



Town of Barnstable
Zoning Board of Appeals
Minutes
October 15, 2008

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday, October 15, 2008 at 7:00 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. A quorum was met. Also present were Art Traczyk – Principal Planner and Carol Puckett – Administrative Assistant.

Laura Shufelt	Present
James McGillen	Present
Michael Hersey	Absent
Craig Larson	Present
William Newton	Present
Alex Rodolakis	Present
Nikolas Atsalis	Present
Brian Florence	Present
George Zevitas	Present

Laura Shufelt opens the hearing at 7:05 PM. She reads a summary of the appeals into the record. She then calls the Oyster Harbor Club appeal and reads it into the record.

7:00 PM Appeal 2008-008 – Anew

**Oyster Harbor Club
Expand/Alter Nonconforming Use**

Originally Opened February 27, 2008, continued; March 12, 2008, April 30, 2008, May 21, 2008, June 11, 2008 and to June 23, 2008, Moved to September 10, 2008, Re-noticed Anew October 15, 2008. 180 day Extension Filed, Decision Due: November 21, 2008.

This appeal has been re-noticed "anew" to allow for a rehearing of the application with a new Board to be assigned. Staff understands that the applicant will be requesting a continuance of this appeal to mid December.

An additional 90 day extension has been sent to Attorney J. Douglas Murphy for signature (new Decision Due date will be February 19, 2009).

Oyster Harbors Club, Inc. has petitioned for Special Permits pursuant to Section 240-93.B Alteration and Expansion of a Nonconforming Buildings or Structures Not Used as Single or Two-Family Dwellings; and Section 240-94.B Expansion of a Preexisting Nonconforming Use. The petitioner seeks to remodel an existing 573 sq.ft., children's play center and to add another accessory building consisting of 1,096 sq.ft., to also be used as a children's play center. The buildings and use is accessory to the principal nonconforming use of the property as a Club House. The subject property is located as shown on Assessor's Map 053 as Parcel 012 Lot 001, addressed as 170 Grand Island Drive, Osterville, MA 02655, in a Residence F-1 Zoning District.

Laura Shufelt indicates that Attorney J. Douglas Murphy has submitted a letter asking for a continuance.

Motion to continue this to December 10, 2008.

Vote:

AYE: Alex Rodolakis, Craig Larson, James McGillen, William Newton, Laura Shufelt

NAY: None

CONTINUED TO DECEMBER 10, 2008 at 7:30 PM

Laura Shufelt then calls the Mill Pond Estates appeal and reads it into the record.

Open Comprehensive Permit No. 2005-013

**Mill Pond Estates - Starboard, LLC
Minor Modification Request**

This is a re-submittal of that request that had been previously withdrawn.

By letter submitted September 30, 2008, from Attorney Michael F. Schulz, Paul T. Caggiano and Brady P. Otey, as Mangers of Mill Pond Osterville Associates LLC, are seeking to modify Comprehensive Permit No. 2005-013 "Mill Pond Estates" issued to Starboard, LLC for the division of 2.81 acres into a 13 lot subdivision for the development of 11 single-family dwellings at 459 and 449 Old Mill Road, Osterville, MA. Three of the 11 dwellings are to be committed to affordable housing pursuant to MGL Chapter 40B, Section 20-23. The applicants seek;

- the transfer of the permit to "Mill Pond Osterville Associates LLC",
- to be allowed to build one "model home for the purposes of marketing the development, and
- to have waived the requirement for posting of securities for the completion of the subdivision until a second building permit is sought.

Laura Shufelt indicates that Attorney Michael Schulz has submitted a request for it to be withdrawn.

Motion is made to withdraw.

Seconded.

Vote:

AYE: Brian Florence, Craig Larson, William Newton, James McGillen, Laura Shufelt

NAY: None

WITHDRAWN

Laura Shufelt then calls the Howland case and reads it into the record.

Appeal 2008-057 - Continued

**Kenneth W. Howland
Bulk Variance**

Opened September 24, 2008, continued to October 15, 2008

Kenneth W. and Doris M. Howland have applied for a Bulk Variance to Section 240-14.E. Minimum Side and Rear Yard Setbacks. The applicants are seeking to locate a 12 by 16 foot accessory shed building 9.0 feet off the side property line and 7 feet off the rear property line where zoning requires a minimum of 15 feet for side and rear setbacks. The subject property is addressed 44 Nobadeer Road, Centerville, MA, and is shown on Assessor's Map 250 as parcel 137. It is in a Residence C-1 Zoning District.

Members assigned: James McGillen, William Newton, Craig Larson, Alex Rodolakis, Laura Shufelt

Attorney Patrick Butler is here representing Mr. & Mrs. Howland. He explains that the primary reason for the continuance was to allow for the members to do a site visit and for him to submit a supplemental memorandum. He indicates that there are photos of the site under Tab 3. He has the colored photos which he submits to the Chair. As he pointed out the last time, if the boundary line were squared off to make it

rectangular there would be plenty of room to put the shed but an additional factor which they looked into is some additional info from the Board of Health regarding the septic system as well as a copy of the provisions 310 CMR 15.2 which indicates that the septic is to the rear and to the right of the back of the house and therefore there has to be certain setback from the house, boundary line and shed. As a result of that it gives additional variance criteria. He indicates there was a confusion regarding where that shed was and could be seen from the driveway. He indicates that the additional hardship is relating to the septic which is another hardship. He also indicates that a letter which was submitted from an abutter in favor.

No questions from the Board. Laura Shufelt asks if there is anyone her from the public who would like to speak either in favor or in opposition. No one speaks.

William Newton indicates that he had done a site visit, looked at maps and drawings and it seems to him that the shed could be sited legally on that lot, however, a few trees might have to be cut down or cut back. The other option would be to the side yard or the back to the side of the house but also some trees might have to be removed. The third is their request to allow or vary and is not moved to do that as there are some other alternatives.

Attorney Butler indicates that he doesn't disagree but the question is that there a hardship to this applicant in doing that and anything that moves it to the other side of the property creates a hardship. He indicates that Mr. Howland has presented a reasonable request and that there are hardships.

William Newton asks to go through the variance tests. Attorney Butler indicates that they don't have to meet all the criteria for a variance but that the shape of the lot creates a unique circumstance.

Attorney Butler indicates that because the Howland's are an older couple and Mrs. Howland has medical conditions and wishes to park her car in the garage and he wishes to put his snow removal equipment in the shed and they need access to the driveway and house and this would be a hardship to them. He indicates that the between the cost of the extension of the driveway and the cutting down of the trees, there would be cost which would be a financial hardship. .

Brian Florence asks if this lot is the only panhandle lot in the neighborhood. Attorney Butler indicates that he believes it is. Brian Florence comments that he agrees that the shape is a hardship. George Zevitas doesn't think that the shape of this lot is a unique circumstance.

James McGillen does findings.

On the petition of Kenneth W. and Doris M. Howland, they have applied for a Bulk Variance to Section 240-14.E. Minimum Side and Rear Yard Setbacks. The applicants are seeking to locate a 12 by 16 foot accessory shed building 9.0 feet off the side property line and 7 feet off the rear property line where zoning requires a minimum of 15 feet for side and rear setbacks. The subject property is addressed 44 Nobadeer Road, Centerville, MA, and is shown on Assessor's Map 250 as parcel 137. It is in a Residence C-1 Zoning District.

- **The Board finds that owing to the pork chop shape nature of the lot together with the location of the dwelling on the property unique conditions are created and a literal enforcement of the setback requirements results in a substantial hardship.**
- **The placement of the shed on the property would necessitate the removal of mature trees which may not be approved by the Quissett Village Association.**
- **The septic system dictates the placement of the shed. These would represent a further hardship to the applicants.**
- **The Board finds that the placement of the shed in the proposed location would not result in substantial detriment to the neighborhood or substantially derogate from the purpose and intent of the zoning ordinance.**

- *There are numerous accessory sheds within the immediate environment which appear to be located within the required setbacks and in many cases much closer to the property lines than the setbacks proposed by the petitioner.*
- *The relief is supported by Dr. Arthur Desrochers, President of the Quissett Village Association*

Vote:

AYE: *James McGillen, Alex Rodolakis*

NAY: *William Newton, Craig Larson, Laura Shufelt*

James Mc Gillen asks if they want to make an affirmative motion to grant

James McGillen moves that the grant the variance to the petitioner's request to locate an accessory, one story shed structure measuring 12 feet by 16 feet of the side property line and 7 feet off the rear property line of said lot.

Seconded.

Vote:

AYE: *Alex Rodolakis, James McGillen*

NAY: *Craig Larson, Laura Shufelt, William Newton*

Laura Shufelt asks William Newton to make negative findings.

William Newton makes negative findings. On the petition of Kenneth W. and Doris M. Howland of 44 Nobadeer Road in Centerville regarding a bulk variance to Section 240-14.E. Minimum Side and Rear Yard Setbacks. The Board agrees with the following findings of fact:

The various tests for the variance, soil, topo, shape, have not been met. Further it is clear that the protective covenant enforced within the deed in these properties here is not covered and not enforceable by the zoning regulation regarding setback requirements. The claim of hardship due to the angle of the house, the existence of these trees, the existence of the septic system is he thinks insufficient to show a hardship in this case.

Within the property there appears to be adequate room in desired location that would require the removal of one or two trees or some cutting back of those trees to still fit legally within the setback requirements. He does believe that lastly that there is an additional option available in the side yard, again probably requiring some cutting of trees to site the shed but that option still exists and thinks it still can be done legally.

Craig Larson indicates that his reasoning is that this did not meet the required hardship.

Laura Shufelt indicates that she concurs with William Newton's assessment.

Attorney Butler asks if they want to vote on those findings. Laura Shufelt indicates no as they already have.

Attorney Butler clarifies that what they are doing are for those who have voted negative they have stated their reasons.

Laura Shufelt concurs.

NOT GRANTED

Laura Shufelt then calls the TransAtlantic Motors, Inc. appeals.

Appeal 2008-061 - New

**Trans-Atlantic Motors, Inc.
Special Permit Alter/Expand Nonconforming Use**

Trans-Atlantic Motors, Inc. has petitioned for a Special Permit pursuant to Section 240-94.B, Alteration and Expansion of a Preexisting Nonconforming Use. The petitioner seek to redevelop a 0.47-acre lot located at the intersection of Hallett and Bearse Roads with a new 4, 240 sq.ft., auto repair and maintenance garage and related site improvements. The subject property is addressed as 49 Bearse Road, Hyannis, MA, and is shown on Assessor's Map 311 as parcel 040. It is in a Residence B Zoning District and a Groundwater Protection Overlay District.

Appeal 2008-060 - New

**Trans-Atlantic Motors, Inc.
Modify Variance No. 1968-006**

Trans-Atlantic Motors, Inc., has applied for a modification of Variance No. 1968-006 issued to Earl T. Legeyt for property located on Bearse Road, Hyannis, MA. The application seeks to modify that variance to permit the redevelopment of property with a new 4, 240 sq.ft., auto repair and maintenance garage and related site improvements. This application is made in addition to, and/or in the alternative to, the above Appeal 2008-061 for a special permit. The subject property is addressed as 49 Bearse Road, Hyannis, MA, and is shown on Assessor's Map 311 as parcel 040. It is in a Residence B Zoning District and a Groundwater Protection Overlay District.

Attorney Theodore A. Schilling is representing the petitioner

Attorney Schilling indicates that also present with him are Dan Ojala of Down Cape Engineering and the architect, Rainer Koch. Attorney Schilling gives a summary of relief requested. Dan Ojala of Down Cape Engineering hands out a presentation and layout plan. Attorney Schilling gives a history of the portions of the lot regarding zoning lines. He indicates that they would need a special permit to raze and replace and for the use. He indicates it is not an intensification of use and that it will go from 0 to 31% green and will be a state of the art building. He indicates that the fuel obtained on site will now be burned for fuel. There will also be a water separator. He believes it will not increase traffic will be better in appearance and use and will not be in derogation or impair public good.

Dan Ojala from Down Cape Engineering gives a presentation of what is existing and what is proposed. He indicates that the proposed site will have rain gardens and will conform to the 50% impervious cover and almost 31% of green coverage.

The architect does automotive use design buildings and is from Ipswich. He indicates that this building is for the purpose of a luxury vehicle service establishment. The ridge is at 26 feet which is below the requirement for this district. He indicates that the siding will be composite clapboard and that there will be a metal roof which will make this low maintenance. He indicates that the building will be standard gray/white colors and the façade will be more residential in character using Pella or Marvin windows. There will be air conditioning and the heating will be supplemented by the burning of the fuel on site. There will be no condensers next to the neighbors.

Attorney Schilling indicates that he has incorporated both Patty Daley's recommendations as well as the recommendations from Site Plan Review. He indicates that he has some concern over some of the proposed conditions and would like to discuss them.

Laura Shufelt assigns members: James McGillen, William Shufelt, Craig Larson, Nikolas Atsalis, Laura Shufelt. Laura indicates that she will go over Attorney Schilling's concerns after the Board has a chance to ask questions.

James McGillen corrects that the existing concrete building is 1934 feet and more or less is 25 feet X 77 feet although it appears the square footage is double it is only 15 feet wider and 20 feet longer and well within the parameters. He sees nothing that would be more detrimental to the neighborhood than the following

requirements that they have outlined here. He indicates that in the back of the lot is an unattractive chain link fence and that the trees would be a decided improvement.

William Newton concurs with James McGillen regarding the back of the lot and that he would support a screened area and perhaps more that is showing on the site plan and something that would buffer that residential area to the back side of it. His second concern is any intrusion into the residential zone through expansion. He asks if there was any discussion about a stop sign at Hallett Road when they were at Site Plan Review. Attorney Schilling doesn't believe to his knowledge. Dan Ojala said they could check with that Town Engineer and if needed they could contribute to getting one.

Attorney Schilling and Dan Ojala discuss the arborvitaes and plantings.

Craig Larson asks Dan Ojala to go over the pavers and stones. Dan Ojala indicates that where the parking stalls are they are using pervious unit pavers over an opened gravel base and gives some examples of other sites where they are used. He indicates that the medium gray would be the pervious pavers, concrete sidewalk is the medium gray and the darker gray is the regular bituminous asphalt and is the open graded gravel with the pervious interlocking pavers on top. Craig Larson asks if the runoff will be safe. Dan Ojala indicates that he believes it will.

Brian Florence comments that he believes it will be a good thing for this neighborhood but when they get to the conditions he would suggest adding a sidewalk

Dan Ojala indicates that in this area there was talk of it but what they thought what might make more sense is to take that money and install landscape trees on Otis where there are residences across from the business.

Attorney Schilling suggests putting in a pedestrian crosswalk.

William Newton asks if here has been any hazardous waste. Attorney Schilling indicates that when the bank mortgage company did their assessment when the building was first bought, to his knowledge, they didn't find anything.

Laura Shufelt asks what the retail sales would include. Attorney Schilling indicates it would be for knobs, gloves, hats, and what goes with BMW stuff. Laura clarifies that this wouldn't be like an auto retail sales like ADAP counter. Attorney Schilling indicates no and it would be incidental things.

Laura Shufelt asks if there is anyone here from the public who would like to speak. No one speaks.

Attorney Schilling indicates that he would like to address Condition #4 and that they don't see a purpose for it as it seems to him that there might be a used car that needs to be serviced which might not be a BMW and that it seems to be a restriction that wouldn't be necessary. Secondly, no retail sales of vehicles shall be permitted and he indicates that they have a variance that is over 40 years old that allows for retail sales and repairs and he suggests without applying for a license to sell vehicles and if they took away that variance and they would need a use variance and wouldn't be obtain that variance. Thirdly, on Condition #6, they would propose to put trees down Otis Street with a crosswalk if they so desire going into the showroom which might help Mr. Newton's concern regarding the stop sign. Also #7, he would like to have it as shown on the plans regarding the lack of fencing. He also suggests on the retail sales, they are not going to apply for a license as there is a license that won't be used anymore and he doesn't want a restriction indicating that they can't.

James McGillen asks if they would have an objection to just the TransAtlantic's vehicles.

Attorney Schilling indicates that they wouldn't have a problem limiting it to TransAtlantic's vehicles.

James McGillen asks if they would have an objection to the "no retail sales of vehicles other than TransAtlantic vehicles shall be permitted".

Attorney Schilling indicates that as long as it is TransAtlantic Motors and that also don't intend to lease it out to anyone else.

Art Traczyk indicates that if they do not reapply for the license for the retail sales of automobiles on this site it will automatically extinguish itself after 3 years.

Laura Shufelt indicates that they did receive a letter from Mrs. Legeyt in favor.

William Newton does positive findings for modification Variance 1968-006 and the Special Permit to expand a nonconforming use pursuant to Section 240-94.B, the Zoning Board of Appeals agrees with the following findings of fact:

- 1. Trans-Atlantic Motors, Inc., seeks to redevelop a 0.47-acre lot located at the intersection of Bearse Road and Hallett for BMW auto service center.**
- 2. The subject property consists of two adjoining lots: lot 85 has been used for auto storage and maintenance under a nonconforming use status since zoning was changed for the B Business District boundaries in 1969. Lot 84 retains a use variance for auto related activities granted in 1968.**
- 3. To the south and west of the subject property is residential development whose property values have surely been affected by the intrusion of TransAtlantic Motors continued development.**
- 4. Existing garage located on the property will be razed and redeveloped with the new BMW service department. The new building is to be 5,540 gross sq.ft.**
- 5. Other site improvements include a Service Reception Canopy' area of 1,000 sq.ft. for auto drop-off, on-site parking for 9 vehicles, site utilities, drainage, lighting, and landscaping.**

Vote:

AYE: Nik Atsalis, Craig Larson, James McGillen, William Newton, Laura Shufelt

NAY: None

William Newton makes two motions:

First motion is to approve the granting of Modification of Variance for Lot 84. He would direct the Board's attention back to the conditions that were placed in the Board's report. Those conditions are on page 6 and include the four bullets that Art Traczyk has noted. He wants to add one additional bullet. The back of Lot 84 has a buffer, trees, shrubs and would like to add some additional screening to that area perhaps of some additional height to buffer the area of the BMW building center and the residential to the immediate south of that.

Second part of the motion is to grant approval to Appeal 2008-61 Special Permit to alter and expand the nonconforming use and he would direct the Board's attention to page 7 which outlines 7 separate conditions with the change to Condition #4 which instead of manufacturer's vehicles, only TransAtlantic Motors.

The Board discusses and decide to strike the first sentence. Condition #4 is changed to strike the first sentence and read "the property and its use shall remain associated with and accessory to the showroom and retail auto sales located at 25 Falmouth Road.

William Newton indicates that the last one is TransAtlantic Motors will work with the town and assist them in placing or getting a stop sign placed and crosswalk placed at Bearse and Hallett Road.

Seconded.

The Board discusses. Laura Shufelt clarifies that it will read: that "no retail sales of vehicles shall be permitted from this site except as associated with the showroom retail sales located at 25 Falmouth Road "

Art Traczyk asks how many vehicles they are authorized for retail sales of vehicles from this lot.

Attorney Schilling is unsure but indicates that they are in the business of selling cars and not servicing cars. However, he indicates that they are trying to take it away from them where they had always had that ability and what they are asking for is not put a restriction in that was never brought up by anybody.

Craig Larson asks Art if they can leave that up to Licensing.

They discuss and clarify language for this condition.

James McGillen clarifies that Attorney Schilling and his client is striking Condition #6 and adding in its place that the applicant shall provide screening by planting street trees on Otis Street part of the parking lot and asks if he is agreeable to it. The Board and the client are agreeable with that condition

Laura Shufelt indicates that condition #5 shall read "no retail sales of vehicles shall be permitted from this site other than those associated with 25 Falmouth Road". She asks for a vote on this.

Vote:

AYE: Nik Atsalis, Craig Larson, James McGillen, William Newton, Laura Shufelt

NAY: None

Laura Shufelt indicates that she believes they were going to add on the end of Condition #7 "as shown on plans submitted".

Laura Shufelt indicates that there was a motion, a second, and amended conditions.

Vote:

AYE: Nik Atsalis, Craig Larson, James McGillen, William Newton, Laura Shufelt

NAY: None

SPECIAL PERMIT IS GRANTED WITH CONDITIONS

Laura indicates that the motion on the variance is subject to the same conditions as the variance.

VARIANCE IS GRANTED WITH CONDITIONS.

Laura Shufelt calls a ten minute break.

Back in session at 8:40 PM.

Laura Shufelt then calls the Dunhill appeal and indicates that there is a letter asking to withdraw without prejudice

Appeal 2008-047

**Dunhill Companies, Ltd.
Expansion of Nonconforming Use**

Dunhill Companies, Ltd., has applied for a Special Permit pursuant to Section 240-94.B Expansion of a Preexisting Nonconforming Use. The applicant is seeking to construct a 40-foot by 60-foot structure for storage of equipment related to the garden center's landscape business. The subject property is commonly know as "Bush Gardens", addressed 182 Osterville-West Barnstable Road and is shown on Assessor's Map 120 as parcel 005. The property is in a Residence C Zoning District and a Wellhead Protection Overlay District.

Motion is made to withdraw without prejudice.

Seconded

Vote:

AYE: Brian Florence, Craig Larson, James McGillen, William Newton, Laura Shufelt

NAY: None

WITHDRAWN WITHOUT PREJUDICE

Laura Shufelt then calls the Crocker appeal. Patrick Butler indicates that this is pending before the Land Court and that the parties are asking for a continuance.

Appeal 2008-036

Estate of Charles F. Crocker, Jr.
Appeal of Building Permit for 68 Pilots Way

Priscilla Dreier as Executrix of the Estate of Charles F. Crocker, Jr., has appealed the issuance of a building permit to develop a single-family dwelling at 68 Pilots Way, Barnstable, MA. The subject property is a 2.13 acre lot owned by Katie E. Gruner. It is shown on Assessor's Map 237 as parcel 007-001. The property is in a Residence F Zoning District.

Motion is made to continue this to December 10th at 7:45 PM.

Seconded.

Vote:

AYE: Nik Atsalis, Craig Larson, James McGillen, William Newton, Laura Shufelt

NAY: None

CONTINUED TO DECEMBER 10, 2008 at 7:45 PM

Laura Shufelt then call s the Bridges appeal. She reads it into the record.

Appeal 2008-050

Bridges
Family Apartment Special Permit

Albert William Bridges has applied for a Special Permit pursuant to Section 240-47.1.A(1) Family Apartments. The applicant seeks to establish a family apartment of 1,000 sq.ft., to be located in a proposed addition to the existing dwelling. The proposed apartment exceeds the 800 sq.ft. permitted as-of-right under zoning. The property is addressed 78 Kilkore Drive, Hyannis, MA and is shown on Assessor's Map 272 as parcel 005-006. It is in a Residence C-1 Zoning District.

Members assigned: Craig Larson, Alex Rodolakis, James McGillen, William Newton, Laura Shufelt

Laura Shufelt indicates that there is an email from Tom Perry regarding the site visit.

Mr. Bridges indicates that he is going to use it as a playroom and should've been there 3 years ago but has been stubborn. He indicates that he bought the house the way it was. He indicates they have been living there since last year. He indicates that he submitted the plans in good faith but when it came to do the first inspection they found the problem.

James McGillen asks when they bought the house. Mr. Bridges indicates he purchased it in 1993. Mr. McGillen then asks who put the kitchen in. Mr. Bridges indicates they did. Mr. McGillen asks if they got a building permit to do this. Mr. Bridges indicates that the building inspector made a mistake by not seeing the kitchen in the plans

Craig Larson indicates that the building permit doesn't list the kitchen and suggests they withdraw the application without prejudice as he cannot approve it the way it is presented to the Board.

Albert Bridges asks to withdraw without prejudice

Seconded.

Vote:

AYE: **Craig Larson, Alex Rodolakis, James McGillen, William Newton, Laura Shufelt**

NAY: **None**

WITHDRAWN WITHOUT PREJUDICE.

Laura Shufelt then calls the Ellis appeal.

Appeal 2008-041

Ellis
Use Variance

Susan W. Ellis has applied for a Use Variance. The applicant is seeking a variance from Section 240-11.A, Principal Permitted Uses, to allow for a second detached dwelling unit on the lot where zoning only allows one single-family dwelling unit per lot. The second dwelling is a former family apartment created within a detached accessory garage/barn structure located on the lot. The subject property is shown on Assessor's Map 208 as parcel 121, addressed as 393 Main Street, Centerville, MA. The property is in a Residence D-1 Zoning District and a Resource Protection Overlay District.

Attorney Patrick Butler is representing the applicants.

Members assigned: Nik Atsalis, Craig Larson, James Mc Gillen, William Newton, Laura Shufelt

Attorney Butler submits a statement in support from 15 residents, from CHIPS house and another is a letter from Mrs. Reed who is a direct abutter.

Attorney Butler indicates that he has something similar to the Wilson appeal and they are not here to do an 81L. He indicates that the applicants are not interested in selling or separating the parcel into two lots but would like to rent the cottage out at market rental apartment and requires them to come before the Board for a variance. He indicates that this property is unique as the house and the cottage have separate addresses. He gives a history of the property. He indicates that he is a neighbor and remembers the Centerville Bakery and knows that intersection well. He indicates that the second dwelling has a separate address from the house and believes the main house was constructed in circa 1850 and predates zoning. He indicates that in 1986 the Ellis' bought the property. He indicates that Article 5 was substituted by the current 240-47-1 and that the difference is that under the existing the cottage could not exist. He indicates that Mrs. Ellis' mother had lived in the cottage as a family apartment until last year when she passed away. He believes there are unique conditions and circumstances relating to the structure. He believes it would be good for workforce housing or could possibly be used also for senior housing. He indicates that he had received a letter from the Rohrbachs, abutters, and addresses their concerns. He indicates that they applicants had started down the road to amnesty but that the spirit of that program was to address illegality but thinks they should look at this for workforce housing. He thinks it could be 81L but does not want to go there.

Laura Shufelt comments that she was one of the co-authors of the amnesty program and it was for illegal apartments but that most of those started as family apartments and it was always intended that as family apartments went out of use that it would be an alternative.

William Newton asks if the Ellis' were aware of the conditions of a family apartment. Attorney Butler indicates that they were aware of it but now they are asking relief as they want to utilize it for an apartment for a non-family member. William Newton indicates that they did make application for the amnesty to this.

Attorney Butler indicates that prior to him representing the applicants, they had applied to the amnesty program. He indicates that they withdrew with his advice. He indicates that it is electrical heat and in amnesty program the utilities are included and the applicants found that this would be costly.

Attorney Butler suggests continuing this in order to meet with the Ellis' and to look over the conditions for something similar to the amnesty program but have it within the context of workforce housing and asks if that would be amenable to the Board for them to look at.

Laura Shufelt indicates that she believes that they need to look at this again and that the utility allowances for electric as she believes it is less currently than gas or oil.

Attorney Butler indicates that based on the uniqueness of the circumstances, he suggests that this might be appropriate for consideration to have the limitations be for workforce as apposed to affordable housing.

Laura Shufelt indicates that she is not comfortable that this has a unique situation where she would be comfortable granting a use variance.

Attorney Butler indicates that for then his other alternative would be to withdraw without prejudice and go with an 81L.

James McGillen indicates that he believes that this would be a substantial derogation of the zoning bylaw and the intent of only allowing one single family dwelling and would have to rule that on this particular partition and that within in that neighborhood no other lot has two structures on one lot.

Attorney Butler clarifies that they are not asking that this be deemed a separate single family dwelling only an apartment. He indicates that maybe if they went into 81L with conditions it might be a better way to look at this.

William Newton indicates that he disagrees that it would allow in fact others with garages and sheds and to explore the same idea and not just within that particular neighborhood but town-wide.

Attorney Butler requests to withdraw without prejudice and to reserve the right to come back with an 81L request.

James McGillen makes a motion to withdraw without prejudice.

Seconded

Vote:

AYE: Nik Atsalis, Craig Larson, James McGillen, William Newton, Laura Shufelt

NAY: None

WITHDRAWN WITHOUT PREJUDICE

Laura Shufelt indicates that the Board members should look at the schedule for next year and let staff know of any conflicts. She indicates that there will be no meeting on or October 29th or November 5th

Motion to adjourn

Seconded.

All in favor.

Meeting adjourned at 9:30 PM.