



Town of Barnstable
Zoning Board of Appeals
Minutes
April 11, 2012

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

Introduction of Board Members

Laura Shufelt, William Newton, Craig Larson, Alex Rodolakis and Brian Florence introduce themselves. George Zevitas is not here as of yet.

Approval of minutes from February 8, 2012 and February 22, 2012.

***Laura wants to table the minutes as she has not had a chance to review them.
George Zevitas arrives.***

Laura Shufelt calls the Elwell appeal

7:00 PM

Appeal No. 2012-003 - Continued

Todd C. Elwell

Todd C. Elwell has applied for a variance to Section 240-11(A)(1) Principal Permitted Uses in the Residence B District. The Applicant is requesting a variance to allow an existing accessory cottage to be used as an affordable housing unit. The subject property is located at 45 Newton Street, Hyannis, as shown on Assessor's Map 308 as Parcel 158. It is in the Residence B Zoning District.

Opened January 25, 2012, continued to February 8, 2012, continued to April 11, 2012. Decision due: April 28, 2012

Members assigned: Laura Shufelt, William Newton, Craig Larson, Alex Rodolakis, George Zevitas

Members assigned tonight: Laura Shufelt, William Newton, Craig Larson, Alex Rodolakis, George Zevitas

Attorney Steve Pizzuti is representing the applicant.

Attorney Pizzuti indicates that the last time he was here he explained the details and that the issue before the board tonight is what they have decided to do after the continuance. Attorney Pizzuti indicates that his client has decided to put the property on the market and find someone who can rent the detached unit as an affordable unit. Therefore, the relief they were seeking previously has been amended to add one major condition which is it

be owner-occupied. Attorney Pizzuti indicates that he has read the staff report and one of the comments was that the accessory affordable apartment program was available and perhaps the owner of this property should proceed. Once this is denied or withdrawn the enforcement action to remove that unit and create unoccupied space will stop the actual permitted use.

Laura Shufelt explains that if an existing structure is detached, it could be considered for an affordable unit but that a detached structure cannot be built in order to accommodate one.

Attorney Pizzuti would ask the board to grant the variance as it would be the same with conditions.

Laura Shufelt comments that she thinks the difference between the Affordable Accessory Apartment Program is set-up with strict monitoring and regulations that would be difficult to transfer to this as a use variance and that it would be difficult to count on their affordable housing list. She indicates that she would not have a problem with Mr. Elwell living there and going through the program but is not in favor of giving them a year in order to run a boarding house. Attorney Pizzuti indicates that it wouldn't be what they would be suggesting and that right now it is not occupied and he would submit to the board that they would agree to a condition that the unit would not be occupied until such time it was owner-occupied.

Craig Larson comments that the property would be more marketable with a variance. Also, even though the new owner could go through the program, he is sure the applicant is under an enforcement order to completely remove the stove, cabinets, sink, refrigerator, etc., in the existing cottage and basically turn it back into a garage, and that this would be cost prohibited to bring it back to an affordable unit. Craig comments that he thought a variance would be a good way to try to get an affordable unit and save a property in Hyannis.

The board discusses.

William Newton clarifies that there is an enforcement action pending the results of this hearing. Attorney Pizzuti indicates that Mr. Elwell believed that the unit was legal and doing work on it when almost finished when they found a problem. The board discusses options.

Alex Rodolakis agrees with Craig Larson. George Zevitas asks for clarification on what would be implicated if they were to grant the variance. Laura Shufelt explains.

Attorney Pizzuti suggests a condition for the variance that states that the new owner would have to come before and qualify and be monitored so that it could be included. Then, they have the variance to get them through to get the new owner into the property and have it continually occupied except for that unit.

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

Pat MacLellan of 53 Maple Avenue, an abutter, asks how many people currently live on the premises as he indicates that he sees more than three people living there. He addresses the report created on January 24, 2012 by the Zoning Enforcement Officer – Robin Anderson from which he reads the part regarding the cottage and how the main house is equivalent to a rooming house for which Mr. Elwell does not have a license to do so. Mr. McClellan indicates that to-date there has been 35 police reports issued and does not think that this situation is a benefit to the neighborhood. Craig Larson asks Mr. McClellan how the situation has been at the premises lately. Mr. MacLellan believes there was an arrest about 1.5 months ago. Craig Larson asks Mr. MacLellan his preference as to what he would like the board to do. Mr. MacLellan believes that the staff report is okay and that he would prefer a single family home.

Laura asks for further comments from the board. Laura asks Elizabeth Jenkins what the latest enforcement action is regarding the property. Elizabeth Jenkins explains that she doesn't believe that there is any enforcement as of late. Brian Florence explains that no enforcement can take place while it is under appeal. Attorney Pizzuti indicates that there is a total of 4 people living on the premises and no one living in the former garage.

Craig Larson asks how long an appeal could be extended for and suggests extending this. The board discusses. Attorney Pizzuti asks for a continuance to July 25th and if there are no problems then Elizabeth Jenkins and himself can communicate and agree to a continuance. Elizabeth Jenkins asks to what end they are they continuing. Craig Larson indicates that he would like to see someone buy the property and live there. Elizabeth Jenkins asks what extent of kitchen facilities are in there. Attorney Pizzuti shows a picture. Laura asks for a copy of an enforcement order. Brian Florence reads the order and notes that it is for the cease of use.

Motion is made by Craig Larson and seconded by William Newton to continue this to September 12, 2012.

Vote:

AYE: George Zevitas, Alex Rodolakis, Craig Larson, William Newton

NAY: Laura Shufelt

Elizabeth Jenkins indicates that they need an extension signed. Attorney Pizzuti will sign one tonight.

CONTINUED TO SEPTEMBER 12, 2012 AT 7:00 PM

Laura then calls the Furrer/Pontifex appeal and reads it into the record:

7:05 PM

Appeal No. 2012-022 - New

Furrer/Pontifex

Stephen A. Furrer and Alicia Nye Crowell Furrer and James L. and Ann Pontifex Jr. have applied for a Variance to Section 240-14(E) Residence F Zoning District Bulk Regulations and 240-36(D) Resource Protection Overlay District (RPOD). The Applicants are proposing to swap an equal area of land to reconfigure the boundary line between the lots. The size of the new lots, 0.85 and 1.25 acres respectively, will remain unchanged, but will be less than 2 acres, as required by the RPOD. The properties are addressed 666 and 694 Santuit Road, Cotuit, MA as shown on Assessor's Map 006 as parcels 042 and 043. They are in a Residence F zoning district and the Resource Protection Overlay District.

Members assigned tonight: Brian Florence, Alex Rodolakis, Craig Larson, William Newton, Laura Shufelt

Greg MacDougall, the engineer, is here representing the applicants who are also with him. He indicates that they applicants are in the process of creating an ANR plan to reconfigure the lots. He indicates that due to the encroaching driveway onto Lot 56, the adjoining owners agreed to swap an equal amount of land being parcels A & B to insure that the driveway and landscaping remain on the newly formed Lot 55. He indicates that in reference to the 3-prong test for a variance that the topography slopes down to a wetland and forces the original construction to the northeast corner of the lot, Also, the hardship would be the cost to move a granite-lined driveway, granite mailbox, landscaping, sprinkler systems and a newer drive would involve cutting down a large spruce tree and there will be no detriment to the neighborhood and no changes would be noted.

The board discusses why the variance would be needed.

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

Craig Larson makes findings:

Stephen A. Furrer and Alicia Nye Crowell Furrer and James L. and Ann Pontifex Jr. have applied for a Variance to Section 240-14(E) Residence F Zoning District Bulk Regulations and 240-36(D) Resource Protection Overlay District (RPOD). The

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- owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
- desirable relief may 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, Alex Rodolakis, Craig Larson, William Newton, Laura Shufelt

NAY: None

Motion is made by Craig Larson to grant the relief being sought 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 of Land: 694 & 666 Santuit Road" prepared for Stephen A. & Alicia Nye Crowell Furrer by MacDougall Surveying & Associates, dated March 9, 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 the lots.
 5. 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, Alex Rodolakis, Craig Larson, William Newton, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Open: Chair's Discussion – **Laura Shufelt indicates that there are openings on the Zoning Board if anyone is interested in applying.**

Release of Executive Session Minutes - **None**

Upcoming Meetings:

April	25
May	9 & 23
June	27
July	11 & 25
August	8 & 22
September	12 & 26
October	10 & 24
November	14
December	12

Motion is made by Laura Shufelt and seconded by Brian Florence to adjourn.

Vote:

All in favor