



Town of Barnstable
Zoning Board of Appeals
Draft Minutes
October 1, 2008

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday, October 1, 2008 at 7:00 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. A quorum was not met. Also present were Art Traczyk – Principal Planner and Carol Puckett – Administrative Assistant.

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

Laura Shufelt opens the hearing at 7:05 PM. She reads a summary of the appeals into the record.

She then calls the Tonero d/b/a Whiskers appeal into the record.

Members assigned: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

Attorney John Norton is representing the applicant, Holly Tonero who is also present. He gives a brief summary of their request. He indicates that there will be no overnight boarding of dogs and that dogs will only be groomed, bathed and that there will be a small retail area.

James McGillen asks if he is aware of the proposed conditions. Attorney Norton is handed a copy and reads them over and indicates that he has a letter from the condominium association and that it would satisfy one of the conditions.

William Newton asks what the cubbies are for. Ms. Tonerio indicates that it is for their collars and leashes when they are dropped off in the morning. Ms. Tonerio indicates that the maximum number is 60 including dogs to be groomed and that there will be approximately 50 dogs in the doggy day care area. William Newton asks about noise control. Ms Tonerio indicates that the building itself is separated by concrete blocks and will put in a baffled ceiling. There will be an epoxy rubber floor in some areas and a different type flooring to cut down on the noise and she will take every step possible to keep the noise down. William Newton asks if the feedback from neighbors has been good. Ms. Tonerio indicates that she has met with them and has addressed their concerns too.

William Newton asks Art Traczyk if there is a standard for how many dogs. Art indicates that there is no standard under zoning but might be under the Board of Health and will need a kennel license and is where that gets controlled.

Attorney Norton indicates that he believes Ms. Tonerio has met with almost all of the neighbors and has addressed their concerns. He submits a letter from an abutter.

Craig Larson asks if the business is owned by her. Ms Tonerio indicates that her existing building is being taken by the airport and that she needs to move.

Brian Florence asks how many employees. Ms Tonerio indicates herself, 3 full-time groomers and an office manager. She will be hiring more employees so that she has one attendant for every 10 dogs.

Laura Shufelt asks if there is anyone here from the public that would like to speak

Connie Bacon speaks and owns two of the other units in the same building. She has gone over Ms. Tonerio's plan and it seems that it will work very well.

Jim Burkin, the owner of the building, indicates that he had visited all the neighbors. He indicates that he had spoken with Adco Tool who had visited Ms. Tonerio's business and was pleased.

Laura Shufelt asks about hours of operation. Ms Tonerio indicates that it will be from 7:00 AM to 6:00 PM, Monday through Friday and on Saturday from 8:00 AM to 5:00 PM and closed on Sunday except for private dog parties. Laura asks that if they changed it the hours to not earlier than 6:00 AM and no later than 8:00 PM would they be able to live with it. Ms. Tonerio agrees.

James McGillen makes positive findings.

- 1. Holly S. Tonerio, d/b/a. Whiskers Pet Grooming has requested a Special Permit pursuant to Section 240-33.C (1) Conditional Uses for a Kennel. The petitioner is seeking to operate a dog grooming and doggy care business in Units 6 & 7 at 30 Perseverance Way, Barnstable, MA. The subject property is addressed 30 Perseverance Way, Barnstable, MA, and is shown on Assessor's Map 295 as parcel 007 units 00Fand 00G. It is in the IND Industrial Zoning District.*
- 2. The application falls within a category specifically accepted in the ordinance for the grant of special permit.*
- 3. A site plan for the proposal has been reviewed by the Site Plan Review Committee and found approvable on July 28, 2008, subject only to the issuance of a Special Permit.*
- 4. After evaluation of the evidence presented, and abutter testimony favoring the grant of the proposal, to grant this special permit fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected*

Seconded.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

NAY: None

Motion is made to grant to the petitioner a special permit pursuant to 240-33(c)1 addressed as 30 Perseverance Way, Barnstable, MA

This permit is issued to Holly S. Toner, d.b.a. Whiskers Pet Grooming to allow for the improvements and use of Units Nos. 6 and 7 and approximately 3,000 sq.ft., of the lot area at 30 Perseverance Way, Barnstable, MA for a dog grooming and dog daycare facility, subject to the following conditions and restrictions.

- 1. Improvements specified on the site plan entitled "Plot Plan of Land Located at 30 Perseverance Way, Hyannis, MA prepared for Jim Burke Properties, LLC" by Yankee Land Survey Co., Inc., dated July 17, 2008, and "as approved by the Site Plan Review Committee, shall be made prior to any occupancy permit issued for the use of the units.**
- 2. A letter from the Liberty Building Condominium Association agreeing to the proposed use of the units for dog daycare and grooming of domesticated animals shall be submitted to the file within 14 days of the issuance of this permit and prior to any building permit being issued in reliance upon this permit.**
- 3. Retail sales from the units shall be limited to not exceed 25% of the entire floor area of the units. Retail sales shall not include any live animals that are housed on the property.**
- 4. The hours of operation shall be not earlier than 6:00 AM and no later than 8:00 PM. No animals shall be kept overnight at this site. The applicant shall also be responsible for establishing and maintaining some agreement with an overnight kennel for in the event that an animal may not be picked up due to unforeseen circumstances of the owner.**
- 5. The applicant shall be responsible for maintaining the premises in a clean, orderly, peaceful and odorless manner at all times.**
- 6. The applicant shall be responsible for securing all necessary licenses and/or permits to operate within the Town of Barnstable.**

Note that Condition #4 is amended to 6:00 AM and no later than 8:00 PM.

Seconded.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Laura Shufelt then calls the Merlesena Corporation and reads it into the record.

Members Assigned: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

Attorney Peter Freeman is representing the applicant, Mr. Merlesena and hands out pictures of the site to the Board Members. He indicates that he agrees with the staff report that Art Traczyk has written. He gives a history of the parcel. He indicates that his client would like a rental apartment instead of the restaurant and the reason there is two, he thinks it might be possible to modify the existing variance but that Art Traczyk felt that they request variances to 240-21(a) 9 for the additional footage requirements of the apartment. He summarizes how the conditions will be met in reference to the variance request. He indicates that the only condition that he would like to comment on and ask them not to do is the circular driveway that was part of the drive-through and Art Traczyk suggested that a condition be placed that the driveway at one of the entrances would either be blocked off or eliminated and doesn't think it is a good idea. Also, in the future, if to be converted they might want the drive around and if the Board feels that there should be no drive around they ask that they not have to break up the asphalt but add a split rail fence to block off one of the entrance ways.

James McGillen asks about the variance findings and wants to take a brief recess in order to verify or modify conditions. Attorney Freeman hands in his memo to the file.

Laura Shufelt calls a 5 minute recess to discuss.

Hearing back in session.

Art Traczyk indicates that it was his understanding for granting this and perhaps that they could come back, surrender the variance and do an as-of-right under the B district which is a liberal district. He comments that is one of the most business oriented district and it is a very small lot. Art indicates that they don't need both but can issue one or the other.

William Newton comments he has a problem with the small lot and with it being a residence in a commercial area.

Attorney Freeman indicates that the area is zoned residential and they are not seeking a use that is prohibited and that the structure was a single family residence. He indicates that they don't have a problem with an occupancy limit. It is a mixed use area. He indicates that it has plenty of parking spaces and that the intensity is less than what was there.

James McGillen indicates that the impact will be less and wants to make sure that the conditions of the variance do not have an impact.

Laura Shufelt asks if there is anyone her from the public here who would like to speak either in favor or in opposition.

No one speaks.

Michael Hersey asks Attorney Freeman to clarify the parking arrangements. Attorney Freeman indicates that the original plan with Pinky's had 2 designated spaces and that Mr. Merlesena indicates that there are 3.

William Newton asks if there is a separate outside entrance to the second unit. Attorney Freeman indicates yes.

Attorney Freeman reiterates that they would again not like to close off the entrance of the circular drive.

Michael Hersey indicates that, in his opinion, he would like to put a limit on the number of cars. Attorney

Freeman asks Mr. Merlesena if he would object to limiting it to 3 cars. Mr. Merlesena indicates that the upstairs

tenant is parking to the left of the building where the drive-through starts; the downstairs unit which might have a couple of people in front of the tree is 3 and one for the drive-around.

Craig Larson clarifies that Mr. Merlesena owns the warehouse next door and that there is plenty of parking there.

Brian Florence comments that a restriction on that puts the tenants in a possible situation if they had guests over that they would be in defiance of the condition if they limited it but that they could indicate permanent or resident parking that they could limit them similar to that language. Brian also comments that he believes that the intensity would be less and for practical purposes that restricting the circular driveway might be a detriment.

Craig Larson comments that they are at the 50 % lot coverage and asks if they eliminated the driveway would they have more unused lot?

James McGillen does the findings:

- 1. Appeal No. 2008-059 is that of Merlesena Realty Corporation seeking to modify Variance No. 2005-008 issued to Michael and Jayne Croteau for property addressed 146 Rosary Lane, Hyannis, MA. The applicant is seeking a modification of that variance to permit the lower level of the building, which had been used as a take-out fast food service, to be converted to an apartment use thereby creating only two apartments in the building consisting of a studio and a one-bedroom unit. The subject property is shown on Assessor's Map 345 as parcel 017. It is in a Business B Zoning District.*
- 2. The applicant is proposing the reuse of the existing building and has not proposed any expansion. All alteration to the building will be interior only. The use of the property will rely upon that existing structure and its location on the lot as a legal pre-existing nonconformity. The proposed conversion of the property of the building to two, one bedroom apartments with conditions on the number or occupants is viewed as a less intense use of the property than that of a drive-thru food service establishment. The requirement of the additional 5000 square foot per unit is varied because of these findings.*

Vote:

AYE: *Craig Larson, Michael Hersey, James McGillen, Laura Shufelt*

NAY: *William Newton*

Motion to grant: *If the Board should find to grant the variance to the provisions of Section 240-21.A(9) Multi-family Dwellings (Apartments) more specifically to: provisions; (a) - minimum lot area ratio of 5,000 sq. ft. of lot area per each apartment unit, (d) - minimum front yard setback, (e) - minimum rear yard setbacks; and (f) - perimeter green space, it may wish to consider the following conditions:*

- 1. This variance is granted to permit the use of the existing structure located at 146 Rosary Lane, Hyannis, MA for two, one-bedroom apartment units only. The upper apartment shall be laid out as a studio unit and the first floor unit as a one-bedroom as per layout plans submitted to the Board. A copy of which is contained in the file.*
- 2. There shall be no expansion of the structure in footprint or in total area. The building shall remain as it is today.*
- 3. Occupancy of the studio units shall not exceed one person. Occupancy of the one-bedroom shall not exceed two people*

4. ***Development of the apartment units shall be required to meet all Building Division and Fire Department requirements and conform to all Board of Health Title V requirements.***

Seconded.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, Laura Shufelt

NAY: William Newton

GRANTED WITH CONDITIONS

Attorney Freeman requests to withdraw without prejudice the application for a variance standing on its own.

James McGillen makes the motion.

Seconded.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

NAY: None

WITHDRAWN WITHOUT PREJUDICE

Laura Shufelt then reads the Mueller appeal into the record.

Amy L. and Carl E. Mueller & Paramount Enterprises Inc., have appealed the Building Division's issuance of an April 14, 2008 notice of zoning violation and order to cease and desist the operating of a landscape business in a residential zone. The notice cites that the use of the property is contrary to the permitted single-family use allowed under Section 240-11 of the Zoning Ordinance. The property is addressed as 22 Suomi Road Hyannis, MA and is shown on Assessor's Map 269 as parcel 102. The property is in a Residence B Zoning District.

Colleen Kramer is representing the applicant. She indicates that they had done further research but have decided to request to withdraw without prejudice and work with the Building Commissioner to find a solution to this as there was a defect in the original notice from the Building Division.

Members assigned: William Newton, James McGillen, Laura Shufelt, Alex Rodolakis, Michael Hersey.

Motion is made to withdraw without prejudice.

Seconded.

Vote:

AYE: William Newton, James McGillen, Laura Shufelt, Alex Rodolakis, Michael Hersey

NAY: None

WITHDRAWN WITHOUT PREJUDICE

Laura Shufelt then calls the Ellis appeal and reads it into the record.

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.

Laura Shufelt reads a letter from Attorney Patrick Butler requesting a continuance.

Motion is made to continue this appeal to October 15, 2008 at 8:00 PM.

Seconded.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

AYE: None

Continued to October 15, 2008 at 8:00 PM

Laura Shufelt calls a 5 minute break.

Hearing is called back in session.

Laura Shufelt then calls the H. Jon Gordon appeal and reads it into the record.

H. Jon Gordon, as Trustee of the 52 Stevens Street Trust has applied for a Use Variance to Section 240-11.A, Principal Permitted Uses. The applicant is seeking to develop a second residence on a lot zoned only for single family use. The second unit is to be developed within the second floor of an existing detached garage. The subject property is addressed 52 Stevens Street, Hyannis, MA, and is shown on Assessor's Map 309 as parcel 165. It is in a Residence B Zoning Districts.

Attorney Freeman is representing the applicant. Brian Florence recuses himself.

Members Assigned: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

Attorney Freeman hands out photos to the Board members regarding the property. He indicates that technically and legally it is a use variance and understands the concern. He gives a history and indicates that the upstairs of this garage is a 2 bedroom apartment. They spoke informally with the housing committee and would do it restricted as an affordable unit. They met with planning staff informally and the consensus of the Town is that they need rental apartments. The most distinguishing factor but this site which was combined with the abutting site which Mr. Gordon owns was a recipient of a comprehensive permit which has lapsed. He indicates that they could go back for another comprehensive permit and withdraw without prejudice if they couldn't get a use variance.

William Newton indicates that he has a real issue with use variances and indicates that the affordable housing program would be the better way to go.

Michael Hersey indicates that he would disagree that the 40B is a better way to go in the sense that where they would put the 10 units and thinks it would be a detriment to the neighborhood and asks Attorney Freeman if they looked at the amnesty apartment program.

Attorney Freeman indicates that requirements of the amnesty apartment program was that the owner of the premises be an occupant and it might happen but did not apply because Mr. Gordon owns the property next door and may live in that property but didn't want to do anything that was not going to happen with certainty. He indicates that before the comprehensive permit the apartment shouldn't have been there and that was the one that he would acknowledge egregious mistake that there shouldn't have been an apartment there was a permit for a garage which was why there was a stop work order and believes that the previous Zoning Board of Appeals' denial of the application for the family apartment was a punishment fast on the heels of the stop work order.

James McGillen indicates that he would be in opposition to any use variances in a residential district

Attorney Freeman indicates that he would like to withdraw without prejudice

Motion is made to withdraw without prejudice.

Seconded.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

NAY: None

WITHDRAWN WITHOUT PREJUDICE

Laura Shufelt then calls another recess.

Hearing is called back in session.

Laura Shufelt then calls the Cotuit Equitable Housing appeal and indicates that all the regular members are assigned as was previously and also present were Nik Atsalis and Alex Rodalakis. She reads the appeal into the record:

Cotuit Equitable Housing, LLC has requested a Modification of Comprehensive Permit No. 2005-082 issued for the development of 124 single-family dwellings on 50.44 acres. The subject property was formerly addressed as 9999 Falmouth Road (Route 28), Cotuit, MA and shown on Assessor's Map 002 as parcel 002. That parcel has recently been subdivided as per plan approved by the Board and the area now addressed as 0 to 59 Dovetail Lane, 0 to 351 Pheasant Hill Circle, 16 to 71 Spring Brook Lane, 6 to 86 Osprey Drive, and 0 to 33 Eagle Lane, Cotuit, MA. The applicant has requested a modification of the comprehensive permit to allow for an alternative permit phasing schedule of market rate units to affordable rate units, changes in house designs and in location of the affordable units, and an extension of the time frame for design and permit request for the signalization at Route 28 and Noisy Hole Road.

Attorney John Kenny is representing the applicant. Brian Dacey, the owner of Bayside Building Company, is also present. He indicates that he had submitted to staff a revised site plan with the requested affordable lots highlighted in yellow. He indicates that they have broken up the affordable lots from the last time and spread them out pretty evenly throughout the subdivision. .

William Newton comments that it is an improvement and is still looking at the wastewater management area and wonders if they can move at least one more unit around the 44/45/46 area.

Brian Dacey indicates that two years ago the original lots 71 and 73 were not affordable lots and currently have sold and indicates that on the plans the lots which are marked "S" are sold.

William Newton suggests moving at least one unit from the 44/45/46 to around the 70 or 72 lot area. Brian Dacey indicates that the distribution is good and that the market has been difficult and would choose not to move those lots.

The Board discusses affordable lot placement.

William Newton indicates that he would like to move 36, 50 or 49 to Osprey or Eagle Drive. Brian Dacey indicates they have designed a state of the art septic system and one of the most efficient systems possibly in the state. He indicates that they will be built with high standards of quality. He indicates that he has also put up a fence between lots 37 and 38 along with a barrier for plantings. He also wants to reserve the right, if possible, to perhaps change lot 36, 49 or 50 for market sales.

Nik Atsalis asks about lot 37 and thinks the plan looks good as it is.

Brian Florence comments that it seems to be placed very well.

Michael Hersey indicates that the wastewater placement and system doesn't concern him.

William Newton suggests moving lot #50 to 66.

Attorney Kenney indicates that financial conditions have affected some of their previous lot designations and have been fair in dispersing the lots.

Brian Dacey indicates that you do not want to distinguish between the affordables and the market rate and would entertain affordable plans. .

Laura Shufelt indicates that she thinks they did a great job but would like to move lot #50. Mr. Dacey is agreeable to moving lot 50 to 64.

Laura Shufelt clarifies the affordable styles and asks which style would be on lot 37. .

Brian Dacey indicates that it will be the Pheasant style on lot 37.

Attorney Kenney indicates that before they were concerned about the 1.5 bathrooms and that have gone to 2 bathrooms and have withdrawn the previous Colonial plan and submitted will submit a new one.

Laura Shufelt asks if there is a standard to for a change to be administratively approved. Art indicates that he had past authority to do administrative approval for simple and dimensional changes. If drastic, he would bring it back to the Board's attention.

Brian Dacey indicates that they would like to reserve the right to come back with maybe a solar panel house.

Laura Shufelt asks about the 2 bedroom Herring Run style in the market type and asks if there is a need for that.

Brian Dacey indicates that they are building for single people also.

Attorney Kenney asks about the suggested Condition #4 and asks to leave the choice of the mix of affordables to them.

Art indicates that he didn't want to see one style.

Brian Dacey indicates that he would prefer to go with 6 Pheasant style, 4 Bayside Capes and 3 Hummocks

William Newton asks if the affordable family would be able to choose. Brian Dacey indicates that he is not sure as of yet as he will attend an informational meeting with housing.

James McGillen makes findings:

- 1. This modification This is a modification to change the design of the affordable and non-affordable units and the location of those units**
- 2. The requests are not inconsiderable intent or designed of the initial comprehensive permit and does not result in any drastic change or substantial change to the number of units or the location of these units.**

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

NAY: None

James McGillen makes a motion is made to grant that part of Pat 2 of the request for Comprehensive Permit 2005-082 as it relates to a change in the design of affordable units (he wants to add "all units" as he feels there are changes to all units). and the location of those units within Phase 1. The first 52 units in the development subject to the following conditions:

- 1. The 13 affordable dwellings required in Phase 1 of the development shall be located on that lots identified on the subdivision plan as Lot Numbers 24, 27, 31, 36, 37, 43, 49, 52, 54, 57, 61, 68 within the subdivision shall be developed with affordable dwellings. The initial plan filed also showed lot 50 as an affordable unit and the petitioner agrees to substitute lot 64. .**
- 2. The affordable units to be developed shall be of three building styles as per plans submitted to the Board's office on September 25, 2008. Those affordable units are identified as;**
 - a. "The Pheasant", a 1.5 story Cape style three- bedroom, two-bath dwelling of 1,398 sq.ft. plus a one-car attached garage.**
 - b. "The Bayside", a 2 story Cape style three bedroom, two bath dwelling of 1,540 sq.ft. plus a one-car attached garage.**
 - c. "The Hummock" a 1 story, three-bedroom, two-bath dwelling of 1,270 sq.ft. plus a one-car attached garage.**
- 3. The three styles of affordable units shall also be made available as market rate dwellings.**

4. *To assure that a mixture of affordable type units are created in the development the building permits issued for the affordable units shall also follow a sequence of the Pheasant first followed by the Bayside and then the Hummock style. Art indicates that they wanted it alternated to a mixture of development being 6 Pheasant, 4 Bayside and 3 Hummocks but understands that those numbers are to be just a guideline. Laura Shufelt suggests saying that it should be worded to be that the affordable units will be a mixture of the 3 styles. James McGillen accepts and indicates that it will be the mixture of the 3 styles.*
5. *All other conditions of Comprehensive Permit No. 2005-082, originally issued on May 2, 2006, and/or modified prior to the modification, shall remain in full effect and force except as modified herein.*

Vote:

Aye: *William H. Newton, Michael P. Hersey, Craig G. Larson, James F. McGillen, Laura F. Shufelt*

Nay: *None*

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Modification Granted With Conditions

Laura Shufelt discusses matters with the Board. She indicates that there was an agenda from the Cape Cod Commission coming up regarding a notification of withdrawal of 131 Oceanview Avenue, Cotuit, MA.

Also, Laura indicates that staff sent a letter to Mr. Scott Chad returning materials that were submitted to the ZBA office and has the letter available for any members who wish to read it.

Brian Florence indicates that he has information from the Citizen's Planner brochure and will email to everyone.

Laura Shufelt asks the members to look over the tentative schedule for next year and send any comments to staff.

Motion to adjourn

Seconded.

Adjourned at 9:20 PM.