



Town of Barnstable
Zoning Board of Appeals
Minutes
February 22, 2012

Laura Shufelt - Chair	Present
William Newton – Clerk	Present
Craig Larson	Present
Alex Rodolakis	Absent
Brian Florence	Present
George Zevitas	Present

Also present were Elizabeth Jenkins – Principal Planner and Carol Puckett – Administrative Assistant.

Laura Shufelt opens the hearing at 7:01 PM

Introduction of Board Members

The members introduce themselves.

Approval of minutes from November 9, 2011 and December 14, 2011

A motion is made by William Newton and seconded by Brian Florence to accept the minutes as submitted.

Vote:

All in favor

Laura Shufelt calls the Egan appeal and reads it into the record:

7:00 PM

Appeal No. 2012-006 - New

**Pamela C. Egan Realty Trust &
Cotuit Realty Trust**

Pamela C. Egan, Trustee of Pamela C. Egan Realty Trust and John R. Egan and Pamela C. Egan, Trustees of the Cotuit Realty Trust have applied for a variance to Sections 240-14(E) Residence F Zoning District Bulk Regulations and 240-36(D) Resource Protection Overlay District (RPOD). The Applicants propose to swap approximately .23 acres of land and reconfigure the lot lines so that an existing garage building at 39 Ocean View Avenue is located on the same lot as the single family dwelling at 28 Bluff Point Drive. The sizes of the lots, 1 acre and 1.72 acres respectively, remain unchanged, but will become non-conforming to the minimum lot area requirements of the RPOD. The subject properties are located at 39 Ocean View Avenue and 28 Bluff Point Drive, Cotuit, as shown on Assessor's Map 034 as Parcels 076 and 075. They are in the Residence F Zoning District and RPOD.

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

Attorney Eliza Cox from Nutter McClennan & Fish is representing the applicants.

Attorney Cox indicates that what is being requested is a variance from the Resource Protection Overlay District (RPOD) to allow for a 0.23 acre land swap between these two lots which will not have an affect on the

neighborhood or the number of buildable lots. She gives a history of the properties and states that these lots were part of a 1973 subdivision and in 1981 the lot lines were reconfigured. She gives details as to what exists inside the dwelling. That lot and structure comply with RF zoning district and not currently subject to RPOD since it existed before RPOD was in effect. She indicates that she had submitted a memo regarding the unique variance criteria and that these variance conditions limit and constrain the ability to site a garage on the property as currently configured or to relocate which is something the Building Commissioner asked them to consider. Attorney Cox indicates that because of these factors which include the irregular shape of this lot the location is constrained as to where a garage could be located. Attorney Cox explains that Exhibit C of her memo speaks to the unique topography and that the property slopes down as you head towards Cotuit Bay and towards Bluff Point Drive. Also, as to the unique soil conditions, there are wetlands to the north, it borders on Cotuit Bay, and has a coastal bank on the property. The proposal is that Parcel B be part of the Ocean View Drive parcel. The 0.23 acres shown on the top, to the north, will come from Bluff Point Drive and be part of Ocean View Drive. In exchange, the garage structure would be conveyed from the Ocean View property to the Bluff Point Drive resulting in both parcels being the same size and will conform to the RF zoning district. There will be no discernable change in the neighborhood and this will not affect the buildability of the lots. Attorney Cox indicates that she had met with the Building Commissioner to confirm that if that garage is on the single family dwelling lot that it wouldn't create any zoning violations because of the kitchenette in the upstairs. Attorney Cox indicates that the Building Commissioner confirmed that as long as that structure was used accessory to the single family dwelling he was comfortable with it being used as a guest house. Attorney Cox indicates that in the staff report, there is a suggested condition to accomplish this and indicates that she would be comfortable with that language. She would suggest that this proposal has all of the variance criteria and that she will have to go to the Planning Board for an ANR endorsement.

Jane Uyenoyama, of 19 Ocean View Avenue, an abutter, asks for clarification of what they are trying to accomplish and how it would be beneficial to the applicants. Laura Shufelt explains the proposal. Brian Florence indicates that it is not if it would be beneficial but whether or not they could issue a land swap. William Newton explains that they would need the variance from the RPOD but that the lots would still be buildable.

William Newton makes findings:

In Appeal 2012-006, Variance to Section 240 -14(E) Residence F Zoning District Bulk Regulations and Section 240-36(D) Resource Protection Overlay District (RPOD), the applicants are Pamela C. Egan, Trustee of Pamela C. Egan Realty Trust and John R. Egan and Pamela C. Egan, Trustees of the Cotuit Realty Trust. The Applicants propose to swap approximately .23 acres of land and reconfigure the lot lines so that an existing garage building at 39 Ocean View Avenue is located on the same lot as the single family dwelling at 28 Bluff Point Drive. .

- The subject properties are located at 28 Bluff Point Drive and 39 Ocean View Avenue in Cotuit.
- 28 Bluff Point Drive is a 1.72 acre lot with frontage on Cotuit Bay. The lot is developed with a 1910 dwelling of 8,024 gross square feet, along with accessory structures and uses.
- 39 Ocean View Avenue is a 1 acre lot. It is developed with a 1.5 story structure of 3,276 gross square feet. The structure consists of a three-car garage and living space on the second floor. According information submitted to the Building Division, the unit consists of a bedroom, bathroom, and includes a microwave, sink, and refrigerator.
- In 2002, an affidavit was signed and recorded by John Egan agreeing that the living space was accessory to the dwelling at 28 Bluff Point, for use by occasional guests only, and not to be rented or occupied as a family apartment.

- Applicant is proposing to adjust the boundary between the lots by conveying two equally-sized parcels. The lot line adjustment will result in two new lots that will not meet the two-acre minimum lot size requirement of the Resource Protection Overlay District, and thus variance relief is requested
- The proposed ANR plan places the garage and dwelling on one lot and the variance request would result in an one acre vacant buildable lot.
- The proposed lots meet the 150 foot minimum frontage requirement of the RF District. The existing structures would be in compliance with the 30 foot front and 15 foot side yard setback requirements. The plan submitted indicates the lots are compliant with lot shape factor requirements.
- Variance findings define that especially with respect to shape this is an irregular shaped lot. Bluff Point is rather an unique shaped lot. Soil conditions exist and topography conditions exist which means that all three have been met
- Literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, there are two other options available to them, first is to either move that garage to the Bluff Point lot or build a new garage. This would be a substantial hardship.
- Desirable relief can and should be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance

Vote:

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

NAY: None

Motion is made by William Newton to grant the relief being requested with the following conditions.

1. The variance is granted from the minimum lot area requirements of the Residence F District and Resource Protection Overlay District to permit an equal exchange of lot area as depicted on the plan entitled: "Approval Not Required Plan: 28 Bluff Point Drive, 39 Ocean View Avenue, Cotuit MA" prepared for Cotuit Realty Trust, Pamela C. Egan Realty Trust by Baxter Nye Engineering & Surveying, dated 01-04-2012.
2. An Approval Not Required (ANR) plan shall be prepared based upon the plan referenced in Condition No. 1. The plan shall incorporate a reference to this variance and notation that the lots are subject to compliance with all conditions of the variance.
3. The Approval Not Required (ANR) plan shall be submitted to the Planning Board for endorsement and thereafter recorded at the Registry of Deeds along with the recording of this variance. Copies of the recorded ANR plan and this decision shall be submitted to the Zoning Board of Appeal's file for this variance to be in effect.
4. There shall be no further division of both lots.
5. Use of the detached garage and living space shall be accessory and incidental to the principal residential dwelling at 28 Bluff Point Drive. The accessory living space shall not be rented or permanently occupied. The property owner shall record an updated affidavit, signed by the Building Commissioner, referencing the newly created lot and agreeing to the limitations on the accessory use of the living space.
6. If the variance and Approval Not Required (ANR) plan have not been recorded at the Barnstable County Registry of Deeds within one year from the date of issue of this variance, this variance shall expire, unless extended.

Seconded by Brian Florence

Vote:

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

NAY: None

GRANTED WITH CONDITIONS

Review and Adopt Updated Local Comprehensive Permit Rules

Laura Shufelt indicates there were updated rules drafted by Elizabeth Jenkins to which she has some corrections.

Craig Larson asks how this came about. Laura indicates that this board has not updated the rules since 2008. Elizabeth indicates that she has pointed out what has changed from the old rules to include new reference, and changes to 40B and here aren't substantial changes.

Laura Shufelt wants to change under 2.01(B), it should be changed at the end to be "engineer".

Craig Larson indicates that regarding 40B's you had to have a registered architect and asks if they can change that. Brian Florence suggests changing to "design professional" to cover architect and engineer. Craig Larson indicates that when someone proposes a project and had conceptual plans to be submitted to the Building Inspector, it would be a lot cheaper and easier to produce than a registered stamped set of plans. Laura Shufelt says they can be conceptual, elevations and floor plan. Laura says if it is more than 4 units you have to have plans.

Laura Shufelt has another change on 2.01(H) which should read "the project eligibility letter" instead of "documents" and that 1, 2 & 3 are not needed and that eliminates (J) completely.

Laura indicates that another correction would be on Page 5, where there should be a reference to the 180 day maximum and suggests taking language from the regulation.

A motion is made by William Newton and seconded by Brian Florence to accept as amended.

Vote:

All in favor

George Zevitas indicates that he will not be here on March 14, 2012. Elizabeth Jenkins indicates that March 14th will be a full agenda.

Laura Shufelt indicates that there is also a memo about the Open Meeting Law regarding emails.

William Newton wants to make a motion to have this board recommend have Brian Florence as a full member to replace Michael Hersey. Laura Shufelt believes that it is the jurisdiction of the Appointments Committee. Elizabeth Jenkins will check with the Appointments Committee whether they will accept a letter recommending Brian Florence to be a full member.

A motion is made by Brian Florence and seconded by George Zevitas to adjourn.

Vote:

All in favor.

Meeting adjourned at 7:37 PM.