

Town of Bourne Zoning Board of Appeals

Meeting Minutes

Virtual Hearing via Zoom

December 16, 2020

Meeting ID: 930 5107 9116

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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 December 16, 2020. 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, Wade Keene, and Associate Member Pat Nemeth. **Members Excused** – Harold Kalick

Also Present: Ken Murphy, Jeanne Azarovitz, Drew Hoyt, and Thomas Pappas.

Agenda Items

2. Approval of Minutes – There are no minutes available to approve.

3. 975 Shore Rd Public Hearing for Special Permit (2020-SP27) a supportive finding that razing and rebuilding of the existing garage will not be substantially more detrimental to the neighborhood than the existing non-conforming structure.

Chris Pine recused himself for this agenda item.

Materials: Public Hearing notice, Application for Special Permit, GFA worksheet (not signed by Town Planner), Floor plans, Plot Plan, assessors card, assessors map, Directions.

Chris Pine, Homeowner, is present for this hearing along with the architect. He reviewed the project supportive finding that razing and rebuilding of the existing garage will not be

substantially more detrimental to the neighborhood than the existing non-conforming structure. He explained it is non-confirming due to the setbacks on the easterly side, about 2ft. proposing to rebuild the garage in the same footprint, there will be no bathroom or water, just electricity.

Mr. Beyer asked if there are any questions from the Board members.

Mr. O'Brien asked if Mr. Pine will be raising the height of the structure. Mr. Pine replied the garage will be raised 3ft to allow room for a larger vehicle to fit inside (pickup truck).

Mr. Beyer asked if there is an abutters list provided. Mr. Pine explained the list was provided. Mr. Beyer asked if the abutters were notified. Mr. Pine replied he has discussed the project with the previous appeal and the abutters and there is no concern.

Mr. Beyer asked if there the abutter at 6 Circuit Ave, requested to speak. He questioned if the height meets code. Mr. Murphy confirmed it meets height.

It was confirmed again by Mr. Beyer, Mr. O'Brien and Mr. Pine that the garage will be rebuilt in the same footprint.

Mr. Beyer requested a motion to close the public hearing. **Mr. Keene made the motion. Mr. O'Brien seconded the motion to close.** Roll call vote: Ms. Nemeth- yes, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- yes.

Mr. Beyer made a motion to approve the request for a supportive finding that razing and rebuilding of the existing garage will not be substantially more detrimental to the neighborhood than the existing non-conforming structure. **Ms. Nemeth made a motion to approve. Mr. O'Brien seconded the motion.** Roll call vote: Ms. Nemeth- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.

Sitting on the hearing; Pat Nemeth, Jim Beyer, Wade Keene, and John O'Brien. Chris Pine is recused.

4. 230 Sandwich Rd, Chase Estates Comprehensive Permit No. 08-18. Applicant's response to Peer Review. (Continued from 10.21.2020)

Mr. Pine rejoined the Board for this agenda item.

Materials: Cover letter for Chase Estate Peer Review Response dated December 11, 2020, and Response Memo to PSC Peer Review dated December 11, 2020.

Jim Beyer made a request to make some comments prior to opening up for discussion.

Jim Beyer read the following “The last time the Board convened to discuss this matter on October 21, 2020 we had specifically requested the applicant provide a comprehensive response to the peer review that was provided on August 10th 2020. At this time the applicant has not submitted this comprehensive response. The applicant has responded point-by-point to some parts of the peer review that deal with site planning and site drainage but has merely provided a vague promise that a new storm water system design, site layout plan, and storm water management plan which would presumably would reflect the viewers concerns will be forthcoming at some unidentified future date. There is no response at all provided to the review of the Traffic Impact Analysis presumably because this was never completed despite a request from the peer reviewer also dated August 10, 2020 for the applicant to provide technical backup for the TIA prior to its review of same. It was my hope tonight that we would be able to debate the technical points raised by the peer reviewer and move quickly towards revising the language in the comprehensive permit so this project could be approved. Alas, we have no current proposed markup of the language of the comprehensive permit, no definitive list of waivers to be sought, we haven’t yet seen a complete list of architectural drawings and other relevant documents to be included in that permit. This board has been conducting public hearings on this matter for well over a year and we are frustrated with the lack of progress in that time. We are not required to meet continually and simply hope the applicant shows up with the necessary material. We need an honest and throughout effort undertaken to compile and submit the information required by section 40B for us to fairly evaluate this project. The burden of that effort falls upon the applicant, not the Board members. Accordingly, I intend to entertain a motion to deny, without prejudice, 230 Sandwich Rd Chase Estates comprehensive permit 08-10 notice of project change. Such a denial would permit the applicant to reapply without a 2 year waiting period, hopefully at such time he has assembled the complete requisite of information for the board consideration. Before hearing such a motion and prior to opening this matter for discussion between Board members I would ask if there are any questions or comments from the applicant or the public”.

Attorney Drew Hoyt stated he is surprised as he feels they have done everything that was asked up until this juncture for the peer review. He feels Mr. Beyer had laid out a two-step process to have the applicant come back and indicate whether they indicate yes or no and provide additional information and make changes, then come back with those revisions and additional substantial information. Mr. Hoyt stated he feels they have met step one as outlined above.

Mr. Beyer responded that he agrees, but stressed the response is incomplete. The response requires the traffic impact analysis and a comprehensive response to the marked up version of the comprehensive permit. Mr. Beyer reiterated the need for a complete submission, including a list of waivers and list of architectural drawings.

Ms. Nemeth stated she feels the response on the storm water analysis is incomplete, lacking information such as which waivers are needed. She supports the motion to deny the permit without prejudice.

Mr. Hoyt said he feels he has not seen a markup of the comprehensive permit from the peer review.

Mr. Beyer reiterated that a decision to deny the permit without prejudice would be of benefit to the applicant.

Attorney Hoyt requested a continuance until the first hearing in March to provide all the documents requested. He reiterated his view of the timeline and two-step process as he had mentioned previously. He stressed his hope to discuss some topics with the peer reviewer this evening.

Ms. Nemeth reminded Attorney Hoyt of a discussion at a previous hearing about the traffic study as an example of his knowledge to this needing to be provided at this hearing.

Mr. Pine stated he agrees with the chairman and Ms. Nemeth in a vote to deny the permit without prejudice and reiterated the desire to have all the documents requested to address all the areas of concern to allow for a complete discussion for everyone involved. He stressed that he feels another continuance is not in the best interest of the Board members, the abutters, or the applicant.

Attorney Hoyt expressed his concerns with his applicant having to reapply and pay the application fee again. He again reiterated his understanding of the two step process he feels he was adhering to. He then stated he and his client may go to the Housing Appeals Committee (HAC).

Mr. Beyer opened the hearing for discussion from the public.

Mr. Sean Scully, an abutter at 8 Bosuns Ln, thanked the Board and his appreciation for the motion to deny the permit. He expressed as a community member he felt he knew what was expected in terms of documentation and response from Attorney Hoyt for the hearing this evening, and feels Attorney Hoyt is incorrect in his statement that he was unaware of what was expected. Mr. Scully asked for an explanation of HAC and what a denial of the permit will mean to the abutters and residents of the Port of Call community.

Mr. Beyer explained that HAC stands for the Housing Appeals Committee and the applicant has a few potential steps including approaching this Committee. He explained further that denying the permit without prejudice waives the two year waiting period to

reapply. He feels it would be punitive to make them wait two years as they have a right to be heard with a complete permit submission.

Mr. Scully expressed his concerns with the project being continued until March.

Brian Jensen, an abutter at 10 Bosuns Ln, stated the Board was very clear in their expectations and what was supposed to happen at the last hearing and Attorney Hoyt and the applicant failed to produce what was asked of them at that hearing.

Attorney Hoyt thanked and praised the Board and feels they have made a good faith effort to shepherd this project and appreciates the Boards overall responses to the project. He again requested a continuance and explained how he feels the outcome will be the same whether it is continued or denied as the end result will be a complete response.

Mr. O'Brien made a motion to close the public hearing. Mr. Pine seconded the motion. Roll call vote: Ms. Nemeth- yes, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- yes.

Mr. Beyer entertained a motion to deny the Chase Estates Comprehensive Permit No. 08-18 without prejudice. Mr. Pine made the motion. Mr. O'Brien seconded the motion. Roll call vote: Ms. Nemeth- yes, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- yes.

Old Business – None.

New Business – Peter Meier, selectman, thanked the Board members for all they do, specify with all the limitations and restrictions due to COVID-19 and a Happy Holidays to all.

Public Comment – None.

Adjournment –

Mr. O'Brien moved, Mr. Keene seconded to adjourn the meeting. Roll call vote: Ms. Nemeth- yes, Mr. O'Brien- yes, Mr. Keene- yes, and Mr. Beyer- yes. The meeting adjourned at 7:45 PM.