believes that this is detrimental to the neighborhood. Mr. Kalick states that the character of all the neighborhoods in Bourne are changing because the Cape is growing and homeowners have the right to do what they want. You can't stop people from improving their property. Mr. Kalick states that after 15 years on the board, people get upset over losing a view time and time again and that is what this about. Chm. Beyer states that this is about what they are proposing to do now, not what they've done in the past. In that case, it should be taken to the land court and appealed. Chm. Beyer states that they do not have a right to build whatever they want, they must conform with the zoning code. Chm. Beyer states that they are not conforming because they are increasing the height of a building that does not conform with setbacks. Mr. Kalick says they have a right to do that, and Chm. Beyer responds that they have a right to ask the board.

Atty. Kennefick responds that they do not have an absolute right to expand the property, but the board has the right to grant waivers. It is the board's job to determine if they can make these changes that are not otherwise allowed. He states that his clients' main concern is not the view, it is the intensity of use because Gray Gables is a very small congested neighborhood. The applicants are looking to increase the occupancy greatly on this property. Chm. Beyer responds that this is not the question before them, the question before them is the additions to the property. There is nothing in the application that says they will use more intensely, it merely says that they are building a bigger structure than they are allowed to. Atty. Kennefick responds that the third issue is that they are looking to increase the size of the property in an already congested area. Atty. Kirrane disagrees that they are increasing the intensity of use. They are proposing to close off an entryway, add a deck, and raise the height of a cottage that is already two stories all within the bylaws. None of these alterations change the fact that this is a single-family residence, and there is no change in intensity of use.

Mr. Kalick asks about 2017-SP22, when the board granted them a supportive finding. Chm. Beyer responds that this is not what this hearing is about. Mr. O'Brien states that this is a supportive finding, and a supportive finding is about if the proposed changes are more detrimental to the neighborhood. He states that the Board of Appeals determines that the proposed alteration does not substantially alter the historic visual character of the

neighborhood by excessive height or mass or design. Chm. Beyer responds that his argument is that it does, and their argument is that it does not and that is what they are voting on.

Mrs. Wightman responds that it seems that they have a lot more people in support of this project and only one person that objects to it. She wonders what the height and square footage of their property is. Chm. Beyer and Mr. O'Brien respond that this is not relevant, and while he respects the opinion of the neighborhood, the only votes that count are of the committee.

Mr. O'Brien makes a Motion to Close the Public Hearing for Supportive Finding #2023-SF03. Mr. Pine seconds the Motion.

Paul Alfano, an abutter, states that he does not believe that increasing height of the cottage will be detrimental to the neighborhood. He speaks to the intensity of use of the property but Chm. Beyer restates that this is not what they are voting on tonight. He states that he is in favor of the applicants.

Roll Call Vote As Follows:

Mr. Pine – YES. Ms. Bystrom – YES. Mr. O'Brien – YES. Mr. Kalick – YES. Chm. Beyer – YES.

The Motion Passes.

Mr. O'Brien makes a Motion to Approve Supportive Finding #2023-SF03 conditional upon Board of Health approval. Mr. Pine seconds the Motion.

Roll Call Vote as Follows:

Mr. Pine – YES. Mr. Kalick – YES. Ms. Bystrom -- YES. Mr. O'Brien – YES. Chm. Beyer – NO.

The Motion Passes.

New Business:

None.

Old Business:

None.

Public Comment:

None.

Adjournment

Mr. Kalick makes a Motion to Adjourn, seconded by Ms. Bystrom.

Roll Call Vote as Follows:

Mr. Pine – YES. Mr. Kalick – YES. Ms. Bystrom – YES. Mr. O'Brien – YES. Chm. Beyer – YES.

The Motion Passes.

With no further business before the Board, the meeting was adjourned at 8:41PM.

Respectfully Submitted,
Ina Sullivan