

Town of Bourne Zoning Board of Appeals
Meeting Minutes

Virtual Hearing via Zoom

December 2, 2020

Meeting ID: 981 3975 2082

APPROVED

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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 2, 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.

Michael Rausch indicated he is recording.

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

Members Excused – Harold Kalick.

Also Present: Ken Murphy, Michael Rausch, Tim Bernard, Tom Timko, Doug Troyer, Susan Ross, Kerry Horman.

Agenda Items

- 2. Approval of Minutes – Mr. Beyer entertained a motion to approve the minutes of the October 7, 2020. Mr. O' Brien made a motion. Mr. Pine second the motion. Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.**

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

- 3. Approval of Minutes – Mr. O'Brien and Mr. Beyer gave corrections to be made. Mr. Beyer entertained a motion to approve the minutes of the October 21, 2020 as amended. Ms. Nemeth moved. Mr. Keene seconded. Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.**

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

4. **72 Elgin St** public Hearing for Special Permit **(2020-SP25)** for a supportive finding to build a new single-family dwelling.

Materials: Application packet, driving directions, Project Information and pictures, property map, site plan and septic design dated 01.03.2020, floor plans dated 07.12.2020, and elevations all dated 10.07.2020. Abutters list dated 10.13.2020. GFA Worksheet signed by the Assistant Town Planner dated 12.2.2020

Tim Bernard, owner, and Tom Timko, architect, are present for the hearing.

Mr. Timko reviewed the application. Single family dwelling on a small non-conforming lot for Mr. Bernard and his family. Requesting 10% override on the 20% limit. Final GFA of 4145sf which he feels is not unusual for a 4 bedroom home.

Mr. Bernard reviewed they will not be changing the existing footprint of the approved plans and will be adding a bedroom above a porch. The septic is approved for 4 bedroom.

Mr. Beyer asked if everyone had received the GFA worksheet provided by the Assistant Town Planner this afternoon. The board members indicated they had.

Ms. Nemeth questioned the GFA calculation for the garage to exclude the utility closet. Mr. Timko replied the utility closet is included within the square footage. Ms. Nemeth said, not according to the drawing in the packet.

Mr. Beyer clarified, reviewing his conversation with the Assistant Town Planner. The referenced utility closet is separated by a wall, which makes the garage excludible.

Mr. Beyer asked if there are any further questions from the Board, there was no response.

Mr. Beyer questioned what the exceptional hardship is and remarked that the mass of the house is out of scale with the neighborhood and feels every advantage has been taken of the code to increase that mass. Including the garage, and the exception of the covered porches. He discussed interpreting the zoning code and continued to say the porches are of significant area and do increase the apart significant mass of the structure. Mr. Beyer then expressed his concern with the attic area, and remarked on the interpretation of the zoning bylaw and the ability to convert the area into a bedroom.

Mr. Timko responded that the peak of the roof in the attic does not meet the building code requirement for habitable space as it requires 7ft, and only the space finished for the porch would be habitable. Mr. Beyer replied that the strict definition of the zoning code refers to 6ft height.

Mr. Beyer then asked if there were any members of the public who would like to comment.

Abutter; Richard Fisher; at 76 Elgin Rd- submitted an opposition for this application to the Zoning Board of Appeals members. He feels the only reason this is less than 20% is because they manipulated the garage to grant the additional square footage. He continues to say it seems like even though it may meet the building code pieces it is still not in the spirit of the intent of keeping the mass of the volume of the house down on such a small lot. Mr. Fisher also referenced the photographs he submitted to the Board showing the mass of the excavation impacting the side lot that abuts this property undermining the hill and sprinkler system and feels this is due to the size of the property bring put on a small lot.

Mr. Beyer asked if there are any further comments from the public. There were none.

Mr. Beyer asked if there are any further comments from the applicant.

Mr. Timko replied to Mr. Fisher's comments stating there has not been any change in the design of the garage and no earlier submission of the garage.

Ms. Fisher referenced the original building plan that was included in the building permit application for the house which he obtained from the Building Department.

Mr. Beyer asked if there are any further comments from the public or applicant. There were none.

Mr. Beyer entertained a motion to close the public hearing. Ms. Nemeth requested to ask a question of staff.

Ms. Nemeth stated to Ken that she was surprised when she visited the site that the grading had occurred, trees removed, damage to adjacent property and felt this was premature work prior to ZBA having time to deliberate on the size of the project.

Mr. Murphy commented that the original plan and the house everything met the GFA and based on the bylaws it was approved they reduced the house down to GFA to meet bylaws and be approved. Ms. Nemeth confirmed this plan is increasing what is already approved. The plan they are trying to move forward on is in addition to what is already approved.

Mr. Fisher stated the original plan was 5800 GFA and the revised plan which was approved had 2 bedrooms and was 3600 GFA which received the approved building plan. This application before the ZBA is adding back in 2 more bedrooms. He reiterated they were approved for a 2 bedroom house, and now they are requesting a 4 bedroom house.

Ms. Nemeth and Mr. Murphy both confirmed.

Mr. Timko said there was a preliminary plan submitted that was not formally approved and the submission that was approved was the 3699 GFA submitted in October. The earlier design Mr. Fisher was referring to was never approved. They are not changing the footprint of the house they are building above the existing porch. Mr. Beyer confirmed it is increasing the area.

Mr. Beyer questioned what the hardship is.

Mr. Bernard, homeowner, explained that the hardship is the 2 bedroom house as his family consists of his wife and 4 sons and is looking to add bedrooms to accommodate his family.

Ms. Nemeth replied that is not a hardship as he bought a lot to build a house with his 4 sons to try and build a bigger house. Ms. Nemeth reviewed that she agrees with the Chairman. The house is too large; the applicant does not have a hardship; and she cannot support the request.

Mr. Beyer asked if there are any further comments from the public or applicant. 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 second. Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.

Mr. Beyer asked if there are any comments or discussion from the Board.

Mr. Pine feels the intent of the zoning by laws is being stretched the use of the additional porches and the way it has progressed allows for a tough time supporting this.

Mr. Beyer expressed he speaks in opposition of the application as well.

Mr. Beyer entertained a motion to deny the application.

Ms. Nemeth made a motion to deny for Special Permit (2020-SP25) at 72 Elgin St, for a supportive finding to build a new single-family dwelling with the square footage as proposed based on the fact there is no hardship. Mr. Keene second the motion to deny. Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.

Mr. Beyer will be writing this decision.

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

5. **72 Circuit Ave** Public Hearing for Special Permit **(2020-SP26)** to construct a new second floor addition on a pre-existing non-conforming structure.

Materials: Application packet, statement of good and sufficient cause, property map, driving directions, abutters list, GFA worksheet signed by the Assistant Town Planner on 9.29.2020, floor plans dated 9.28.2020, Plot plan dated 08.26.2020.

Greg Siroonian, from RESCOM architectural, representing the homeowner is present for the hearing.

Mr. Siroonian reviewed the project to add onto the back of the home allowing for more space and a home office since the family is home more often due to the pandemic. He outlined the addition will be in the spirit of the neighborhood. Mr. Siroonian discussed a shed that is included on the GFA and a neighbor's garage which encroaches on 72 Circuit Ave. This garage is not included in the GFA. These two items were confirmed with the Assistant Town Planner and indicated on the GFA worksheet.

Mr. Beyer opened up comments from the Board Members.

Mr. O'Brien clarified that the house has an existing second floor. Mr. Siroonian confirmed there is an existing second floor that will be extended and will match the roof height. Mr. O'Brien asked about removing the shed to meet the necessary GFA. Mr. Siroonian responded that the shed is valuable storage space as the basement is in flood plain.

Ms. Nemeth complimented the design and feels the mass of the house is consistent with the neighboring properties that face the water. She asked if there are any abutters present for the hearing. Mr. Siroonian explained they have not contacted abutters outside the abutter notifications sent via the Zoning Board of Appeals application process handled by the Town Hall staff.

John Bonvouloir, homeowner, reports he has not heard from any abutters. He stated the abutters have his contact information and they have not reached out.

Mr. Pine supports the project and feels it is in scale with the neighborhood. He did question what the hardship is.

Mr. Beyer agreed, and reiterated the question.

Mr. Siroonian replied that due to being in the flood plain the basement is not usable to add additional office space or usable space.

Mr. Beyer and Mr. Siroonian discussed the application. Mr. Siroonian explained they are taking the existing bedroom and making it bigger. And taking the space that is leftover, under 70sf which does not count as habitable space and making it into an office. Mr. Beyer questioned how much they are over. Mr. Siroonian clarified they are allowed by the 10% 172sf and are asking for 166sf. Mr. Beyer explained the 10% it is not automatically given and there needs to be a hardship.

Mr. O'Brien stated in the past the Board has tried to deal with the hardship issue by talking to people and are conducive to approving if there is a uniqueness of the property, due to a hill or slope and feels the inability to use the basement constitutes as one of these unique situations. Ms. Nemeth, Mr. Pine and Mr. Beyer agreed.

Mr. Beyer asked if they were not allowed to have the additional square footage how big would the bedroom would then be. Mr. Siroonian replied it would be a little over 10x16ft. He stated the proposed addition would be 254sf, some of that area is existing, and would be half that size.

Mark Gardener, an abutter, commented on the garage saying the original surveys going back to 1920/1910 had every one of the lot lines different and it was built on their property. The addition looks nice but it does take away from their view. The existing chimney cuts into their view so the new roof will cut into their view. The garage has residential space above which has been there since the 1920's and will have more house in their view. He states there was no effort to be contacted, and does not have Mr. Bonvouloir's contact information. The only contact they have had is when he requested the fence not be built within 3ft of his garage, and noted this request was not granted. He reiterated that his view will be blocked.

Mr. Beyer confirmed he noted the view would be obstructed by this addition and asked Mr. Gardener if he was submitted an objection or an observation.

Mr. Gardener replied he was making not an objection. He also requested to make another observation he has no evidence of. He was referencing the comment about being in a flood zone and stated someone has cut down reeds and beach grass which prevents the house from flooding during a hurricane.

Mr. Siroonian commented he feels the town is responsible for the cutting as it is done in the whole area every year. He also referenced the statement about contacting the abutters and feels they did not state contact was attempted outside the abutters notifications send as part of the application process.

Mr. Beyer asked if there are any further questions or comments. Hearing none he made a motion to close the public hearing.

Mr. Siroonian asked if he could ask a question.

Mr. Siroonian stated that seeing as the project is able to possibly change can they have a discussion to possibly proceed or ask for a continuance. Mr. Beyer confirmed they can grant a continuance and asked what the reasoning would be. Mr. Siroonian clarified he was asking for a discussion so they can learn if they will not be granted an approval they will request for a continuation. He clarified this is allowed with other towns.

Mr. Beyer asked if there are any further questions or comments from the public. He then asked if there are any further questions or comments from the Board.

Ms. Nemeth stated this is complicated. She reiterated that the property behind this house would lose their narrow view of the water, but feels that in and of itself should not deny the applicant the right to do this modification to this house. She feels it will be compatible with surrounding properties in the neighborhood and is in favor of this project.

Mr. Beyer stated he appreciates Mr. Bonvouloir's hardship of not being able to build on the property but does not see the exceptional hardship for the applicant if this project is denied and he will stand against it.

Mr. Beyer asked if there are any further questions or comments from the Board.

Mr. Beyer asked Mr. Siroonian if he would like to continue the project, if not the Board will be voting.

Mr. Siroonian asked Mr. Bonvouloir to choose whether he would like a continuance or a vote of the Board. Mr. Bonvouloir said it is difficult to assess what the view of the Board is. He does concur with the member who is in favor. He stressed the hardship and their intent to stay within the footprint and profile of the house and feels there is nowhere else to go. This course of action to make the house more livable in a modern sense, and the hardship is the limitation. He said to go ahead with the vote and feels the design is good and hopes the Board can see that.

Mr. Pine stated he is in support of the project, there has been a lot of consideration and agrees the hardship of the site and the limitations of the flood plain. He discussed this project is in line with others that have been approved in this area. He appreciates the input from the abutters and feels it is important but the amount of impact on the views is not enough to deny the project and he is in support.

Mr. Beyer asked if there are any further questions or comments from the Board.

Hearing none he made a motion to close the public hearing. Mr. Pine made the motion.

Mr. Keene second. The hearing was closed to the public. **Roll call vote: Mr. Pine- yes,**

Ms. Nemeth- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.

Mr. Beyer entertained a motion to approve the project as submitted Special Permit (2020-SP26) to construct a new second floor addition on a pre-existing non-conforming structure. **Mr. O'Brien made the motion. Ms. Nemeth seconded the motion. Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- No.**

Mr. Pine will be writing the decision.

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

6. **8, 9, 10 Cape Cod Lane Special Permit (2020-SP21)** for a supportive finding to build a single family dwelling combining two non-conforming lots and make the consolidated new lot and the one new dwelling less non-conforming than the existing houses and lots. (Continued from 10.21.2020)

Materials: No new materials since previous hearing.

Ford O'Connor is present and representing the project. Mr. O'Connor gave a recap of the project as requested. The applicant will be purchasing two non-confirming houses. One is 8ft from Cape Cod Lane and the other is 13.5ft from Cape Cod Lane. Received approval from the Planning Board to combine the lots. They have come before this board for a supportive finding and a determination for a special permit. They have removed a ceiling to comply with GFA. Relocated house to 12ft within sidelines. One corner of the house is 17ft from the end of Cape Cod Lane which makes it a front yard. Asking the board to find locating the house within that location 17ft from the lane that is used as a driveway is a substantial improvement making it less non-conforming. He reiterated this request.

Mr. Beyer and Mr. O'Connor clarified the corner in reference.

Mr. Murphy stated the client has met all the requirements except meeting the setbacks based on the definition in the bylaw and Mr. O'Connor has it one way and the planning Board has it another way and it is up to what the Zoning Board finds.

Mr. Pine praised Mr. O'Connor for all the work he has done. Mr. Pine requested seeing the proposed project on a site plan. Mr. O'Connor stated it was submitted for an earlier hearing.

Mr. Santos, with Holmes and McGrath, said he can pull up the site plan showing this.

Mr. Beyer confirmed he found the plot plan as submitted. He and Mr. O'Connor discussed the setbacks. Mr. Beyer asked Mr. Murphy for his advice. Mr. Murphy stated it is 17ft based on the average of the neighboring properties not the 20ft or 25ft setback. He

referenced a previous project where they took the average frontage of the houses next door.

Ms. Nemeth complimented Mr. O'Connor and his client as they have made changes that have made the development significantly better.

Mr. Beyer confirmed they are asking for a supportive finding.

Mr. Beyer asked if there are any further comments from the public or applicant. There were none.

Mr. Beyer asked if there are any further questions or comments from the Board.

Mr. O'Brien asked if there is a difference in voting for a special permit and a supportive finding. Mr. O'Connor clarified.

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

Mr. Beyer entertained a motion to approve (2020-SP21) for a supportive finding to build a single family dwelling combining two non-conforming lots and make the consolidated new lot and the one new dwelling less non-conforming than the existing houses and lots. **Ms. Nemeth made the motion. Mr. Pine seconded the motion. Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.**

Ms. Nemeth will be writing this decision.

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

7. **4-6 MacArthur Blvd** - Extension of Variance #V21-2016 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 Board of Appeals members, Attachment "A", Attachment "B", Attachment "C", Attachment "D", Attachment "E", Attachment "F, Abutters lists.

Doug Troyer is present and representing Cumberland Farms. Mr. Troyer gave an update reviewed the history of the project.

Mr. Beyer shared that he had spoken with Attorney Bob Troy in regards to this matter and he substantially concurs with the summation just made.

Mr. Beyer asked if there were any questions or comments from the Board members.

Mr. O'Brien stated they are just standing on the sideline and hopeful the land court will make a decision and does not see a reason not to extend the variance again. Mr. Beyer concurred.

Mr. Beyer asked if there were any further questions or comments from the Board. Hearing none he entertained a motion to close the public hearing. Mr. Keene made a motion to close the public hearing. Mr. O'Brien second the hearing. **Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.**

Mr. Beyer entertained a motion to extend the Variance #V21-2016 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 for 6 months. **Mr. O'Brien made the motion. Mr. Pine second. Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes.**

Mr. Keene will be writing the decision.

Sitting on the hearing: Jim Beyer, Chris Pine, John O'Brien, Wade Keene, Pat Nemeth.

8. 56 Meetinghouse Rd. Discussion only of previously issued variance **2016-V27.**

Materials: decision for 2016-V27, Letter from the Bourne Housing Partnership to the ZBA, Letter from the manager of 56 Meetinghouse Rd to the Bourne Housing Partnership, Affordable Housing restriction Deed Rider, Letter from Bourne Housing Partnership to the Manager of 56 Meetinghouse Rd.

Mr. Murphy gave an update. The tenant is in the process of trying to find renters that qualify for 40B. There was a complaint filed indicating the current renters do not qualify for 40B and will be moving out soon. Today Susan Ross and Kerry Horman will be giving input and updating everyone on a past ZBA decision. Mr. Murphy explained that he will not be enforcing this, the housing partnership will be enforcing a letter to let them know they do not have the proper tenants living there.

Mr. O'Brien asked why the board is discussing this. Mr. Murphy replied that the Town Administrator requested this be brought to their attention.

Mr. Beyer stated the Board will listen but will not have any comment.

Susan Ross and Kerry Horman gave updates but the rest of this discussion was not recorded as it was discussion only and the Board had determined it did not require minutes.

Old Business – None.

New Business – None.

Public Comment – None.

Adjournment – Mr. Beyer entertained a motion to adjourn the meeting.

Mr. Pine moved, Mr. Keene seconded to adjourn the meeting. The motion carried.

Roll call vote: Mr. Pine- yes, Ms. Nemeth- yes, Mr. Keene- yes, Mr. O'Brien- yes, and Mr. Beyer- yes. The meeting adjourned at 8:32 PM.