

Case No. 15-22
Application filed: 18 May 2022

RECORD OF PROCEEDINGS

I, Lisa C. Morrison, assistant to the Zoning Board of Appeals of the town of Edgartown, hereby certify that the following is a detailed record of proceedings pertaining to the request by Luke & Katie Kenney d.b.a. Blackbird Café for a special permit under section 10.2 A 2 of the zoning bylaw to operate a business in the R-120 Residential District. The applicants are proposing to install a seasonal food truck at 3 Jeffers Lane (property owned by the heirs of Gerald Jeffers and the site of the Chappy Store – Assr. Pcl. 31-30), In addition, the applicants are proposing to use as support a kitchen located at 98 Pocha Road (property owned by 98 Pocha Realty Tr., Katherine J. Kidder, Tr. – Assr Pcl. 47-43).

1. On 18 May 2022 the application, a true copy of which is marked "A," was presented to the Town Clerk.
2. An advertisement, a true copy of which is marked "B," was published in the Vineyard Gazette on 20 May and 27 May 2022.
3. Notice of the hearing, a copy of which is marked "C," was mailed, postage prepaid, to the petitioners; the abutters - owners of land adjacent to the subject property within 300-feet of the property lines - all as they appear on the most recent, applicable, certified tax list; and to all the proper town boards and departments.

On Wednesday, 8 June 2022, the hearing was opened and held via Zoom. The following board members were in attendance: Carol Grant – acting Chair, Nancy Whipple, Pamela Dolby, Thomas Pierce, and Robin Bray – alternate. Ms. Grant opened the hearing and read the necessary requirements for conducting remote meetings in compliance with both the Governor's order and the Open Meeting Law.

The applicant, Luke Kenney, began the presentation saying that he has been coming to Chappy for over 20-years and is a property owner. He said that he and his wife hope to revitalize the Chappy Store and offer coffee service and simple sandwiches and pastries from a Blackbird food truck. The café will be open seasonally from June to October, 8 a.m. to 4 p.m. six days a week.

Mr. Kenney noted that the food truck is fully licensed in its home location of Groton MA. Mr. Kenney said that Massachusetts law requires that food trucks have a base kitchen. Mr. Kenney said that he has a cooperative agreement with Katie Kidder for limited use of her home-based commercial kitchen. The agreement allows Kenney to use the kitchen between

the hours of 7 a.m. and 9 a.m. He noted that no deliveries will be made to the Pocha site, nor will there be any food prep or cooking. It will be used for sanitation of small wares and coffee service. He said that he anticipates that this limited use will have little or no impact on the neighbors.

Katie Kenney said that she and her husband were both looking forward to running the store, and are hoping for the opportunity to provide Chappy residents and visitors with some new food and beverage options in their food truck café.

Ms. Grant asked if there were any letters or comments from town boards. Matt Poole, Heath Agent, said that should the proposal be approved by the Zoning Board, there are food code requirements that need to be reviewed and fine tuned with the Kenneys.

Ms. Grant then asked if there were any letters from abutters. The assistant said that letters of support had been received from the owners or trustees of both properties: Lolita Jeffers and Katie Kidder. Letters of support were received from Jason & Lisa Gruner of 76 Washque Ave, Melinda & Jeff Fager of 104 Wasque Avenue, Rick Schifter of 33 Pocha Road Extension, and Brad Woodger. All spoke about the need for a general store and café on Chappy and how it will likely reduce trips to downtown Edgartown and ease ferry traffic. The letters also spoke to the Kenneys reputation as business people and their understanding of the unique character of Chappaquiddick.

Copies of correspondence were reviewed by the members prior to the hearing, including correspondence between Jason Gruner and Luke Kenney regarding improvements to the entrance and exit off Chappaquiddick Road. Mr. Gruner requested that the Highway Department monitor the site and make recommendations for improvements.

Jo Marie Solet of 232 Chappaquiddick Road wrote in support of the store, but was concerned about possible noise from the food truck's generator.

Judy Didion of 42 Washque Avenue also wrote in support of the food truck and store, but was concerned about the use of the Kidder kitchen. She was concerned about setting a precedent that would allow additional commercial use of the kitchen, as well as increase in traffic and deliveries to the Pocha Road site.

Correspondence from Dana Strayton of 307 Chappaquiddick Road was also reviewed. Ms. Strayton was concerned about the precedent that could be set should the board allow an existing home-based business to be used by a third party. She also did not see how the proposal could meet the requirements of the bylaw.

Ms. Grant then asked if anyone present wished to speak in favor of the proposal. Dana Gaines, who owns property directly across Pocha Road, said he was fine with the current proposal, but wanted to go on record as being opposed to any future expansion of commercial use of Katie Kidder's kitchen.

Jeff Fagor said that he was 100% supportive of the proposal and said that both the food truck and the store are desperately needed on Chappaquiddick.

Marcia Greenfield a direct abutter to the Chappy Kitchen at 44 Washque Avenue said that while she is fine with the food truck and thinks it is a wonderful idea, she is opposed to the

use of the Chappy Kitchen. She was concerned that there would be an increase in traffic and noise, and was worried that the limited proposed use could, in the future, expand in both hours and intensity.

Ann Floyd said that while she does not object to the proposal *per se*, she does not agree that there is a desperate need for coffee and light food options on Chappy. She said she does agree that there is a need for a general store that offers basic provisions and wondered why that was not part of the proposal.

Laura Jemison of 45 Wasque Avenue said that she believed the store was needed, but was concerned about the transformation of the Chappy Kitchen from a home-based business to a commercial enterprise and the possibility of that change setting a precedent.

The assistant noted that the Zoning Board reviews each application individually and bases its decision on the application's specific merits. Generally, the issue of precedence is not paramount in the board's decision making process.

Mr. Kenney thanked all his supporters and said he understands the concerns of others. He said that the food truck will not be on a generator and will be served by a new electric line. He said the only noise would be from a small exhaust fan. He said that extending the hours of use in the Chappy Kitchen would be a violation of his lease with Ms. Kidder. He said that the use of the kitchen will be minimal – there is a three-bay sink in the food truck that is more than adequate for general day-to-day washing up. He reiterated that there will be no food prepared in the Chappy Kitchen.

Mr. Kenney said that he sent out a survey and had over 150 responses from the community with suggestions for what they would like to see in the store. He said that the store was not part of this application because he was told that it was a grandfathered or preexisting use.

Ms. Grant then closed the public portion of the hearing for discussion by the board.

Ms. Dolby noted that 79 abutters were notified in connection with this hearing. She said that in order for the food truck to operate, it needs to be associated with a kitchen. She said she did not see the minimal use proposed as generating an increase in traffic or noise, as it will be limited to just a few hours in the morning and will not involve any cooking or deliveries. She said she thought it was great that someone will be reviving the store. She said that she thought it was a great proposal for Chappy and seemed to meet with general approval. She suggested that if the board decides to approve the proposal, she would ask that a review be scheduled in a year to see if there have been any complaints.

Ms. Whipple agreed and said she too thought it was a terrific proposal.

Ms. Bray asked if all the cooking would be done in the truck. Mr. Kenney replied that all the required cooking would be done in the truck and commented that it is a small operation with a very limited menu, about 3% of what they do in their off-island café. The Chappy Kitchen will only be used to double down on their cleaning. He said that food safety is always a paramount concern.

Mr. Pierce said that he thought it was a great idea and has his full support.

The assistant asked if the truck would be commuting to the Chappy kitchen. Mr. Kenney replied that it would not, items would be transported to the kitchen by car or van.

Mr. Grant said that she too was in favor of the proposal, and asked that a condition be placed on the permit that it be nontransferable.

Ms. Whipple made a motion to approve the project as presented. She said she believed that the proposal was in substantial harmony with the requirements of the bylaw. She said she believed that the proposal will fill an important need for the Chappy community and decrease ferry traffic. She said she did not believe that the project will adversely affect the neighborhood and noted that there was substantial support for the project among Chappy residents. She added the following conditions: (1) Project will be reviewed in one year to ensure that the operation is complying with the requirements of the bylaw, Board of Health rules and regulations, and is not having a negative impact on the neighborhood and (2) the special permit will be issued to Luke & Katie Kenney d.b.a. Blackbird Café and will not be transferable without prior review and approval from the Zoning Board of Appeals.

Ms. Dolby seconded the motion and voted to grant the special permit for the same reasons and with the same conditions.

Ms. Bray, Mr. Pierce, and Ms. Grant also voted, by roll-call vote, to approve the project for the same reasons and with the same conditions. Motion approved: 5 – 0.

Respectfully submitted,

Lisa C. Morrison, Assistant