



Town of Barnstable
Zoning Board of Appeals
Minutes
January 28, 2009

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday, January 28, 2009 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	Absent
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 7:02 PM. She reads a summary of the appeals into the record

She then calls the Estate of Charles F. Crocker Jr. appeal and reads it into the record.

Appeal 2008–036 - Continued

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

Noticed for May 21, 2008, moved to and opened on June 11, 2008, continued to August 6, 2008, moved to September 10, 2008, continued October 15, 2008, December 10, 2008 and to January 28, 2009. 180 day Extension filed, Decision Due February 13, 2009.

Members Previously Assigned: James McGillen, William Newton, Michael Hersey, Craig Larson, Laura Shufelt
Associates Present: Nikolas Atsalis, Alex Rodolakis, Brian Florence, George Zevitas

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

Members assigned: William Newton, Craig Larson, Brian Florence, Nik Atsalis, Laura Shufelt

Attorney Sarah Turano-Flores from Nutter McClennen & Fish is here representing Ms. Dreier. She indicates that she has received the letter from the Town Attorney regarding zoning determination and agrees with her conclusion on page 5 of her opinion as to what the Board should be determining. She indicates that there were 2 points of concern of the memo. First, is while they agree with her assertion on the first page, first footnote indicating that neither the Building Commissioner nor the ZBA are required to apply the planning Board's definition of the term "frontage". She believes that as the Town Attorney has noted in her own Opinion Memo and as they have in their narrative to the ZBA, that it is a basic canon of statutory interpretation to construe a legislative enactment as a whole and where possible legislative enactments within the same town should be read to create continuous harmonious whole consistency with a legislative purpose and in this instance she thinks that the because the zoning bylaw is silent it would not be unreasonable to look to the subdivision regulations in this case and apply that definition and in fact they would suggests further that if the ZBA were to apply a definition that differed or was inconsistent with subdivision regulations that in fact would provide another source of problems with the Town as the public has certain expectations to the legislation intent based on these subdivision regulations would state. Secondly, with respect to Attorney Weil's conclusion that the totality of the circumstances should be reviewed by this board in making its determination, they would disagree with some of the factors that she enumerated as factors they should consider. Specifically that it would be appropriate for this Board to consider that the lot has required linear frontage on the Way and that the lot was created by an unappealed ANR plan. Also, that the issue of adequate access was raised during the Planning Board's proceedings. She indicates that it is not appropriate consideration for the Board and, in fact, there is case law which states that a landowner with frontage on a private subdivision way that was enacted pursuant to a definitive subdivision approval that is not located within the subdivision has no rights to make use of that public way for purposes of establishing frontage. She had drafted a memo on that issue and appended the relevant case law and has given it to Attorney Weil and Attorney Schulz and would like to submit it for the record. She then talks about the subdivision control law and then refers to page 2 of her memo.

She indicates that the Way was created by the Crocker's on Pilot's Way and therefore the totality of the circumstances that this board should be reviewing when making its determination should not consider in any way the fact that this lot merely abuts a Way that has been shown on an approved subdivision plan of land. She asks that the Board to overturn the Building Commissioner's issuance of the building permit.

Laura Shufelt asks if there is anyone here who would like to speak

Building Commissioner, Tom Perry indicates they looked at the part of the ANR which the applicant would've had to prove to the Planning Board that they had rights of access over the Way. He indicates that they would've assumed that since the ANR was approved, that they proved to the satisfaction of the Planning Board that they had rights to Pilot's Way. He

indicates that it is a two acre lot, has frontage, met all the bulk requirements necessary for a lot and thinks that the question should've come up at the time whether or not they had access. He indicates that this case is before the Land Court and many of the questions that have been brought up by everyone should be answered by the Land Court.

William Newton asks if abutters are notified in the ANR process.

Art Traczyk indicates on an ANR, abutters are not notified but the actions are appealable.

Brian Florence asks Art if it advertised in the paper. Art indicates no, they are not required under Massachusetts General Law.

Attorney Albert Schulz is here representing Ms. Gruner and indicates that the Crockers took part in all of the proceedings in the ANR, participated in the hearing and could've appealed the ANR endorsement.

William Newton asks for clarification on how the Crocker's were involved in the hearing.

Attorney Albert Schulz, who is representing Ms. Gruner, explains how the Crockers were involved in the process and indicates that they could've appealed the ANR endorsement. He reminds the Board that this is before the Land Court and the issues are the same in the Land Court as here as to whether his client has access over Pilot's Way. He indicates that the Crockers could've sought a preliminary injunction from the Land Court and he suggests that they chose not to do that because they would've had to prove that they had a substantial likelihood of recovery on the merits in that case in order to get a preliminary injunction and chose not to do that. He believes that, for tactical reasons, they could not prove the likelihood of recovery. He indicates that the Land Court is going to decide this issue and urges the board to uphold Mr. Perry's decision.

Attorney Turano-Flores indicates that members of the Crocker family were in attendance and did voice their objection and she does not believe that the Town Attorney ever issued an opinion on the issue on the legal rights for frontage. The Planning Board went forward without an opinion from the Town Attorney and did decide to go forward and approve the ANR. She indicates that the reason why they did not object to that approved ANR is because the lot is shown on an ANR plan which does not mean it is buildable for purposes of zoning and neither does it mean it has adequate frontage for purposes of zoning and it needs another layer or inditia of ownership in order to confirm that you do in fact have frontage. If it is not legal frontage by virtue of being on a subdivision plan that is part of the original definitive subdivision plan approval that created the way you cannot, as an abutting property owner, claim frontage on it by virtue of you abutting that way and is in the case law that she outlined tonight.

She also indicates that even if by virtue of being an abutter to it shown on an ANR plan, they have the linear frontage required, unless they have rights in and to that way for zoning processes they don't have frontage and that is what her claim is here tonight. She indicates that the individual that they received the deed from had no rights to convey. Why they didn't sought a preliminary injunction until November was because they were involved with good faith negotiations and were hoping it was unnecessary. Also, the Gruners were aware of the risking

status of their right, title and interest to Pilot's Way and the building permit was issued with an at risk basis and are on notice with 3 letters from them.

William Newton clarifies the ANR process with Attorney Turano-Flores

Building Commissioner, Tom Perry indicates that they had the ANR all the deeds and from what he saw they could convey rights to Pilots's Way and thinks it is an issue the Land Court has to determine.

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

Attorney Schulz refers to a memo from Jackie Etsten regarding a discussion with David Houghton and reads it.

Art Traczyk asks Attorney Turano-Flores what easement they are concerned with. Attorney Turano-Flores indicates it is the second easement 2006 from Ellis/Shield to Toennies.

Craig Larson makes findings.

In Appeal 2008-036 regarding the estate of Charles F. Crocker, Jr. 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

This appeal was filed on April 11, 2008, by Attorney Patrick M. Butler on behalf of the appellant Priscilla Dreier as Executrix of the Estate of Charles F. Crocker, Jr. The appeal seeks the Board's review of the issuance of Building Permit No. 20080470, issued to Richard Prhlik on March 13, 2008 for construction of a single-family dwelling on property addressed as 68 Pilots Way, Barnstable. The appeal was filed citing that the property does not have legal access via Pilots Way; therefore, has no frontage on a designated way.

The appeal was filed pursuant to MGL Chapter 40A, Section 8 and is processed per Section 15. It was filed at the Town Clerks Office, the Zoning Board of Appeals Office, and with the Building Commissioners Office.

It is the finding of this Board that the Building Commissioner did act reasonably based on the totality of the circumstances including the fact that the lot has the required linear footage on the Way

The Building Commissioner has determined that there is adequate physical access.

The lot was created by an unappealed ANR plan and that the issue of adequate access was raised during the Planning Board's proceedings and that there was a recorded easement which on its face provided colorable rights and access to Pilot's Way.

Vote:

AYE: Nik Atsalis, Brian Florence, Craig Larson, William Newton, Laura Shufelt

NAY: None

Motion is made under Appeal 2008-036 that they uphold the Building Commissioner's decision to issue a building permit.

Seconded

Vote:

AYE: Nik Atsalis, Brian Florence, Craig Larson, William Newton, Laura Shufelt

NAY: None

BUILDING COMMISSIONER'S DECISION UPHELD

Laura Shufelt then calls the Mill Way Realty Trust appeal and reads it into the record.

Appeal 2009-001 - New

Mill Way Realty Trust, Henry E. Blair, Trustee

Mill Way Realty Trust, Henry E. Blair, Trustee has petitioned for a Special Permit pursuant to Section 240-23. C (1) Conditional Uses in the MB-B Business District. The petitioner is seeking the permit for the use of an existing fish market to include a restaurant with outside seating. The subject property is addressed 275 Millway Road, Barnstable, MA and is shown on Assessor's Map 301 as parcel 063 001. It is in a Marine Business B Zoning District.

Members assigned: Nik Atsalis, Alex Rodolakis, Craig Larson, William Newton, Laura Shufelt

Attorney Schilling is representing the applicant. Also with him is Dan Ojala from Down Cape Engineering who prepared the site plan Attorney Schilling gives a summary of relief being sought. He indicates that he has prepared a memorandum. Based on his memo he thinks the board can find after further discussion this is within the spirit and intent of the zoning bylaw. Also with him is Sandy Blair who manages the property and is the brother of the petitioner.

William Newton asks if they board should be worried if the trust which owns this is transferred to someone else. Attorney Schilling thinks that because this is a special permit it will be running with the land.

Attorney Schilling indicates that they are willing to live with the 13 conditions as outlined in the staff report. As suggested in the staff report regarding the liquor license which would require them to come back to the Zoning Board, he indicates that they didn't apply for a liquor license here or at site plan review and that there is none pending and are not objecting to that. However, in condition #1, he is asking to change the 6 years to 3 years and thinks the 3 years is too short.

Alex Rodolakis asks what the current hours of operation are for the take-out. Attorney Schilling indicates that it is the same hours as the restaurant and that the hours of the restaurant are from 8 AM to 10 PM. He indicates that the take-out usually starts approximately around 11 AM.

Craig Larson asks if there will be table service.

Attorney Schilling indicates that there will be no table service.

Craig Larson comments that what he thinks that Art Traczyk was trying to get at is that the restaurant is allowable as an accessory use of a retail operation and the applicant is the owner of the property and not necessarily the retail sales person and was trying to connect them and asks how he connects them together.

Attorney Schilling indicates if he changed it tomorrow and put somebody else in there how does that affect the special permit as it is still a fish market.

Craig Larson indicates that he sees it somewhat like a B&B that they would need to renew it.

They discuss.

Attorney Schilling thinks as long they are selling fish and following the special permit and thinks the permit should flow with the land.

Brian Florence comments that as a Building Commissioner, when they issue a violation it goes to the property owner.

Laura Shufelt asks about parking. She wants assurances that the parking will be reserved for the restaurant.

Attorney Schilling indicates that the whale watch has designated parking and a gated charge as to how they can control it is another issue. What they hope to do here is have signage and they will instruct the lessee and the gate person that operates the paid parking lot that this people have to be directed.

Laura Shufelt asks if there will be a parking attendant.

Attorney Schilling indicates that there is one there now.

William Newton asks if it would be open for coffee at 8:00 AM.

Paul Dean who also operates Osterville Fish indicates that in the summer they sell fresh fish around 9:00 AM and cook around 11:00 AM.

William Newton asks if they would have objections to 11:00 AM or 10:30 AM for food service.

Attorney Schilling indicates would like 10:00 AM to 10:00 PM.

Laura Shufelt asks if there is anyone here

Attorney Mike Stussee is representing Robert & Paul Venditti, operators of Mattakeese Wharf Restaurant who are direct abutters. They are not opposed but have concerns. They would like to ask that the staff recommendations that no beer or wine be served outside without a modification of a special permit in the future as they think it might be a problem with parking issues. The hours of operation seem fine and would also like to ask that the permit be reviewed more frequently than 6 years.

Nik Atsalis clarifies with Art Traczyk that Condition #6 addresses the first concern regarding the liquor license and asks if that covers Attorney Stussee's request.

Art Traczyk answers yes.

Attorney Schilling comments that on the length of years that the Building Inspector has the right to be the enforcing agent and thought that the purpose of the 6 years was to make sure that the special permit would be a functional use. He would still want to go with the 6 years which staff had agreed to.

Craig Larson doesn't think that the board is not in the enforcement business and is not concerned about length of years or liquor licensing and doesn't think it is this board's job to do that. They discuss.

Laura Shufelt indicates that she is still concerned with parking in a busy area like this.

William Newton makes positive findings.

The Petitioner in Appeal No. 2009-001 is Mill Way Realty Trust, Henry E. Blair, Trustee. The petition seeks a Conditional Use Special Permit pursuant to Section 240-23.C(1) to allow for a restaurant, service of food at a fish market establishment in the Marina B Business District

- 1. The locus is a 0.31-acre lot improved with a one-story, 945 sq.ft., commercial building. The building is used as a fish market for the retail sales of fish that has included the retail sale of cooked food for consumption off-site or on-site outdoors. It has been traditionally known as the "Millway Fish Market" and today it is leased to "Osterville Fish" and operates under the name of "Osterville Fish Too". The building dates to 1980 and was rehabbed in 2000. It is served by public water and Town sewer.**
- 2. The property is fully within the Marine Business B District and the use of the premises for the retail sales of fish and shellfish is a principal permitted use allowed as-of-right. A restaurant use is also allowed only as a conditional use and that is the subject of this special permit.**
- 3. The lot was created and conforms to the area and frontage requirements of the district**
- 4. Total seating will be 66 seats with a deck accommodating 28 seats and a patio with 38 seats. The 66 seats have been approved by the Board of Health.**

5. ***A total of 32 parking spaces are provided on the subject lot and on the abutting lot also owned by the applicant and is part of the Trust***
6. ***Although the building is not in conformance to the required front yard setbacks and not in compliance with building permit issued, it has been more than 6 years since the building permit was issued and no action was taken to enforce the correction of the violation. In addition, other building permits have been issued thereafter and none refused based upon that noncompliance.***

Art Traczyk indicates that he had misinterpreted the district and had assumed it was a 20 foot front yard setback which was actually the frontage for the lot and the setback is 10 feet here. Technically, the building and deck conforms to the front yard setback. They agree to strike the reference to the nonconformity.

Craig Larson suggests adding that according to all evidence presented the proposal fulfills the spirit and intent of the zoning ordinance and would not represent a substantial detriment to the public good or the neighborhood affected as per testimony given here tonight.

William Newton accepts the amendment.

Vote:

AYE: Nik Atsalis, Alex Rodolakis, Craig Larson, William Newton, Laura Shufelt

NAY: None

William Newton makes the motion to grant the special permit with the following conditions as noted on pages 4 & 5 of the staff report. Corrections under #1 are that the permit will be renewable every 6 years and the operation under #3 shall be from 10:00 AM TO 10:00 PM. Condition #6 shall stay as it is. Also Condition #12 shall be:

12. ***No boats or other items shall be stored on that parking lot area shown on the plan submitted that identifies the 32 parking spaces for the restaurant between May 1st and September 30th of each year.***
13. ***The 32 spaces shown on that plan shall all be marked and reserved for the exclusive use of the restaurant customers only and made available to those customers without a parking fee during those times that the restaurant is open.***

Seconded.

Craig Larson asks about the time period. He amends it to change Condition #1 to say that "this conditional use special permit is issued to Mill Way Realty Trust, Henry E. Blair as Trustee as owner of the property addressed as 275 Millway Road, Barnstable, MA. This permit is non-transferable.

Nik Atsalis asks about Condition #6. Craig Larson indicates that if they want to summarize #6, " the service of alcoholic beverages is specifically not authorized by this permit and the service of alcoholic beverages shall require this permit to be reviewed at a public hearing by the Zoning Board of Appeals

Vote:

AYE: Nik Atsalis, Alex Rodolakis, Craig Larson, William Newton, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Appeal 2009-004 - New

Kohler

A January 13, 2009 letter from the Appellant's representative, Attorney Francis J. Hurley has been entered into the file requesting a continuance of this appeal to April 1st. or April 15th. (copies enclosed). This Appeal is awaiting an applicant from EAC Disposal d/b/a Cape Resources Company for a modification of Variance No. 1996-014 issued to the subject property.

Staff recommends continuance to April 1, 2009 @ 7:00 PM. 90 day extension filed – Decision Due April 30, 2009.

Peter and Rose Kohler have appealed the decision of the Building Commissioner issued September 22, 2008 regarding EAC Disposal d/b/a Cape Resources Company. The appellants are appealing the Building Commissioner's determination that no enforcement action is needed with respects to the activities being carried on by Cape Resources Company at 280 Old Falmouth Road, Marstons Mills, MA. The property at issue is shown on Assessor's Map 100 as parcel 008. The appeal is being made pursuant to MGL Chapter 40A, Section 15 and is seeking the enforcement of the terms and conditions of the Zoning Board of Appeals Decision issued in Appeal No. 1996-014. The subject property is in a Residence F Zoning District and a GP Groundwater Protection Overlay District.

***Motion to Continue to April 1st at 7:00 PM.
Seconded.***

Vote:

AYE: George Zevitas, Alex Rodolakis, Brian Florence, Craig Larson, William Newton, Laura Shufelt

NAY: None

CONTINUED TO APRIL 1, 2009 at 7:00 PM

Nik Atsalis leaves at 8:10 PM

Laura Shufelt then calls the Pendergast/Cape Cod Package Store appeal and reads it into the record.

Appeal No. 2009-007 - New

Pendergast/Cape Cod Package Store

Pendergast Falmouth RD Realty Trust has petitioned for a Special Permit pursuant to Section 240-93.B, Alteration or Expansion of a Pre-existing Nonconforming Building or Structure not used as a Single- or Two-family Dwellings and Section 240-94.B, Expansion of a Pre-existing Nonconforming Use. The petitioner is seeking to expand and alter an existing nonconforming building housing a nonconforming use of a liquor store, the Cape Cod Package Store. The proposal is to expand the existing building with 696 square feet of retail and 428 square feet of office space. The location of the proposed expanded building area does not conform to the required setbacks for the district. The subject property is addressed 1495

Falmouth Road (Route 28), Centerville, MA and is shown on Assessor's Map 209 as parcel 081. It is in the HO, Highway Office Zoning District.

Appeal No. 2009-008 - New

Pendergast/Cape Cod Package Store

Pendergast Falmouth RD Realty Trust has applied for a Variance to Section 240-94.B provision 1. That provision requires that "[a]ny proposed expansion of the [nonconforming] use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties." The locations of the proposed additions are within the district's required 45-foot front yard setback off Falmouth Road (Route 28) and Old Post Road. The subject property is addressed 1495 Falmouth Road (Route 28), Centerville, MA and is shown on Assessor's Map 209 as parcel 081. It is in the HO, Highway Office Zoning District.

Members assigned: George Zevitas, Brian Florence, Craig Larson, William Newton, Laura Shufelt

Attorney Michael Ford is representing the applicants. Also here are Rick Fennucio of Brown, Lindquist, Fennucio and Raber Architects, Inc., members of the Pendergast family, and Brian Yergatian from BSC Group. Attorney Ford gives a summary of relief being requested and shows the plans on an easel. He indicates that in order for his client to remain competitive they would like to expand and would like to have a large wine display and hopefully they will remain competitive. Attorney Ford indicates that on the Route 28 side there remains two curb cuts which Brian Yergatian points out and explains. Attorney Ford indicates that there is a drive that turns along the building and shoots out the second curb cut. He talks about the curb cut on the Old Post side which has been used by motorists as a cut through. He indicates that 11 of his client's 31 current parking spaces are off site. They are actually in the remains of old layouts of either Route 28, Phinney's or Old Post Road or either exist on State or Town owned property. It has been that way since the store has been there since 1930. They wanted to see perhaps the reliance on those parking areas and to see if they could landscape more of that area. He indicates that they met with Engineering, Site Plan Review on at least 4 occasions and Growth Management on at least 3 occasions. He indicates that the concerns from Growth Management, Site Plan and Engineering were the Route 28 curb cuts. They were to close the most easterly curb cut entirely and secondly they would like to see the westerly curb cut restricted at least to a right-in and right-out. Brian Yergatian shows the proposed plan on the easel. He indicates that they were at Site Plan Review with a right-in and right-out and were asked to meet with Bob Burgmann and Steve Seymour and the result is this plan displayed. He indicates that they were never asked for a traffic study by Growth Management and indicates that he thinks in part was because they only have 658 square feet more of retail space than what exists and it was thought that the new vehicle trips by that small amount of new square footage didn't warrant a full traffic study. When he received the most recent staff report there was a request for some traffic information. He asked BSC to use the ITE Trip Generation manual and to generate a short analysis which he has passed out. He indicates that in addition to the retail space he also added the office space and that the difference of vehicle trips would be 52 during an entire day and 3 during the peak hours and doesn't think the numbers for the expansion warranted a traffic study. He also asked BSC to look at the traffic generation as a whole with right in and right out and the elimination of the front driveway that they would have the effect of creating a safer and is a positive change.

William Newton asks about the curb cut on the state highway and what is the relationship of how you deal with traffic issue.

Attorney Ford indicates that they have to go to them to have the reconfiguration of the curb cuts approved. There will be an application to Mass Highway and they would come out and look at it and would be responsible for approving their proposed changes to the site. He indicates that Brian has had the discussion with State Highway and has had positive conversations with them but still have to apply formally.

Attorney Ford indicates that the Centerville Civic Association is in support. He gives a summary of the relief being sought.

Laura Shufelt asks if the Board has any questions.

Craig Larson asks about the parking off site. Attorney Ford indicates that there is nothing in writing and that it would be in the application to Mass Highway. Craig asks where the Town and State has control on the portion of the layout Attorney Ford points out the State layout.

George Zevitas asks if someone was to come from the east, will not be able to take a left hand turn into the site if the curb cut is closed, but wants to continue going west, will have to go down Old Post Road and asks if there has been any numbers regarding the increase of traffic onto Old Post Road.

Attorney Ford indicates clarifies that people will have to take a left onto Old Post Road to access the liquor store.

William Newton asks if they have figures of the impact of the traffic on Old Post if both curb cuts are closed on Route 28. He asks if they have any sense of which direction the traffic comes from.

Mr. Pendergast thinks most of the traffic is well balanced but because they find it difficult to come in on the left, they already go down Old Post at the lights.

Art Traczyk comments that he was checking some earlier reports that he has on site specific traffic in this area, Route 28 relating to liquor stores, site specific of 4400 square foot liquor stores is about the size of what they are proposing and the peak hour was 125 vehicles entering and exiting.

Attorney Ford indicates that they are not proposing a 4500 square foot new liquor store.

Art Traczyk indicates that Attorney Ford has a volume of 10 to 13 vehicles at peak hour and is not sure of the figures.

Attorney Ford indicates that his figures were taken from ITE manual and understands that Art's figures are from a traffic report. Art indicates that his figures are site specific and that there aren't any figures for liquor stores in the ITE manual.

Laura Shufelt asks Attorney Ford about a rain garden being proposed and if they will maintain it and if Mass Highway needs to approve it.

Attorney Ford indicates that he expects that the Board's approval will be based on Mass Highway.

Alex Rodolakis comments that he is concerned about the overburdening of Old Post Road and is wondering if there is some way to minimize that.

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

William Skinner who is a direct abutter is here also as president of the Mattakeese Village Association and is representing the association. He indicates that entrance and exit into Sachem Drive overlooks the property itself. People trying to exiting their road have had trouble doing so and finds this a concern. He indicates that he has met 3 times in the past 6 years with Town Engineering and Town Highway have met with him on site and on each occasion agreed that the State's requirement for line of site in both directions is violated and does not meet minimum State requirement for safe line of vision at a stop sign. However, the town also acknowledged that they have a signification hazard and don't have the funds to fix it. Traffic coming from Hyannis to Falmouth who wants to utilize the package store will have to take a left to Phinney's Lane and will have to go by their street causing a much more increase in hazard to an already difficult dangerous area. He indicates that he also has a petition signed by 16 members which he submits to the file.

He urges the Board not go grant this unless it has mitigation regarding the traffic

Attorney Ford asks Mr. Skinner what they would like for the applicant to do. Mr. Skinner indicates that the Town and the State would've done it differently and that they made an error and what he is asking is not to grant this without some assurance that there be a correction of this problem. Also, children get on and off the buses which is also a concern.

Brian. Florence asks Mr. Skinner if he has any documentation about the engineering.

Mr. Skinner indicates that he will forward documentation to staff.

Laura Shufelt indicates that there are letters from John and Sharon Sorcenelli of 99 Captain Samadrus in support, email from William Skinner, a letter from Pol G. Hill of 63 Sachem Drive who is not opposed but would like mitigation regarding the traffic, Gene Mulligan on behalf of the Centerville Beautification Association and wants more trees and shrubbery, David Pollack of 23 Dunaskin Road, Centerville in support, Michael Collopy of 119 Cranberry Lane, Centerville in support, Reverand Robert Anthony in support, Bradford Lowe at 1480 Route 28, Centerville in support and Centerville Civic Association in support.

Laura Shufelt indicates that on the staff report there was a suggestion of a peer review.

Attorney Ford indicates that this issue never came up with Growth Management before and is surprised and doesn't think it necessary.

William Newton is concerned about traffic, curb cuts and the request for a variance. He comments that he would want to see more information.

Brian Florence calls point of order since Attorney Ford has not presented the variance conditions.

Attorney Ford gives summary of variance relief being requested. He indicates that in abundance of caution in case the board could not find to grant a special permit. He indicates that it is the shape of the result of the conversion of the three roadways and that applying the bylaw literally would make the building 10 feet wide which would be a hardship. He thinks they can meet the 3 prong test of a variance.

The Board discusses special permit and the variance.

Laura Shufelt asks Art what the difference is for the special permit and variance.

Art explains.

William Newton indicates that he would feel more comfortable with a peer review/mitigation regarding the traffic problems in this area.

George Zevitas asks Art what a peer review would entail.

Attorney Ford indicates that because this is a small expansion and that the applicant has been here for over 40 years, they do not need a peer review. The board comments that maybe they could get together with the concerned neighbors and figure something out.

Laura Shufelt calls a recess at 9:34 for ten minutes for the applicants and neighbors to discuss.

Back in session at 9:46 PM. Attorney Ford doesn't think he can frame the condition. He would like to come back at the next meeting.

William Newton would like to see some case law supporting varying a requirement for a special permit and is concerned "you shall" and varying that.

Attorney Ford indicates that he would do the case law and copy the Town Attorney.

Motion to continue to February 11, 2009 at 8:15 PM

Seconded

Vote:

AYE: George Zevitas, Brian Florence, Craig Larson, William Newton, Laura Shufelt

NAY: None

CONTINUED TO FEBRUARY 11, 2009 AT 8:15 PM

Laura Shufelt informs the Board that there will be an Open Meeting Law Training session on February 12, 2009 for any Board members who would like to attend..

Motion to adjourn

Seconded

All in favor

Meeting adjourned at 9:58 PM