



TOWN OF EASTHAM

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EASTHAM ZONING BOARD OF APPEALS MEETING MINUTES Earle Mountain Room April 6, 2023, 5:00 pm

Members present: Joanne Verlinden, Bob Bruns, Brian Ridgeway, Martin Ridge, Bob Sheldon and Jarod Carey

Members absent: Gay Craig

Parties in interest present: Sara Zobel, John Sheehan, Leslie Riordan, Jennie Largey, David Badger, Deborah Badger, Ellen Bowler, John & Linda Koterba, Jody & Peter Quill, Kozydwowic, Spencer Shames, Judy McMullen

Staff Present: Paul Lagg, Director of Community Development; Natasha Frodel, Administrative Assistant Community Development and Building;

Joanne Verlinden opened the meeting at 5:00 pm, and stated the meeting was being recorded and could be found at <https://www.eastham-ma.gov/653/On-Demand-Video-of-Meetings-Special-Prog>

1.

Opening Statements: Joanne Verlinden read the following statement into the record:

Before we begin, I would like to take a moment to remember Bill Craig, the husband of our Clerk, Gay Craig, who died this past weekend. He was a loving husband, father, and grandfather, who cherished time with his family and doted on his grandchildren. As a resident of Eastham, he was a valuable member of the Planning Board, sharing the knowledge and experience in local government that he gained while serving on various Boards and Commissions in Vermont, where he and his family lived before moving here to the Cape. We, the Zoning Board of Appeals, thank Bill for his many contributions to Eastham and offer our sincere condolences to his family, friends and fellow Board members.

2.

Case No. ZBA2023-04 Andrea Hanson and Christopher Swedo (Applicants) seek an appeal of Planning Board Decision for Site Plan Approval Residential for case PB2022-18, 715 Bridge Road Map 19, Parcel 4, pursuant to Eastham Zoning By-law section 10.3.4: Any person aggrieved by the denial, approval with conditions or approval by the Planning Board may appeal the action to the Zoning Board of Appeals within ten days of filing the decision with the Town Clerk. The Zoning Board of Appeals shall hear and decide appeals from decisions of the Planning Board under Section 10.3 in accordance with MGL. C. 40A s. 8.

Members Seated: *Verlinden, Bruns, Sheldon, Ridgeway, and Carey*

Andrea Hanson and Chris Szwed, applicants, spoke as abutters to 715 Bridge Road. Ms. Hanson gave an opening statement summarizing their concerns as abutters. Mr. Szwed gave a presentation regarding the 715 Bridge Road project and provided information on why the appeal was being presented. Jim Arnold spoke in support of Andrea Hanson and Chris Szwed's appeal. A discussion ensued regarding the square

footage / scale / massing of the proposed home, neighboring homes and the potential impacts on views and neighboring properties. Robert Sheldon, Bob Bruns, Brian Ridgeway and Martin Ridge each provided commentary on the proposed home and the presentations given by Ms. Hanson, Mr. Swedo and Mr. Arnold. Attorney Ben Zehnder was invited to speak on behalf of the proposed homeowners at 715 Bridge Road. Mr. Zehnder summarized the findings of the Planning Board with respect to why he felt an appeal was unjustified. Mr. Zehnder provided comparisons to neighboring properties. Ms. Verlinden asked the applicants if there was the potential for compromise. Ms. Verlinden asked if anyone else wanted to speak on the matter. Joanne Buffington, Eastham Conservation Foundation, spoke and pointed out that a previous building permit issued for the property prohibited additional bedrooms. The architect for the proposed 715 Bridge Road dwelling spoke and clarified information regarding stie coverage and stated a meeting had already taken place between some of the abutters and the homeowners and compromises were made. The architect further stated that the Conservation Commission and the Planning Board had already shaped the project.

At 6:46PM, Ms. Verlinden closed the public comment portion of the meeting to allow the Board to discuss potential solutions. Mr. Bruns spoke and stated he felt the house design was outstanding but also too big. Mr. Bruns proposed the Board select a ten percent size reduction to change the massing and conditionally require foliage where necessary. Jarod Carey stated that he felt the house was too big and he agreed with Mr. Bruns. Brian Ridgeway stated he did not feel qualified to repeal the Planning Board's decision and stated the design / layout inside of the house was not the business of the Board or the abutters. Bob Sheldon stated that he did not have any problems with the house as proposed. Martin Ridge asked the appellant if modifications to the garage would help and stated it was not the Board's business to critique the inside of the house. Mr. Bruns addressed Mr. Ridgeway's concerns regarding repealing the decision. Ms. Verlinden initiated a straw poll of the Board members to gauge interest in asking the homeowners to reduce the size of the home by 10 percent and provide foliage in front of the basement. Mr. Carey said he would be in favor of both. Mr. Ridgeway stated he would be in favor of the plantings, not of the size reduction. Mr. Bruns stated he would be in favor of both. Mr. Ridge stated he was concerned that modifying the plantings would send the project back to the Conservation Commission. Mr. Sheldon stated he was in favor of the plantings but would not ask for a reduction in size. Ms. Verlinden asked Attorney Zehnder to make his final comments. Mr. Zehnder stated the size reduction would be very costly and time consuming. He asked the Board to only consider the plantings.

A MOTION by Brian Ridgeway to approve the proposed Findings of Fact for **ZBA2023-04**.

SECONDED by Bob Bruns.

In favor: Verlinden, Bruns, Ridgeway, Sheldon, and Carey

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

A MOTION by Bob Sheldon to approve the proposed Conditions for **ZBA2023-04** with the addition that the applicant shall install plantings to mitigate the view of the basement area as approved by the Conservation Commission.

SECONDED by Brian Ridgeway.

In favor: Verlinden, Bruns, Ridgeway, Sheldon, and Carey

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

A MOTION by Bob Bruns to propose an additional condition to reduce the net living space in the main building, 1st and 2nd floor, not the basement, by 10 percent.

SECONDED by Jarod Carey.

In favor: Carey, Bruns, Verlinden
Opposed: Ridgeway, Sheldon
The VOTE: 3-2
Motion passed – 3-2

Attorney Zehnder addressed the Board and asked that the Board re-vote. Attorney Zehnder stated the vote would kill the project. The appellants stated they liked the vote and the reduction in size. Ms. Verlinden noted that Mr. Sheldon proposed that the parties plan a continuation and have a meeting to discuss the issue further. The appellants stated they would be agreeable to a meeting. Attorney Zehnder asked for a continuation of 30 days and asked any interested parties to supply their email address to the Planning Department to assist in scheduling a meeting. Attorney Zehnder asked the Board to rescind their previous vote regarding the ten percent reduction.

A MOTION by Bob Bruns to rescind the previous two votes regarding Condition 7 and Condition 8 and approve a 30-day continuance.

SECONDED by Jarod Carey.

In favor: Carey, Bruns, Verlinden, Ridgeway, Sheldon
Opposed: None
The VOTE: 5-0
Motion passed – Unanimous

At 7:22PM Chair Verlinden called a 5-minute recess.

The meeting reconvened and Ms. Verlinden read the previous case's official continuation into the record. Ms. Verlinden then moved to the next agenda item: Case No. ZBA2023-05.

3.

Case No. ZBA2023-05 1080 Old Orchard Road, Map 9, Parcel 329. Esther Markman (Owner), Paul Andre Coulombe (Applicant) seek a Variance pursuant to M.G.L. c. 40A s. 10 and Eastham Zoning By-Law section 7.2.4 (setback requirements) to construct a two-family dwelling in violation of minimum property setback requirements

Members Seated: Bruns, Ridgeway, Carey, Ridge, Verlinden,
Recused: Bob Sheldon

Attorney Ben Zehnder representing applicant Paul Coulombe. Mr. Zehnder acknowledged that variances are hard to get and that specific hardships related to topography, soil or shape condition must be demonstrated. Mr. Zehnder explained the reason for the variance request based on the shape of the lot.

Ms. Verlinden asked Paul Lagg if the ZBA had ever approved a waiver request for the need to present a site plan developed by a registered surveyor or engineer. Mr. Lagg stated that none had been approved to his knowledge. Ms. Verlinden stated that she agreed with the Planning Board's decision to require a surveyed site plan. Mr. Zehnder stated that an engineered site plan would cost tens of thousands of dollars and wanted to know if a variance had a chance of approval before moving forward. A discussion ensued regarding the existing and proposed setbacks. Mr. Ridgeway stated he was likewise concerned about a lack of engineered site plans. Mr. Ridge stated he would not support the project regardless of whether an engineered plan was present. Mr. Ridgeway stated he was not in favor of the project either. Ms. Verlinden stated she was not either. Mr. Bruns stated he was undecided. Mr. Carey stated he was undecided. Mr. Zehnder requested a continuation.

A MOTION by Brian Ridgeway to approve a continuance for **Case No. ZBA2023-05** 1080 Old Orchard Road, Map 9, Parcel 329.

SECONDED by Martin Ridge.

In favor: Carey, Bruns, Verlinden, Ridgeway, Ridge

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

4.

Case No. ZBA2022-06 –34 Bayberry Lane, Map 13 Parcel 161, Yaron Rachlin & Lisa Rachlin Trustees (Owner/Applicant) seek a Special Permit pursuant to M.G.L. c. 40A s. 6 and Eastham Zoning By-Law section 19.2 (non-conforming uses, buildings, structures) and section 7.2.4 (setback requirements) to demolish a pre-existing non-conforming two-story dwelling and construct a new two-story dwelling in violation of minimum property setback requirements.

Members Seated: Verlinden, Bruns, Ridgeway, Sheldon, and Carey

Attorney Ben Zehnder representing the owner/applicant provided an overview of the project. Mr. Zehnder referenced 3 support letters from abutters. Mr. Ridgeway questioned the placement of the home on the project in interest of conformity. Mr. Ridgeway and Mr. Martin voiced support for the design of the home relative to the neighborhood. Michael Kraemer, property abutter, appeared in favor of the project.

A MOTION by Brian Ridgeway to approve the following Findings of Fact for **ZBA2023-06**.

SECONDED by Bob Bruns.

In favor: Verlinden, Bruns, Ridgeway, Sheldon, and Carey

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

PROPOSED FINDINGS OF FACT:

The Zoning Board of Appeals finds that:

1. The property is located at 34 Bayberry Lane, Map 13 Parcels 161 and is located in District A (Residential).
2. The applicant has applied for a Special Permit pursuant to M.G.L. c. 40A s. 6 and Eastham Zoning By-Law section 19.2 (non-conforming uses, buildings, structures) and section 7.2.4 (setback requirements) to demolish a pre-existing non-conforming two story dwelling and construct a new two-story dwelling in violation of minimum property setback requirements.
3. The lot is pre-existing non-conforming to minimum lot size (8,583 sf., where 40,000 sf is required). The existing structure is pre-existing non-conforming to all property setbacks. The proposed structure will comply with the Bayberry Lane setback (38 feet, where 30 feet is required). Setbacks for the proposed dwelling will remain non-compliant on the north side (18 feet where 25 feet is required), to the south side (20.6 feet where 25 feet is required), and to the Cranberry Lane setback (26.3 feet where 30 feet is required).

4. After an evaluation of all the evidence presented, the proposed use will not be substantially more detrimental to the established or future character of the neighborhood or the Town and the structure involved will be in harmony with the general purpose and intent of the Zoning By-Law and zoning district.
5. The proposal will not have a negative impact on traffic flow and/or safety.
Bayberry lane is a low volume local access dead end road with no public beach access. The proposed driveway will provide ample parking and maneuvering space.
6. The proposal will not have a negative impact on the visual character of the neighborhood.
The surrounding neighborhood is thickly settled with several pre-existing non-conforming dwellings in close proximity. The proposed dwelling is a more sophisticated design than the current structure, which is a modest sized cottage with minimal architectural detail. The proposed project utilizes several architectural techniques that help breakup the scale and massing of the structure including upper floor setbacks, varied rooflines, covered porches and overhangs. The design is similar to other properties that have been redeveloped over the last several years on Bayberry Lane, where owners have built dwellings that are designed to maximize small, narrow lot sizes and potential water views by adding a second story.
7. The proposal does have adequate methods of sewage disposal, sources of potable water and site drainage. *The lot has an approved IA septic system providing adequate septic capacity for the proposed three bedroom dwelling. No negative issues have been identified.*
8. The proposal does provide adequate protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies.
No negative impacts were identified.
9. The proposal does provide adequate provision for utilities and other necessary or desirable public services. *The site is served by existing water, electrical, telephone, cable and data services adequate for residential use. No detrimental issues have been identified.*
10. The proposal does provide adequate protection from degradation and alteration of the natural environment. *No detrimental issues were identified.*
11. Artificial light, noise, litter, odor or other sources of nuisance or inconvenience will be adequately controlled. *Conditions controlling exterior lighting will be added to the special permit. No other relevant issues were identified.*
12. [1] Abutters/Parties in Interest appeared IN FAVOR and [0] appeared IN OPPOSITION of the proposal. [3] letters was/were received IN FAVOR and [0] IN OPPOSITION.

A MOTION by Bob Bruns to approve the following Conditions for **ZBA2023-06**.

SECONDED by Brian Ridgeway.

In favor: Verlinden, Bruns, Ridgeway, Sheldon, and Carey

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

PROPOSED CONDITIONS:

1. No Building Permit shall be issued until the application complies with all pertinent sections of the Town of Eastham Zoning By-Law.
2. The Applicant shall obtain a Building Permit from the Eastham Building Department prior to the start of the construction.
3. The Applicant shall verify bedroom count and septic design for adequacy with the approved plan with Eastham Health Department and if necessary, shall obtain Board of Health approval prior to issuance of a building permit.
4. All exterior lights shall be down shielded to reduce light spill and nuisances to adjacent properties.
5. The applicant is responsible for providing building plans to the Eastham Building and Fire Departments. Plans shall contain information on construction methods and materials sufficient to conduct a full code compliance review.
6. Plan reviews conducted by town staff as part of this approval have been conducted for conformance with applicable sections of the zoning bylaw and for adequacy of the site for public safety access and environmental impacts. Additional plan review for health and safety code compliance will be required and may result in changes to the approved plans. Any changes to the proposed site plan dated 1/13/23 or the building plans with latest revision date of 1/31/23 except those that are de minimus must be reviewed by the Zoning Board. If the Board finds a change to be substantial, re-notice is necessary for a new hearing.
7. The Board reserves the right to monitor the ongoing construction for compliance with the approved plan.

A MOTION by Bob Bruns to approve the Special Permit to demolish a pre-existing non-conforming two-story dwelling and construct a new two-story dwelling in violation of minimum property setback requirements for **ZBA2023-06**.

SECONDED by Jarod Carey.

In favor: Verlinden, Bruns, Ridgeway, Sheldon, and Carey

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

5.

Other business: Joanne Verlinden made a motion to support the zoning bylaw amendments going before town meeting. The motion was seconded by Mr. Bruns. Attorney Zehnder spoke and advised the board that in many neighboring communities the ZBA does not formally vote to support the amendments. Ms. Verlinden rescinded her motion.

6.

Minutes: Minutes of the ZBA **February 2, 2023**, meeting

A **MOTION** to approve the February 2, 2023 minutes by Bob Bruns.

SECONDED by Martin Ridge.

In favor: Verlinden, Bruns, Sheldon, and Ridge

Opposed: None

Abstained: Ridgeway

The VOTE: 4-0

Motion passed – Unanimous

7.

Adjournment:

A **MOTION** by Brian Ridgeway to adjourn.

SECONDED by Bob Sheldon

In favor: Verlinden, Bruns, Ridgeway, Ridge, Sheldon and Carey

Opposed: None

The VOTE: 6-0

Motion passed – Unanimous

Respectively submitted by Philip Burt
