



TOWN OF PLYMOUTH

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23
JAN 17 1:00
RECEIVED

Board of Appeals

Decision

Case No. 4077

LANDOWNER: New Hope Chapel of Plymouth, Inc.

PETITIONER: Save the Pine Barrens, Inc.

SUBJECT PROPERTY: 1-5 Joshua's Way (a/k/a 2-6 Joshua's Way), Plymouth, MA.

PARCEL ID NO: 088-000-036-001, 088-000-036-002, 088-000-036-003, 088-000-036-004, and 088-000-036-005.

TITLE REFERENCE: Plymouth Registry of Deeds Book 53335, Page 149.

DATE OF PUBLIC HEARING: January 4, 2023.

In exercise of its discretionary powers, the Plymouth Zoning Board of Appeals ("ZBA") (Members: Michael Main, David Peck, Michael Leary, Edward Conroy, and Kevin O'Reilly) voted 0-5 to overturn the Building Commissioner's November 8, 2022 determination. As the petition of Save the Pine Barrens, Inc. seeking to overturn the Building Commissioner's determination did not receive the requisite four (4) votes, the petition is hereby **DENIED**.¹ The petition concerns an Appeal under Mass. G.L. c.40A §8, 15 from the Building Commissioner's denial of Save the Pine Barrens, Inc.'s request for enforcement dated October 20, 2022, for the property located off Joshua's Way owned by New Hope Chapel of Plymouth, Inc. and shown as Assessor Parcels 088-000-036-001, 088-000-036-002, 088-000-036-003, 088-000-036-004, and 088-000-036-005 in a RR Zone (the "Property").

SUBMITTED DOCUMENTATION:

1. Letter from Community Land and Water Coalition, a Project of Save the Pine Barrens dated October 20, 2022.
2. Department of Inspectional Services response letter dated November 8, 2022 (the "Determination").
3. Letter from Community Land and Water Coalition, a Project of Save the Pine Barrens dated November 29, 2022 (the "Petition").
4. Petition Application received November 29, 2022.

¹ Pursuant to G.L. c.40A, § 15, "[t]he concurring vote of all members of the board of appeals consisting of three members, and a concurring vote of four members of a board consisting of five members, shall be necessary to reverse any order or decision of any administrative official under this chapter or to effect any variance in the application of any ordinance or by-law. (Emphasis added).

5. Memorandum from Town Counsel to the Zoning Board of Appeals dated December 29, 2022.
6. Letter from Save the Pine Barrens, Inc. dated December 30, 2022.
7. Copy of PowerPoint presentation slides from January 4, 2023.

THROUGH SUBMITTED DOCUMENTATION AND TESTIMONY THE PLYMOUTH ZONING BOARD OF APPEALS (THE “ZBA”) DETERMINED THE FOLLOWING FACTS:

1. On October 20, 2022, Save the Pine Barrens, Inc. (the “Petitioner” and/or “STPB”) filed a Demand for Enforcement of the Plymouth Zoning Bylaw (the “Bylaw”) against Sheava Development Corporation, Sheava LLC and/or Scott W. Spencer² (collectively “Spencer”) for conducting earth removal operations at the Property from 2015 to 2021. STPB alleges that a Special Permit was necessary for the earth removal activity.
2. Sheava Development Corporation owned the Property from 2015 to 2020. Currently, there is no earth removal activity at the Property.
3. The subject Property is located in a Rural Residential (RR) Zone and is the subject of an approved 5 lot definitive subdivision.
4. Pursuant to the approval of a definitive subdivision plan for 5 house lots in 2015, Spencer undertook earth removal activities at the Property.
5. Pursuant to the Zoning Bylaw in effect in 2015, Section 205-18(F)(1), since the earth removal was associated with an approved subdivision plan, a Special Permit was not required.
6. STPB is claiming that the issuance of the subdivision approval in 2015 (plan endorsed June 22, 2015) was a “ruse”. As STPB is essentially appealing the issuance of a subdivision approval, any such appeal of that subdivision approval would have had to be filed within 20 days by a “person aggrieved.” See, G.L. c. 41, § 81BB. Here, there was no appeal filed within 20 days of the approval and therefore the subdivision approval is final.
7. Several abutters to the Property spoke about being aware of the earth removal activity and the negative impact the earth removal has on abutting properties.
8. While acknowledging the abutters’ concerns, the Board found that since the earth removal was conducted between 2015 and 2021, any request for enforcement is too late. Further, the Building Commissioner testified that other than the instant appeal, a complaint has not been filed with his department in the last eighteen months.

DECISION:

A motion to overturn the Building Commissioner’s Determination was made by David Peck and seconded by Kevin O’Reilly, followed by a vote of 0-5, as the Petitioner did not receive the requisite four (4) votes to overturn the Building Commissioner’s Determination, the appeal of STPB is hereby **DENIED**.

² Scott W. Spencer is an officer of both Sheava Development Corporation and Sheava LLC.

ZONING BOARD OF APPEALS:

Michael Mair
Michael Mair, Chair

Kevin O'Reilly
Kevin O'Reilly, Member

David Peck
David Peck, Vice Chair

Michael Leary
Michael Leary, Member

Edward Conway
Edward Conway, Clerk

NOT SEATED ON THIS CASE
Peter Conner, Alternate

NOT SEATED ON THIS CASE
Philip Ricardi, Alternate

We hereby certify that copies of this decision were filed with the Town Clerk, Building Inspector, and the Planning Board on: Jan 17, 2023

This decision shall not take effect until a copy of this decision certified by the Town has been recorded in the Plymouth County Registry of Deeds or with the Assistant Register of the Land Court for Plymouth County, and a certified copy indicating such Registry recording has been filed with the Board of Appeals.

Any person aggrieved by a decision of the Board of Appeals has the right to appeal such Decision to the Plymouth Superior Court, the Land Court, or the Plymouth Division of the District Court of the Commonwealth of Massachusetts pursuant to Massachusetts General Laws, Chapter 40A, Section 17, by filing such appeal within twenty (20) days after the date on which the Decision was filed with the Town Clerk.

Copy to Applicant via Certified Mail on: January 17, 2023

Notice of Decision to interested parties on: January 17, 2023