MINUTES
April 26, 2022

6:00 p.m.
Sand Hill School Community Center, 16 Dewey Avenue

Present: Erik Van Buskirk, Chair; James Killion, Vice-Chair; Robert Jensen; Christopher Neeven; Chase Terrio; and Mary Foley via phone
Absent: Gerry Nye
Also Present: Ralph Vitacco, Director of Planning & Economic Development; Leanne Drake, Town Planner; and Brendan Brides, Building Commissioner
Absent: Maureen McCabe, Sr. Administrative Assistant

Mr. Van Buskirk opens the meeting with the Pledge of Allegiance and the reading of the Opening Statement.

Old Business

- There is no Old Business to discuss.

New Business

Mr. Van Buskirk says that because Ms. Foley is participating remotely all votes taken tonight will be by roll call.

Mr. Jensen explains to Ms. Foley that in Mr. Terrio's absence she will be a voting member tonight.

Mr. Terrio joins the meeting at 6:02 p.m.

- #22-09: 196 North Shore Boulevard – Special Permit – Creedon

Mr. Van Buskirk reads the Public Hearing Notice into the record. Mr. Killion motions to open Application #22-09. Mr. Jensen seconds. Unanimously approved by roll call vote.

Mr. Van Buskirk reads the following comment memos into the record:

- Memo to Erik Van Buskirk, Chair, Zoning Board of Appeals from Jeffrey Picard, Planning Board Chair re: 196 North Shore Boulevard, Special Permit Application, dated April 21, 2022
- Memo to Erik Van Buskirk, Chairman Board of Appeals from David J. DeConto, Director, Department of Natural Resources re: Conservation Commission
comments on Special Permit #22-09, 196 North Shore Boulevard, Sandwich, MA, dated April 8, 2022

- Email to Maureen McCabe from David Mason, Director of Public Health re: Request for Comment: #22-09: 196 North Shore Boulevard – Special Permit, dated April 4, 2022
- Email to Maureen McCabe from Sean Miller re: Request for Comment: #22-09: 196 North Shore Boulevard – Special Permit, dated April 4, 2022

Brian Wall, Esq. introduces himself to the Board. Ms. Anne Michniewicz, who drew the new house plans, is also in attendance. Attorney Wall says the property is in the Shore District as well as the Floodplain Overlay District. He explains that the proposed project is to demolish the existing 100-year-old-non-conforming house and construct a new house. Attorney Wall states he is seeking a Special Permit for two reasons: to change or alter an existing, non-conforming structure and to authorize construction in a floodplain. He provides the dimensions of the small lot and discusses frontage. According to the Assessor’s records, the house was built in 1922. Attorney Wall states this is an undersized lot and explains why it is a pre-existing non-conforming structure on a non-conforming lot. The proposed project is to raise or demolish the pre-existing dwelling and construct a new three-bedroom dwelling (there will be no increase in bedrooms) on a footprint of 44 feet by 30 feet. The property is in a flood zone, not a velocity zone. The proposal is for the new structure to be on pilings and all habitable space will be above the 14-foot elevation. Attorney Wall details the construction process, which includes bringing in fill. The only fill that will be brought in is to fill the hole that remains from the removal of the structure. The fill will be brought in and made to match the existing grade. Attorney Wall says the Conservation Commission voted favorably last week to approve this project. He goes on to say that this project will not be substantially more detrimental because it will improve the front yard setback and also because there are no floodplain requirements. The existing structure does not meet the standards that the Town wants to see in a floodplain; the new structure will. The new structure will be flood zone compliant and will be an improvement to the existing conditions. In the event of a storm event with high water, the waters will flow under this house through the pilings. From a zoning perspective, this new structure will be floodplain compliant. This new house will fit in with all the others in the neighborhood. Attorney Wall discusses how the structure complies with the new flood zone requirements. He respectfully suggests that they meet all of the criteria for a Special Permit to alter a pre-existing non-conforming structure and also new construction in a floodplain. Attorney Walls advises Mr. Killion that the lot is level; the whole property is within a flood zone. Ms. Michniewicz says the property doesn’t exceed 35 feet in height. They measure from the top of pilings; the property is 31.5 feet above pilings. Attorney Wall says 16.29 cubic feet of fill is all that is required to backfill the foundation. Mr. Jensen says that the Planning Board is asking about underground utilities. Ms. Michniewicz says in this area service is always put underground. Mr. Vitacco says the Board of Health has addressed the flooding of the septic. There is a detailed conversation as it relates to Section 2420.

There are no further comments from the Board. Mr. Van Buskirk opens the matter up to the public for comment. The following person spoke:
Jeanine Marsolais, 191 North Shore Boulevard

Ms. Marsolais comments on parking, low hanging overhead wires, truck traffic, construction hours of operation and the height dimensions of the new structure. Board members and Ms. Michniewicz answer her questions. Mr. Jensen suggests she contact National Grid as it relates to the low hanging wires.

There are no further questions from the public. Mr. Jensen motions to close #22-09 and take the matter under advisement. Mr. Killion seconds. Unanimously approved by roll call vote.

- #22-10: 18 State Street – Special Permit – Dimascio

Mr. Vitacco says that because Mr. Terrio is here Ms. Foley no longer needs to be a voting member for this application or for the 258 Phillips Road Special Permit application. Ms. Foley acknowledges Mr. Vitacco.

Mr. Van Buskirk reads the Public Hearing Notice into the record. Mr. Killion motions to open application #22-10. Mr. Jensen seconds. Unanimously approved by roll call vote. Mr. Van Buskirk reads the following comment memos into the record:

- Memo to Erik Van Buskirk, Chair, Zoning Board of Appeals from Jeff Picard, Planning Board Chair re: 18 State Street, Special Permit Application, dated April 21, 2022
- Memo to Erik Van Buskirk, Chairman Board of Appeals from David J. DeConto, Director, Department of Natural Resources re: Conservation Commission comments on Special Permit #22-10, 18 State Street, Sandwich, MA, dated April 8, 2022
- Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: #22-10: 18 State Street – Special Permit, dated April 5, 2022
- Email to Maureen McCabe from Sean Miller re: Request for Comment: #22-10: 18 State Street – Special Permit, dated April 4, 2022
- Email to Maureen McCabe from David Mason, Director of Public Health re: Request for Comment: #22-10: 18 State Street – Special Permit, dated April 4, 2022

Attorney Wall introduces himself to the Board. He says this property is in the R1 District as well as a floodplain overlay district. He explains that there was a pre-existing non-conforming structure on the property that had been demolished by order of the Building Commissioner. Attorney Wall provides Board members with a detailed background of the property. The prior owners tore down the two-family structure and built two separate detached single family dwellings, they created a condominium and then sold to Mr. Dimascio the non-conforming structure which is no longer 18 State Street, that is the address, but is a part of the larger 77,000 square foot lot. What Mr. Dimascio bought was a condominium unit and the right under the condominium to tear down and rebuild that. After Mr. Dimascio purchased the condominium, he thought of redeveloping the property but it became uneconomical when he looked at the condition of the property. He then sought a demolition permit; this permitting process was timely. The structure became a public safety hazard. On May 11, 2021, Mr. Brides issued an order to tear it down. It was torn down on May 26, 2011.
The Dimascio’s are proposing to construct a new three-bedroom bungalow style house with an attached two-car garage that will fit into the neighborhood. Attorney Wall describes the proposed dwelling. The property is in an elevation 13 flood zone, not a velocity zone but a flood zone. The structure will not be on pilings but on a flood foundation. The Historic District Committee as well as the Conservation Committee have approved this project. Attorney Wall discusses setbacks. He references and quotes directly from Section 2430 of the By-Law. He contends that his client is still within the timeframe set forth in the By-Law to rebuild. The Dimascio’s do not want to reconstruct the pre-existing non-conforming structure that is four feet from the road. They want to construct a structure that conforms to zoning and is floodplain compliant. Attorney Wall contends that the proposed structure, that is ultimately intended for the lot, is not substantially more detrimental to the neighborhood than the pre-existing dwelling because it is more conforming to zoning. It has better setbacks from the front yard, has been approved by Historic and Conservation and will not create a nuisance, hazard or congestion; it is one less bedroom than what was there and will be flood zone compliant. It is a much better project than what was there before. Regarding floodplain, the previous structure was noncompliant; the new structure meets the criteria. Because of the elevation, it will not be susceptible to damage from floodwaters because it will be above the floodplain. Mr. Jensen talks about Section 2430 and asks how we get from the 20 to the 30. Attorney Wall explains what he is suggesting is that they have the right to build what was there in exactly the same space. He elaborates as it relates to this matter. He concludes by explaining he is not saying that under the reconstruction they can get the house that is proposed but he is saying rebuild it and under a separate section ask for it to be torn down and rebuilt. The neighbors, rightly so, felt very strongly about the historic qualities of the neighborhood and there were some vigorous conversations about demolishing the structure and once that happened there were some other conversations about what kind of structure would be built in there. Attorney Wall says the old footprint is 1,884 and says the new structure is bigger. Attorney Wall says the Historic District Committee felt that this design fit in the neighborhood in terms of size. Mr. Jensen says he estimates the new structure is roughly a 20% increase. Mr. Jensen talks about the language in the initial Special Permit and that the driveway for this unit could not be shared with the other two because of the Town’s shared driveway requirements. Attorney Wall says this project will have separate driveways. Mr. Brides explains that he issued a teardown order. For quite a number years no one was interested in purchasing the property, the conditions were worsening and created a danger. The teardown order created a lot of push back. Mr. Killion asks Mr. Brides if he had any discussions with the applicant or owner about rebuilding it at the time it was demolished. Mr. Brides says he had no discussions with the owner. Mr. Jensen talks about the flood foundation versus pilings and asks if any fill is being used here. Ms. Michniewicz provides a detailed answer. She says they will be regrading to create positive drainage away from the house and the house next door and bring it to the back. Attorney Wall says he believes this is the right path permitting-wise but it did occur to him that this Board gave a Special Permit when the lots were merged for three structures. Rightfully you could have come back and said can the Special Permit be amended. Attorney Wall says this could have been done, too, but he believes what they are asking for is well within the authority of the Board to do one way or the other. Mr. Killion addresses Mr. Vitacco to say it seems the Board is skipping a step in the process and will that create any problems issuing a Special Permit. Mr. Vitacco explains why he doesn’t believe it will. Mr. Vitacco says the process seems very reasonable and won’t create any conflict in the Special Permit process if that is what the Board chooses to do.
Mr. Jensen says he is more comfortable with the process and describes why. A discussion ensues with Attorney Wall.

There are no further questions from the Board. Mr. Van Buskirk opens the matter up to the public. The following people spoke:

- **Virginia Maquire, 14 State Street**

  Ms. Maquire explains her only concern is the runoff from the property, especially since there will be a raised septic in the backyard. She says that her property is the lowest point on State Street and the marsh and wooded area behind her is raised about two feet and that runs all the way down to the marsh. Ms. Maquire says she is concerned as to where in the swale and French drain the water will be deposited. She explains that during the last rainstorm the water was clearly coming from that property over into her front lawn. Ms. Michniewicz explains that the engineer has spent an extensive amount of time looking at the drainage. The engineer has put swales in, pipes and drainage pits as you go back to the property. Mr. Brides says that there have been many problems lately with water runoff. If the design is such, we would want to see an engineered plan submitted with the Building Permit. Mr. Brides respectfully requests that this be a condition of the Special Permit.

- **Ross Vander Pyl, 12 State Street**

  Mr. Vander Pyl says there is a problem when the water comes in from the Bay it is going to go to the lowest point. He says it is not just the runoff there is an ocean out there that comes in. To start filling these in, he believes, affects the best property because water can't go where it used to go. Mr. Vander Pyl says he is concerned with the septic system and filling that whole corner. Even if you're not looking to do any damage there is damage being done. If everyone fills their land in and you're the next person, you're going to fill your land in, too. Mr. Van Buskirk says it is his understanding that no one is filling in their land. Ms. Michniewicz says no one is filling in their land; the situation is being made better. Now everyone drains onto this lot; the raised septic system has to be there because that is the Board of Health requirement. The engineer took an extra step by introducing all of these drainage pits and creating the swales so water will go into the proper area.

There are no further comments from the public. Mr. Killion motions to close application #22-10 and take the matter under advisement. Mr. Jensen seconds. Unanimously approved by roll call vote.

- **#22-11: 258 Phillips Road – Special Permit – Conlon**

  Mr. Van Buskirk reads the Public Hearing Notice into the record. Mr. Killion motions to open application #22-11. Mr. Jensen seconds. Unanimously approved by roll call vote. Mr. Van Buskirk reads the following comment memos into the record:

  - Memo to Erik Van Buskirk, Chair, Zoning Board of Appeals from Jeff Picard, Planning Board Chair re: 258 Phillips Road, Special Permit Application, dated April 21, 2022
Memo to Erik Van Buskirk, Chairman Board of Appeals from David J. DeConto, Director, Department of Natural Resources re: Conservation Commission comments on Special Permit #22-11, 258 Phillips Road, Sandwich, MA, dated April 8, 2022

Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: #22-11: 258 Phillips Road – Special Permit, dated April 5, 2022

Email to Maureen McCabe from Sean Miller re: Request for Comment: #22-11: 258 Phillips Road – Special Permit, dated April 5, 2022

Mr. Rob Dewar from Bracken Engineering introduces himself to the Board. He explains that they have received recommendations from the rest of the Boards and there are no outstanding comments including an existing Order of Conditions supplied by the Conservation Commission. Mr. Dewar says this is an existing 9,000 square foot lot with an existing dwelling on it. It has three bedrooms and is currently non-flood compliant. The owners are proposing to remove an existing wraparound deck that is elevated to the second floor and replace that with an addition in approximately the same footprint and extending a similar size deck off the rear of the addition. The existing non-impervious area is proposed to be enclosed with a gravel floor. The rest of it will be supported on piles. Currently the house is non-flood compliant; the first floor is habitable space at the moment. That area will be renovated/converted to an unheated, storage area. The existing slab foundation will be equipped with flood vents. There is really no fill or excavation required for this. Mr. Dewar says they are driving piles and there may be some mild grading. Mr. Jensen asks how big the addition is. Mr. Dewar says the addition over the second floor addition is about 390 square feet; the deck itself is about 225 square feet. The existing house is 1300 square feet. Mr. Jensen inquires about the utilities. Mr. Dewar says they are constructing an elevated platform alongside the deck at the rear of the addition to elevate all of the utilities with the exception of one air conditioner condenser. All of the utilities will be elevated above the floodplain. This is an AE 14 zone. Mr. Dewar confirms to Mr. Killion that the first floor is being turned into non-habitable space and building around it up on the second floor. The second floor is roughly 16.6 feet so they will be a couple of feet above the flood zone and that elevation will be maintained for the addition. There are no further questions from the Board. Mr. Van Buskirk opens the matter up to the public for comment. There is none. Mr. Jensen motions to close application #22-11 and take the matter under advisement. Mr. Killion seconds. Unanimously approved by roll call vote.

**Board Discussion**

- There are no items to discuss.

**Deliberations**

- **#22-09: 196 North Shore Boulevard – Special Permit – Creedon**

  The Board reviews and discusses the application and materials submitted for Special Permit #22-09. Board members unanimously approve the Special Permit with conditions. The Decision, Findings and Conditions are on file in the Planning & Development office.
• #22-10: 18 State Street – Special Permit – Dimascio

   The Board reviews and discusses the application and materials submitted for Special Permit #22-10. Board members unanimously approve the Special Permit with conditions. The Decision, Findings and Conditions are on file in the Planning & Development office.

• #22-11: 258 Phillips Road – Special Permit – Conlon

   The Board reviews and discusses the application and materials submitted for Special Permit #22-11. Board members unanimously approve the Special Permit with conditions. The Decision, Findings and Conditions are on file in the Planning & Development office.

Other Matters Not Reasonably Anticipated

   • There are no other matters to discuss.

Adjournment

Mr. Neeven motions to adjourn. Mr. Terrio seconds. The vote is unanimous. The meeting adjourns at 7:23 p.m.

Respectfully Submitted,

Maureen McCabe

Supporting Documents:

1. 196 North Shore Boulevard Public Hearing Notice (1 page)
2. 196 North Shore Boulevard Special Permit application (27 pages)
3. Memo to Erik Van Buskirk, Chair, Zoning Board of Appeals from Jeffrey Picard, Planning Board Chair re: 196 North Shore Boulevard, Special Permit Application, dated April 21, 2022 (1 page)
4. Memo to Erik Van Buskirk, Chairman Board of Appeals from David J. DeConno, Director, Department of Natural Resources re: Conservation Commission comments on Special Permit #22-09, 196 North Shore Boulevard, Sandwich, MA, dated April 8, 2022 (1 page)
5. Email to Maureen McCabe from David Mason, Director of Public Health re: Request for Comment: #22-09: 196 North Shore Boulevard – Special Permit, dated April 4, 2022 (1 page)
6. Email to Maureen McCabe from Sean Miller re: Request for Comment: #22-09: 196 North Shore Boulevard – Special Permit, dated April 4, 2022 (1 page)
7. 18 State Street Public Hearing Notice (1 page)
8. 18 State Street Special Permit application (41 pages)
9. Memo to Erik Van Buskirk, Chair, Zoning Board of Appeals from Jeffrey Picard, Planning Board Chair re: 18 State Street, Special Permit Application, dated April 21, 2022 (1 page)
10. Memo to Erik Van Buskirk, Chairman Board of Appeals from David J. DeConto, Director, Department of Natural Resources re: Conservation Commission comments on Special Permit #22-10, 18 State Street, Sandwich, MA, dated April 8, 2022 (1 page)
11. Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: #22-10: 18 State Street – Special Permit, dated April 5, 2022 (1 page)
12. Email to Maureen McCabe from Sean Miller re: Request for Comment: #22-10: 18 State Street – Special Permit, dated April 4, 2022 (1 page)
13. Email to Maureen McCabe from David Mason, Director of Public Health re: Request for Comment: #22-10: 18 State Street – Special Permit, dated April 4, 2022 (1 page)
15. 258 Phillips Road Public Hearing Notice (1 page)
16. 258 Phillips Road Special Permit Application (46 pages)
17. Memo to Erik Van Buskirk, Chair, Zoning Board of Appeals from Jeffrey Picard, Planning Board Chair re: 258 Phillips Road, Special Permit Application, dated April 21, 2022 (1 page)
18. Memo to Erik Van Buskirk from David J. DeConto, Director, Department of Natural Resources re: Conservation comments on Special Permit #22-11, 258 Phillips Road, Sandwich, MA, dated April 8, 2022 (1 page)
19. Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: #22-11: 258 Phillips Road – Special Permit, dated April 5, 2022 (1 page)
20. Email to Maureen McCabe from Sean Miller re: Request for Comment: #22-11: 258 Phillips Road – Special Permit, dated April 5, 2022 (1 page)
21. 258 Phillips Road: Conservation Commission Order of Conditions, Permit #SE66-1920 (13 pages)
22. Town of Sandwich Protective Zoning By-Law November 2021 (94 pages)