



BOARD OF APPEALS  
**TOWN OF FOXBOROUGH**  
40 SOUTH STREET  
MASSACHUSETTS  
02035

**Foxborough Zoning Board of Appeals Minutes  
October 7, 2021**

Members present: Members Barney Ovrut and David Brown, 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.

Vice Chairman David Brown opened the meeting.

**8:00 p.m. Continued Public Hearing - 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.** This is a continuance of a hearing that was opened on August 19, 2021. Vice Chairman David Brown and Associate Members Lorraine Brue and Kurt Yeghian are sitting in on this petition. 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. Frank Spillane and Engineer Bill Buckley of Bay Colony Group was present for The Oilman, the business at 227 Cocasset Street.

Barney Ovrut stated that he was not at the August 19, 2021 meeting but has watched the video of the meeting and filed a certification in accordance with the Mullin decision and state law with the Town Clerk; he also noted that he attended the sitewalk on September 20, 2021.

Atty. Frank Spillane spoke on behalf of the business located at 227 Cocasset Street, Oilman. He explained that this is an oil supply business for home heating oil, oil tanks and boilers. The oil supply use has been on the property since the 1940's and is a pre-existing, non-conforming use in the R40 district that pre-dates the Zoning Bylaws. They also have propane and ice sales on the property. In 2003 the Oilman came before the ZBA for a reconstruction of an existing building, Case #03-19, the Board issued a finding that the building would not be substantially more detrimental than the existing structure with no conditions. Atty. Spillane noted that the abutters at 217 Cocasset Street were in favor of the reconstruction. In 2005 Oilman went before the Planning Board for a Site Plan Approval and Special Permit in the Water Resource Protection District for the construction of a one story metal building and received approval from the Planning Board in May 2005 with 22 conditions; Atty. Spillane noted that the abutters at 217 Cocasset Street attended those hearings and were in favor of the project.

Atty. Spillane addressed the eleven violations in Atty. Valanzola's application before the Board; none of the violations are for ZBA Case #03-19 as there were no conditions with that approval, the Planning

Board has stated that they feel that the property is now in compliance and the Zoning Enforcement Officer has issued no violations on the property.

Atty. Spillane reviewed the eleven violations:

1. The RV Trailer on the property – this trailer is used by the employees of Oilman and the business owners feel it helps with employee retention by offering them the use of the trailer.
2. The dump truck on the property is owned and used by Oilman during the course of business when they remove boilers from homes and businesses. Atty. Spillane submitted a list of all the vehicles owned and used by Oilman.
3. The construction beams were extras from the construction of the steel building and are not a violation of the permit.
4. The detention area and swale will be addressed by Mr. Buckley later in the meeting.
5. In regards to the open Order of Conditions from the Conservation Commission, the Planning Board had a condition that the performance guarantee would not be released until a Certificate of Compliance was received from the Conservation Commission; the Planning Board is still holding those funds so there is no violation of the Planning Board permit. The last item in the Order of Conditions was the installation of a concrete pad on the site, Oilman will file for a Certificate of Compliance once that pad is completed.
6. The grades on the property will be addressed by Mr. Buckley
7. The storage containers have been on the property for decades, Atty. Spillane showed the Board a satellite picture from 1990 showing storage on the land. There were no Planning Board conditions to remove the storage containers and no town officials ever asked for the removal of the storage containers. Atty. Spillane noted that the Brodeurs house was built after 1990 and they removed trees on their property which would have provided a natural buffer to the Oilman property.
8. In regards to the 20 foot buffer, the Brodeurs and Oilman agreed to the installation of a fence instead of trees as a buffer, the 20 foot buffer past the fence line on the Oilman side exists.
9. The trucks on the property, the Planning Board decision allows the parking of Oilman trucks on the property overnight, the ZBA decision has no conditions.
10. The gray construction trailer is used by the business, it is not currently on the property but may be used again there in the future.
11. The landscaping spray tank is used for the business for maintenance on the property and also to help with any damage on client's property that may occur during the installation of boilers and oil tanks.

A site walk was taken on September 20, 2021 with Board members.

The Planning Board held a meeting in January 2021 in regards to the landscaping business on the site, Planning Board member Ron Bressé acted on behalf of the Planning Board and they were satisfied that all landscaping materials were cleaned from the property. Atty. Valanzola contends that the clean-up was not done in a timely manner and Mr. Bressé is not the enforcement officer for the town and was not objective.

In regards to the fleet list of vehicles, Mr. Brown asked if it was known which of these vehicles were on the site in 2003, Atty. Spillane did not know when the vehicles were purchased.

Engineer Bill Buckley spoke to address the drainage issues. He did the work for the site plan in 2005. In regards to the detention area and swale, there is a stone trench to the basin located in the southwest area of the property. The stormwater management has been built to plan, the basin is at the elevation it is supposed to be, Mr. Buckley has been out there a few times, it is a dry basin that drains after storm

events. The swale is crushed stone, it pitches towards the basin and is performing as designed. In regards to the grades on the lot, the building was shown on the plan at elevation 204 and was built at elevation 205, this would not result in any changes to the drainage. The corner of the lot is higher and a wall was built there, it pitches towards the swale and there is some runoff towards the Brodeur's property. There is a low area, approximately 9% of the drainage goes towards that area; most goes to the basin. Mr. Buckley stated that a memo was sent to the Planning Board on June 15, 2021 and to the Building Commissioner on July 14, 2021 regarding the stormwater system at the Planning Board and the Building Commissioner's requests.

Atty. Valanzola then distributed requested findings to the Board, there are twenty two findings listed, Mr. Brown stated that is an increase of the eleven asked for in the application and feels these additional items should be part of an appeal process if they decide to appeal.

Atty. Valanzola wanted to address Atty. Spillane's statements. In regards to the land being pre-existing non-conforming, he feels that the use of the property is defined by the 2005 Planning Board Site Plan, the larger building was asked for to keep the trucks inside overnight. The twenty-two conditions that the Planning Board noted in their decision do not allow for grandfathered items. They ignored the condition in regards to additional business vehicles on site, they just changed signage on the vehicles and now they all belong to Oilman. They told the Planning Board that the Siteworks business was moved to another property so the sign and landscaping material piles were removed but the vehicles just changed signage.

Mr. Brown feels that Oilman made a good faith effort to resolve the problems brought to their attention and now the Brodeurs are adding additional complaints.

Engineer Jim Borrebach stated that the storage containers were not on the site plan that was signed by the Planning Board in 2005.

Atty. Spillane stated that the use was not part of the 2003 and 2005 applications before the ZBA and the PB. Those applications were in regards to replacing buildings, the use wasn't addressed. Atty. Spillane feels that the Brodeur's are asking for nothing to be outside the building and that is not practical to a business. The Brodeur's cleared their lot when they built their house which affects the drainage on their property and also the view. The Brodeur's originally listed eleven violations and are now asking for twenty two findings.

A motion for a five minute recess was made by Ms. Brue and seconded by Mr. Yeghian. The motion carried 3-0-0.

A motion to resume the Public Hearing was made by Mr. Brown and seconded by Ms. Brue. The motion carried 3-0-0.

Atty. Valanzola stated that the Brodeur's property is not relative to this application. In his opinion, the business is not pre-existing, non-conforming as a matter of law. He feels his clients are entitled to a buffer.

Mrs. Brodeur addressed the Board, she stated that they do not want everything removed from the property, they are fine with the running of a business. In regards to the buffer, the Brodeurs wanted a fence instead of trees.

Mr. Brodeur stated that they were told what was going to be done at the 2005 hearing and over the years more and more additional things were being done. They were forced to this point, they just want

Oilman to comply with the terms of the permit from 2005; they never said they wanted everything off the property. They want the findings presented as part of the decision the Board makes.

Mr. Ovrut stated that the ZBA made no conditions as part of their approval in 2003, just findings. Atty. Valanzola stated that the issue is did the Building Commissioner take any action.

The Board discussed the findings requested and decided that they would act only on the eleven violations noted in the original application.

A motion to close the Public Hearing was made by Ms. Brue and seconded by Mr. Yeghian. The motion carried 3-0-0.

The Board immediately moved into deliberations.

The first issue is the trailer on the property at 227 Cocasset Street. The trailer is provided as a benefit to the employees, is registered to the company and is within the allowable weight to be on the property.

A motion that the RV trailer on the property is not a violation of the permit was made by Mr. Brown and seconded by Ms. Brue.

Discussion: Can the Board issue any orders or findings that are valid and enforceable in a court of law. If the Board says any item is a continuing violation, can the Building Commissioner enforce the issue? Oilman and the property at 227 Cocasset Street are technically not part of this hearing. The violations would be given to the Building Commissioner who would send notice to Oilman who could appeal to the ZBA.

The Board discussed the best way to proceed, it was decided that the Board would vote if there are violations of the Planning Board decision from 2005.

A motion to withdraw the previous motion was made by Mr. Brown and seconded by Ms. Brue. The motion carried 3-0-0.

A motion that the RV Trailer on the property at 227 Cocasset Street is a violation of the Planning Board decision from 2005 was made by Ms. Brue and seconded by Mr. Yeghian. Motion fails 0-3-0.

A motion that the dumptruck on the property at 227 Cocasset Street is a violation of the Planning Board decision from 2005 was made by Ms. Brue and seconded by Mr. Yeghian. Motion fails 0-3-0.

A motion that the steel construction beams on the property at 227 Cocasset Street is a violation of the Planning Board decision from 2005 was made by Ms. Brue and seconded by Mr. Yeghian. Motion fails 0-3-0.

A motion that the function of the detention area and swale at 227 Cocasset Street is a violation of the Planning Board decision from 2005 was made by Ms. Brue and seconded by Mr. Yeghian.

Discussion: A letter was received from Bay Colony that the basin and swale are working as designed.

Motion fails 0-3-0.

A motion that the failure to receive a Certificate of Compliance from the Conservation Commission and the failure to construct the slab for the water dispensing system on the property at 227 Cocasset Street is a violation of the Planning Board decision from 2005 was made by Ms. Brue and seconded by Mr. Yeghian.

Discussion: The Board feels it is beyond the Building Commissioner's control to compel the completion of the work and to ask for the Certificate of Compliance

A motion to withdraw the previous motion was made by Ms. Brue and seconded by Mr. Yeghian. The motion carried 3-0-0

A motion that the failure to obtain a Certificate of Compliance from the Conservation Commission is not actionable by the Zoning Board of Appeals was made by Ms. Brue and seconded by Mr. Yeghian. The motion carried 3-0-0.

A motion that the grades on the property as existing have negatively affected the swale and detention area function at 227 Cocasset Street and are in violation of the Planning Board decision from 2005 was made by Ms. Brue and seconded by Mr. Yeghian. Motion fails 0-3-0.

A motion that the storage trailer on the property at 227 Cocasset Street is a violation of the Planning Board decision from 2005 was made by Ms. Brue and seconded by Mr. Yeghian. Motion fails 0-3-0.

A motion that the buffer area not being maintained to keep vehicles out of it on the property at 227 Cocasset Street is a violation of the Planning Board decision from 2005 was made by Ms. Brue and seconded by Mr. Yeghian. Motion passes 3-0-0.

The buffer area only being loam and seeded is not keeping trucks out of it, tire tracks have been observed in the area.

A motion the Oiltime be directed to protect the 20 foot buffer area from equipment and vehicles through signage, curbing or plantings was made by Ms. Brue and seconded by Mr. Yeghian. The motion carried 3-0-0.

A motion that overnight parking of Oiltime vehicles on the property at 227 Cocasset Street is a violation of the Planning Board decision from 2005 was made by Ms. Brue and seconded by Mr. Yeghian. Motion fails 0-3-0.

A motion that the gray construction trailer on the property at 227 Cocasset Street is a violation of the Planning Board decision from 2005 was made by Ms. Brue and seconded by Mr. Yeghian. Motion fails 0-3-0.

A motion that the landscaping spray tank on the property at 227 Cocasset Street is a violation of the Planning Board decision from 2005 was made by Ms. Brue and seconded by Mr. Yeghian. Motion fails 0-3-0.

Mr. Ovrut will prepare a decision for the Board to sign.

Atty. Spillane asked who approves the buffer plan once it is created. The Board advised Atty. Spillane to send it to the Building Commissioner.

The meeting was adjourned at 10:20 p.m.

Respectfully Submitted,

Diana Gray

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Signed on behalf of the Board

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Kim Mellen, Clerk