

Approved:

Zoning Board of Appeals January 22, 2020 Meeting Minutes

Call to Order:

Mr. Brian Heath, Chairman, called the meeting to order in the Council Chambers located on the second floor of the Municipal Office building, 66 Central Square, Bridgewater at 7:00pm

Attendees:

Present: Brian Heath, Chairman, Gerry Chipman, Vice Chair, Anna Klimas, Member

Absent:

Staff Present: Jennifer Burke, Director of Community and Economic Development, Steven Solari, Building Commissioner, Jasmin Farinacci, Executive Assistant

I. 7:00 PM: Public Hearings*

- Murphy's Landing – Comprehensive Permit

Present before the Board: Larry Silva, Silva Engineering Associates
Rebecca Baptista, Silva Engineering Associates
Erin Murphy, Owner

Chairman Heath states that he recalled requesting a letter certifying that the tires were removed from the subject property and recycled at an appropriate location, and they have received a letter to that effect. Mr. Silva states that there was also discussion that a new ADA curb cut should be added to the sidewalk on both sides of the road with a crosswalk to allow for access to the recreation area, which has been added to the revised plans. The flood elevations observed in the nearby river have been verified and the basement elevation is 41 and the bank height is surveyed at elevation 22. The water and sewer department had requested that the output pipe of 2" be revised to be 8" and that the sewer pump be serviced by the owner. The sewer pipe has been revised on the plan to be 8" in and out and a note has been added to the plan that the pump shall be maintained by the owner. Hermenau and Hermenau has submitted a letter to the Board that the tires were appropriately removed from the site. The applicant was requested to submit a plan addressing who will be responsible for access and stewardship for the easement to the river. The Town of Bridgewater Conservation Commission is being gifted this land. A waiver for the requirement of a landscape plan is requested, landscaping is shown on the plan.

Mr. Silva states that they have reviewed the proposed draft decision and they are comfortable with the decision as it stands now apart from conditions 35 and 36.

Chairman Heath asks what the concern with the two conditions are.

Mr. Silva states that the conditions are placing the responsibility for the construction of the boat ramp/kayak launch on Mr. Murphy, which was never the intent. Kitty Doherty was the person who had requested the kayak launch on the site. Mr. Murphy had never intended to perform or be responsible for any construction of a kayak launch. Chairman Heath states he recalls seeing in the plans for access and parking spaces for that area. Mr. Silva agrees that

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Mr. Murphy agrees with that but does not feel that Mr. Murphy should be responsible for the construction of any kayak launch. Director Burke states that a walkway was not shown on the plans. Director Burke states that she has requested that a type of plan be in place for the creation of the walkway and the parking spaces in order to ensure the public access is created.

Member Chipman states that he is surprised that this has been worked out until this point and would not support withholding a Certificate of Occupancy from someone who has complied willingly with the town. Member Chipman feels the Conservation Commission or another entity should have had a plan in place for this. Mr. Silva states that this land will be going to the Conservation Commission and recalls a prior project when a boy scout Eagle Scout project had made improvements similar to this at another location. Mr. Silva feels if this is under the jurisdiction of the Conservation Commission that this will be completed, but does not agree to tying this requirement to the Certificate of Occupancy. Chairman Heath states that he recalls part of the agreement for the affordable units were to have the access to the site via the easement. Mr. Silva states that Kitty Doherty had requested that land be put aside for this use. Mr. Murphy is committed to completing the construction of the parking spaces in order for people to access the water use. Member Klimas states that she envisioned people having access to the water from this site as well, especially after hearing Kitty Doherty speak at the prior public hearing.

Director Burke states that this project was initially approved as a Use Variance which had lapsed. It was proposed to go forward with a 40B in lieu of a Use Variance as there would be a better benefit to the Town. Director Burke states she believed that the access to the river was discussed at the previous decision on the variance that was issued. Chairman Heath states that was not a condition of approval for the Use Variance that was previously granted.

Member Chipman states that when Kitty Doherty was before the Board at the prior hearing he had noted that it was never made clear what type of access was going to be provided. Member Chipman asked if CPC funds could be utilized for the project. Director Burke said that it could. Member Chipman recommends removing that requirement from this decision and utilizing CPC funds in order to complete the project. Director Burke suggests moving conditions 35 and 36 from the decision. The Board is in agreement.

Member Heath states that his only other question is what the residents will do with the trash. Mr. Murphy states that the trash collection will go down the driveway and collect the trash and utilize the turnaround on the site.

MOTION: Member Chipman moves to close the public hearing. Member Klimas seconds.

VOTE: (3-0-0)

MOTION: Member Chipman moves to accept the proposal as presented subject to the corrections to Conditions 34, 35, and 36 of the draft decision. Member Klimas seconds.

VOTE: (3-0-0)

- 0 Plymouth Street – Use Variance

Present before the Board: Larry Silva, Silva Engineering Associates

Mr. Silva recommends a continuance until March 11, 2020.

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MOTION: Member Chipman moves to continue this matter until March 11, 2020. Member Klimas seconds.

VOTE: (3-0-0)

- 0 Plymouth Street – Appeal of Building Inspector’s Decision

Present before the Board: Larry Silva, Silva Engineering Associates

Mr. Silva recommends a continuance until March 11, 2020.

MOTION: Member Chipman moves to continue this matter until March 11, 2020. Member Klimas seconds.

VOTE: (3-0-0)

- 1300 Vernon Street – Special Permit

Present before the Board: Attorney Ed Brenan
Larry Silva, Silva Engineering
Rebecca Baptista, Silva Engineering Associates

Mr. Brenan states that the Board is familiar with this project as this has been before the Board at the time. Mr. Brenan states that he was not the representative before the Board at the time. This was initially requested as a Variance, but Mr. Brenan feels this should be a Special Permit under Section 5.40 as a reconstruction of a pre-existing non-conforming structure. The building has been deteriorated over time and the letter from the Building Commissioner determines that this is a pre-existing non-conforming lot. This is in a residential district and does not present any non-conforming use. The non-conformities are with the lot itself. Given the fact that the structure has deteriorated by natural causes the Board can grant a Special Permit to reconstruct the structure.

Mr. Brenan states that in reference to the Town of Bridgewater Zoning Ordinances Section 5.40 talks about re-building a deteriorated structure. Giving consideration to re-building the structure the current location is not the ideal location on the site for the structure due to its proximity to the wetlands. Mr. Brenan recommends reviewing the words re-constructed and re-built under Section 2.43 and gives the definition of re-built to include moving the structure. Mr. Brenan is requesting that the structure be re-constructed at a different location on the site where they could meet all setbacks as well as being further away from the wetlands as well. Mr. Brenan requests that the Board find that a Special Permit be permitted to the applicant and a list of acceptable conditions has been submitted by the owner. There are some conditions that address some of the concerns of the abutters.

Mr. Brenan states that he feels this would be a win-win for the neighborhood if the house were allowed to be constructed.

Chairman Heath asks how Mr. Brenan got past Section 5.30. Mr. Brenan states that in his interpretation that this discusses non-conforming uses. Chairman Heath disagrees that this addresses non-conforming use or

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land. Mr. Brenan feels that the use of the land and the building are both residential, and were both previously residential, and that there is not a non-conformity with the use or the land. Mr. Brenan does not feel that Section 5.3 will get in the way of the Special Permit.

Chairman Heath disagrees that the home could be reconstructed in a new footprint. Chairman Heath states it is his interpretation that Section 5.30 does apply to this case.

Member Chipman states that 5.40 seems to be silent on the same footprint. Commissioner Solari states that this was a difficult decision on his part and feels that the structure should not be constructed larger than the footprint and should not have any accessory structures. Commissioner Solari states that they have granted Variances in past circumstances where the structure is still being used, but the structure in question has not been used in over 20 years. Member Chipman asks if there are any regulations that specifically state a structure must be re-built in the same footprint. Commissioner Solari states that there is no exact wording to that effect. Commissioner Solari states that when this was submitted to him the house was not being proposed to be re-located.

Mr. Brenan states that there are 26 acres on this lot and that he feels the house should be shifted away from the wetlands. Member Chipman reiterates that at the initial application there was not a proposal to move the structure. Mr. Brenan states that is correct that the original application did not show the house moving on the lot. Member Chipman asks if the house is proposed to be constructed larger than the existing house. Mr. Brenan states that is the intention to construct a larger house further from the wetlands. Mr. Brenan also suggests that there would be a smaller wetland crossing if the structure were moved to a different location on the lot.

Mr. Silva states that the existing house is 14 feet from a wetland on one side and 22 feet from a wetland on the other side and they are proposing to move the house entirely from any wetland area to be entirely upland. The proposed relocation is outside of all wetland buffer zones.

Member Klimas states that if Section 5.30 and Section 5.40 are read together that it would not be possible to reconstruct the structure under Section 5.40.

Mr. Silva states that regardless of the use this is a pre-existing non-conforming lot and regardless of the existing structure, the lot has been pre-existing non-conforming and if the Town renders the lot unbuildable it is essentially performing a taking.

Mr. Brenan states that the lot complies in all other aspects other than access, which they believe is also pre-existing non-conforming.

Commissioner Solari states that he has gone through all of the deeds for the property and this was a difficult case.

Member Chipman states that Section 5.30 is much more specific than Section 5.40. Member Chipman states the Board may have to determine whether or not this request in fact falls under 5.40.

Present before the Board: Art Kinnealey, 1310 Vernon Street

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Mr. Kinnealey states that this project has been before the Board previously and the abutters are concerned with construction and water mitigation for the property. If this application is approved Mr. Kinnealey is largely concerned with the water, and Silva Engineering is trying hard to mitigate that concern. Mr. Kinnealey requests that some of the conditions state that the construction be for one single-family dwelling, that water mitigation be in place, and that no business be allowed on the property.

Member Chipman asks if Mr. Silva could address the water concern on the property. Mr. Silva states that they have spoken with multiple abutters regarding the property and that the conditions were proposed in a way to protect the abutters. This crossing and lot has issues due to a culvert on the property and when further development happened upstream it over burdened the culvert. A large box culvert is proposed on the property to handle the burden of the existing upstream construction and snow melt. There was no gradient behind the houses to protect them from the water level of the pond behind them as well. If the project is approved there will be a meeting with Conservation to discuss grading the properties to handle water from the existing brook.

Member Chipman asks if Mr. Silva can improve the drainage and conditions that the neighbors are currently facing. Mr. Silva states he absolutely believes he can improve the existing water conditions.

Present before the Board: Scott Newton, 1370 Vernon Street

Mr. Newton states that the structure has been abandoned for a multitude of years. Mr. Newton states that there is an abundance of water on the property already and they are concerned with any impacts new construction would have. Mr. Newton also states that he doesn't believe the Board can get around Section 5.30.

Present before the Board: Shane Veronesi, 1188 Vernon Street

Mr. Veronesi states he is concerned that this is not just a brook anymore, that it is a river, and that no mitigation is going to be able to prevent the bank recession. Water floods the entire back yards of the existing houses. Mr. Veronesi states he has worked in construction his entire life and placing culverts on the site will disrupt the wildlife and the natural flow of the water. Mr. Veronesi is concerned with the size of the house that will be constructed. Mr. Veronesi states that the applicant races cars and he is concerned that the owner will be hauling cars and engines onto the property. Mr. Veronesi states the existing culverts on the other side of the road need to be replaced. There are issues with the existing roadway from the excessive building in the area. Mr. Veronesi states that whoever owns this land will get this kind of pushback.

Present before the Board: Peter Postell 1216 Vernon Street

Mr. Postell states that he doesn't want to hear disruptive noise, and that the applicant is proposing a large garage for sports cars. Mr. Postell states that he is concerned with the water and the disruption the new construction would cause. Mr. Postell states that he doesn't want this project in his backyard and would like the Board to not approve this project.

Present before the Board: Gerald Ouellette 1286 Vernon Street

Approved:

Mr. Ouellette states that he would like something from the Zoning Board that whatever the proposal is that the Board restrict any commercial activity or business as well as restrict the construction to one single-family dwelling.

Member Chipman asks if Mr. Silva could go over the water remediation he's proposing. Mr. Silva states that the applicant is open to the conditions that there be a single-family dwelling without a business. Mr. Silva states the culvert is proposed to be very large to handle the water from Snow's Brook, essentially the size of a bridge. Mr. Silva states in response to the abutter stating that they did not want a home in their backyard that there could not be any possible disruption with the proposed location of the house. Mr. Silva states that the only impact to the neighbors would be a benefit by controlling the flooding.

Present before the Board: Peter Postell

Mr. Postell states that if there is one house, with no large garage and no dirt track he would not be as opposed.

Chairman Heath asks about the proposed culvert. Mr. Silva states that the culvert is 24' wide and there are pipes that will discharge the water. Chairman Heath asks that there will be no block to the water flow after the construction of this culvert. Mr. Silva states that is exactly what he is saying, this culvert will prevent the water blockage that exists now.

Present before the Board: Charlene Weingartner, 1195 Vernon Street

Ms. Weingartner states that there is a small brook that runs in front of her house and the road there is caving in. The town was supposed to fix it and it did not. Ms. Weingartner asks why they think the proposed culvert will not sink in the way the one in front of her house did.

Chairman Heath states the proposed culvert is much larger than the culvert in front of her house.

Present before the Board: Scott & Karen Newton

Mr. Newton states that he does not currently have water issues at his house and asks how the proposed culvert will protect the properties on the other side. Ms. Newton asks where the proposed culvert will be.

Chairman Heath states that the water will not be directed to the existing properties, it will be directed to where it currently flows now and that the culvert will be in the existing right-of-way.

Present before the Board: Manuel Bugginga, Owner

Mr. Bugginga states that the property is being built for his personal home, not for a business, no dirt track, not for commercial use. Mr. Bugginga states that he would like the Board to consider this proposal.

Present before the Board: Peter Postell

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Mr. Postell states that he cannot understand why they would want to build a house in this existing area where there are water issues. Mr. Postell states that the existing culverts and pipes are falling apart and asks who is going to be responsible for the upkeep down the road.

Member Chipman asks who will be responsible for the culvert maintenance. Mr. Silva states that the owner will be responsible for the maintenance of the culvert since it is not on town property.

Chairman Heath asks how wide they are widening the brook for this culvert. Mr. Silva states they are creating the culvert in order to allow for the river to flow naturally. There would be minor excavating to hold the base of the culvert.

Member Chipman states he is still not clear where they are with 5.30 and 5.40 and what they are dealing with.

Mr. Brennan states that he feels 5.30 and 5.40 do co-exist.

Chairman Heath states they will close the public comment portion of the hearing after asking if anyone else in the room would like to speak.

Member Chipman states that he does not feel that 5.30 is applicable to this application as this application was submitted under Section 5.40. Section 5.40 does not have a timeline as 5.30 does. Member Chipman states that the water maintenance has been addressed in detail and it has been made exceedingly clear that this will be a single-family home with no dirt track or business on the site. Member Chipman states that looking at everything altogether he would be inclined to support the application before them as it was applied for under Section 5.40.

Member Chipman does ask out of curiosity what the size of the proposed home would be.

Mr. Buginga states it would be a 2,100 s.f. ranch style home.

Member Chipman states he would be open to approve under Section 5.40 and with the proposed conditions as this would also make substantial improvements to the neighborhood.

Chairman Heath states that what he would offer to the applicant would be that if this went to a vote as it is it is likely to be denied. Chairman Heath states that he believes that if they approve this project that more projects similar to this will come before the Board that they would feel obligated to grant.

Member Chipman states that he would like to obtain a point of view from council since the applicant had council to represent this project. Since the Town Council has a conflict of interest and could not offer any insight on this project. The Town Manager has offered to seek outside council if the Board requests it.

MOTION: Member Chipman moves to continue the public hearing until March 11, 2020. Member Klimas seconds.

VOTE: (3-0-0)

Approved:

MOTION: Member Chipman moves to request an outside attorney be procured to comment on a request submitted to the Board under 5.40 if in any way 5.30 does apply and should be brought into the discussion of the application under 5.40. Comment on the clarification on use of land under 5.30 if it should apply. Also requesting clarification on the ability to reconstruct a home on a different area on the lot since 5.40 on is silent on rebuilding on the same footprint or the timeframe of reconstruction. And clarification of the definition of 'reconstructed' as in 2.43. Member Klimas states she would also like clarification of 5.30 – if a non-conforming building itself subject to the three year window of allowance under 5.30. Member Klimas seconds.

VOTE: (3-0-0)

II. Additional Board Business

- Board to sign Local Regulatory Agreement for Burrill Place
- Minutes to be approved: 1/22/2020

MOTION: Member Klimas moves to approve the minutes of 1-22-20. Member Chipman seconds.

VOTE: (3-0-0)

- Director's Report, if needed

III. Adjournment

MOTION: Member Chipman moves to adjourn. Member Klimas seconds.

VOTE: (3-0-0)