



BOARD OF APPEALS
TOWN OF FOXBOROUGH
40 SOUTH STREET
MASSACHUSETTS
02035

**Foxborough Zoning Board of Appeals Minutes
August 19, 2021**

Members present: Member David Brown and Associate Members Lorraine Brue and Kurt Yeghian

This meeting was held in person with the Zoom video platform also available; it was also being broadcast on Foxboro Cable Access.

7:00 p.m. Administrative Appeal of Maurice and Sharon Brodeur pursuant to Section 10.2.2.1. of the Code of the Town of Foxborough, Massachusetts, Chapter 275: Zoning, alleging that the Town of Foxborough Building Commissioner and Zoning Enforcement Officer has not enforced Board of Appeals Decision No. 03-19 and certain of the conditions imposed by the Planning Board in a Site Plan Approval, Special Permit and Finding dated May 19, 2005 with respect to the property situated at 227 Cocasset Street, Foxborough, in the R-40 Residential and Agricultural District. Vice Chairman David Brown opened the hearing and appointed Associate Members Lorraine Brue and Kurt Yeghian to this petition upon the absence of the two regular members. Mr. Brown also stated that he has filed a Conflict of Interest Form with the Town Clerk as the business located at 227 Cocasset Street supplies the heating fuel for his home. Maurice and Sharon Brodeur of 217 Cocasset Street were present as well as their attorney, Ed Valanzola and Engineer Jim Borrebach from OHI Engineering. Atty. Jeff Lovely was present for The Oilman, the business at 227 Cocasset Street.

Atty. Valanzola stated that this appeal was for inaction of the Building Commissioner, Barry Ringler when the Brodeur's made requests for enforcement actions starting in October 2020. Atty. Valanzola reviewed the permits that 227 Cocasset Street has through the Planning Board and the Zoning Board of Appeals. The Planning Board decision made note that all Oiltime vehicles were to be parked in the garage overnight and drainage work was also to be completed. The business also has an open Order of Conditions from the Conservation Commission.

On October 30, 2020 and November 18, 2020 notices were sent that the owner of 227 Cocasset Street were conducting a second business on the site, Sitework Specialists, this business had loam, mulch and landscaping equipment on the site which was not allowed. On January 21, 2021 the owners of 227 Cocasset Street met with the Planning Board in regards to this illegal business, the Planning Board gave them until June 1, 2021 to remedy the situation as the ground was frozen at the time. Since that time, the loam and mulch have been removed, the sign for the additional business has been removed and an attempt at a buffer area have been made.

Two follow up emails were sent to the Building Commissioner by the Brodeurs as they believed there are additional violations to the existing permits on the site. On June 24, 2021 another email was sent, Mr. Ringler answered on June 25, 2021 that he would begin enforcement when he was back in the office as he was off at the time; no letter was ever received.

Atty. Valanzola stated that his clients have tried to work with the town to get these violations rectified, they are looking for due process. The violations they have noted are: An RV trailer parked on the property is not a business vehicle, a dumptruck with Sitework Specialists signage is parked on the property, not part of the oil business; there are steel construction beams still on site; there are large storage containers on site; landscape tanks are located onsite. The Brodeurs feel that having these items on the property is a violation of the Planning Board Site Plan Approval as they were not shown on the plan approved by the Planning Board. Atty. Valanzola would like a decision from the Zoning Board that violations exist that can be appealed to Land Court.

Atty. Valanzola noted that the 20 foot buffer was supposed to be treed, but they put up a fence instead. Grass was planted in the area but the trucks still drive over it.

They also have issues with the drainage infiltration basin and swale. Bay Colony Engineers have stated that the infiltration is working as designed but they did that on behalf of the business owner, the Brodeurs would like independent verification. Engineer Jim Borrebach from OHI Engineering observed that there is crushed stone in the area but stated that he cannot tell if it is working or not and there is no As-Built plan to confirm that it was constructed properly. There is water running off to the Brodeur's property that Mr. Borrebach feels is because they changed the elevations on the 227 Cocasset Street property that changed the flow patterns.

Atty. Valanzola stated that the Planning Board had a bond for 227 Cocasset Street that should not have been released if the work was never completed, there is no Certificate of Compliance from the Conservation Commission and no as-built for the property. There is a drainage pipe pointing towards the Brodeur's property that was never removed.

Mr. Borrebach feels a survey should be done to determine the stormwater changes, not installing the trees and installing a fence instead changes the stormwater flows, the current conditions plan should be updated for review as there were changes done that were not approved on the plan. Mr. Borrebach stated that his review was observations from the Brodeur's property only, he did not go onto the 227 Cocasset Street property.

Atty. Valanzola stated that there is also an excavator on the property at this time. Building Commissioner Barry Ringler stated that the excavator is working on the cement pad that was supposed to be built for the water dispensing system that was part of the existing approvals. Mr. Ringler also noted that the storage containers were part of the existing conditions plan in 2005. He also noted that the property has had a Certificate of Occupancy since 2011.

Town Counsel Pat Costello advised that the Building Commissioner could make a determination for the alleged non-compliance, do the current conditions of the property violate the 2003 and 2005 decisions. The Certificate of Occupancy does not establish what the conditions are today. A site visit may be beneficial for the Zoning Board members to determine whether the enforcement actions would be sufficient or if the Board should supersede his determination for additional action.

Atty. Jeff Lovely, speaking on behalf of Oilman Attorney Frank Spillane who was not available this evening, stated that he has been given authority to authorize a sitewalk for the Zoning Board members and the abutters and their attorney, he was not given authorization to allow an engineer on the property.

A sitewalk will be coordinated and posted before the next meeting.

A motion to continue the hearing to September 30, 2021 was made by Ms. Brue and seconded by Mr. Yeghian. The motion carried 3-0-0.

GENERAL BUSINESS

Minutes

The Board reviewed the minutes of June 30, 2021.

A motion to approve the minutes of June 30, 2021 was made by Ms. Brue and seconded by Mr. Yeghian. The motion carried 3-0-0.

Discuss possible zoning bylaw and sign bylaw amendments

Ms. Brue reviewed the zoning bylaw and sign bylaw amendments that Mr. Ovrut has been working on as he was unable to attend this evening. There are changes proposed to the Zoning Bylaws, the definition of habitable floor area to include all living spaces, the second change is to the determination of building height by eliminating the use of the word “story” or “stories” and replacing it with “feet”. The proposed changes to the Sign Bylaw are administrative or procedural. The Sign Bylaw Committee has been disbanded so sign enforcement is with the Zoning Board now.

A motion to support the Zoning Bylaw and Sign Bylaw changes as proposed this evening was made by Ms. Brue and seconded by Mr. Yeghian. The motion carried 3-0-0.

The meeting was adjourned at 8:30 p.m.

Respectfully Submitted,

Diana Gray

Signed on behalf of the Board

Kim Mellen, Clerk