



Town of Barnstable

Zoning Board of Appeals



www.town.barnstable.ma.us/ZoningBoard

Board Members:

Craig Larson – Chair Brian Florence – Vice Chair Alex Rodolakis – Clerk George Zevitas - Member
David A. Hirsch – Associate Member Herbert Bodensiek – Associate Member
James Tinsley – Town Council Liaison

Staff Support

Elizabeth Jenkins – Principal Planner - elizabeth.jenkins@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, November 12, 2014

2nd Floor Hearing Room – 367 Main Street, Hyannis, MA

Craig Larson - Chair	Present
Brian Florence – Vice Chair	Present
Alex Rodolakis – Clerk	Present
George Zevitas	Present
David Hirsch	Absent
Herbert Bodensiek	Present

Also in attendance were Elizabeth Jenkins- Principal Planner and Carol Puckett – Administrative Assistant.

Call to Order

Craig Larson opens the meeting at 7:08 PM

Introduction of Board Members

All members present introduce themselves.

Craig Larson reads the following:

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Approval of Minutes

Minutes from October 8, 2014

Motion is made by Craig Larson and seconded by Brian Florence to approve the minutes as submitted.

Vote:

All in favor

Craig calls the following appeals and reads them into the record:

7:00 PM Appeal No. 2014-043

K&E Plus Three Enterprises, LLC.

K&E Plus Three Enterprises, LLC, has petitioned for a Conditional Use Special Permit pursuant to Section 240-93.B to allow for retail sales and a drive-through pick-up window in the Highway Business District. The petitioner seeks to eliminate the carwash use and construct a 940 square feet addition to the westerly side of the existing gas station/carwash including installation of a drive-up window. The total area of the expanded building is to be used for a convenience store for the retail sales of groceries and sundries including coffee sales via a drive-through. The subject property is located at 577 West Main Street, Hyannis, MA and is shown on Assessor's Map 269 as parcel 003. It is in the Highway Business (HB) Zoning District and a Groundwater Protection (GP) Overlay District.

Continued from October 8, 2014. No members assigned.

7:01 PM Appeal No. 2014-044

K&E Plus Three Enterprises, LLC.

In the alternative to Appeal 2014-043 above, the petitioner, K&E Plus Three Enterprises, LLC, has petitioned for a Special Permit pursuant to Section 240-94.A, Change of a Nonconforming Use to another Nonconforming Use and 240-94.B, Expansion of Nonconforming Use Section. In this Appeal, the petitioner seeks to construct a 940 square feet addition to the westerly side of the existing building and to change the use of the service station and carwash to that of a convenience store for the retail sales of groceries and sundries including coffee sales via a drive-through. The subject property is located at 577 West Main Street, Hyannis, MA and is shown on Assessor's Map 269 as parcel 003. It is in the Highway Business (HB) Zoning District and a Groundwater Protection (GP) Overlay District.

Continued from October 8, 2014 due to quorum issues. No members assigned.

7:02 PM Appeal No. 2014-045

K&E Plus Three Enterprises, LLC.

K&E Plus Three Enterprises, LLC, has petitioned for a Special Permit pursuant to Section 240-93.B Alteration Expansion of a Pre-Existing Non-Conforming Building. In this Appeal, the petitioner seeks the Permit, if necessary, to provide for the 940 square feet addition to the westerly side of the existing building as that building does not conform to the required 60-foot front yard setback required on Old Craigville Road. The subject property is located at 577 West Main Street, Hyannis, MA and is shown on Assessor's Map 269 as parcel 003. It is in the Highway Business (HB) Zoning District and a Groundwater Protection (GP) Overlay District.

Continued from October 8, 2014 due to quorum issues. No members assigned.

Attorney Charles Sabatt is here representing the applicants and states that he is requesting that this be continued to December 10th as there is an issue with Site Plan Review for which he needs to file an additional plan.

Motion is made by Brian Florence and seconded by George Zevitas to continue these appeals to December 10, 2014 at 7:00 PM

Vote:

All in favor

CONTINUED TO DECEMBER 10, 2014 AT 7:00 PM

Craig Larson calls the Whole Foods appeal and reads it into the record:

Old Business

7:00 PM Appeal No. 2014-015

Whole Foods Markets Group, Inc

Whole Foods Markets Group, Inc, as lessee, is petitioning to modify Special Permit No. 2013-055 to permit the addition and operation of two mobile food venues on the site. The property is located at 990 Iyannough Road and 65 Independence Drive, Hyannis, MA as shown on Assessor's Map 295 as Parcel 015-X02 and Map 294 as Parcel 004. They are in the Highway Business, Business, and Industrial Zoning Districts.

Continued from April 23, 2014 and October 8, 2014. Continued from October 8th due to quorum issues. Continued from October 22, 2014 to November 12, 2014. Members Assigned April 23, 2014: Craig Larson, Brian Florence, Alex Rodolakis, George Zevitas, Herbert Bodensiek

Members assigned: Brian Florence, Alex Rodolakis, George Zevitas, Herbert Bodensiek, Craig Larson

Representative: Attorney Michael Scott from Nutter McClennen & Fish. Attorney Scott states that also with him tonight are Dan Seamen and Jim Strain from Whole Foods Market Groups, Inc., and Sean Kelley from Sean Kelley from Vanasse & Associates, Inc.. Attorney Scott gives summary of relief being sought and how, at the last hearing, the board had decided to continue the discussion of the food trucks to the fall so that members could view the operation of the store up to this point. He states that over the summer, Whole Foods conducted a parking demand analysis during peak store hours, in August in order to show peak demands. He states that the conclusion was that during the peak hours, 48% of the spaces were unoccupied leaving available sufficient parking.

He states that the mobile food venue will supplement the prepared foods area and is smaller compared to their other Whole Foods locations such as in Hingham and Norwood. He turns the presentation over to Sean Kelly of Vanasse & Associates, Inc. Mr. Kelly explains the parking analysis procedure done in August of 2014 which was to get an idea of traffic flow during peak summer conditions. Two time periods they looked at were weekday evening and Saturdays. During evening = 300 trips (ins and outs). Saturday was higher 326 trips. This is consistent for a store of this size on the Cape. They also did parking demand study. He shows on easel and states that they never reached the 60% occupied figure and that the traffic generation is where it should be.

George Zevitas clarifies that they originally were going to reduce the number of food trucks. Craig confirms that they asked for 3 and went down to 2. Brian clarifies that the study was only done once on a weekday and once on a Saturday and that the walkway is already constructed.

Craig Larson asks for public comment. No one speaks.

Brian Florence makes findings:

Whole Foods Markets Group, Inc, as lessee, is petitioning to modify Special Permit No. 2013-055 to permit the addition and operation of two mobile food venues on the site. The property is located at 990 Iyannough Road and 65 Independence Drive, Hyannis, MA as shown on Assessor's Map 295 as Parcel 015-X02 and Map 294 as Parcel 004. They are in the Highway Business, Business, and Industrial Zoning Districts

Special Permit Findings

- Whole Foods Markets Group, Inc. is requesting a modification of Special Permit No. 2013-055 to permit the addition and operation of two mobile food venues on the site.
- The changes to the site plan were approved by the Site Plan Review Committee on April 3, 2014.
- After an evaluation of all the 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.
- The use will not substantially or adversely affect the public health, safety, welfare, comfort or convenience of the community.
- A traffic impact and parking assessment concludes that the addition of mobile food venues to the Whole Foods Market can be accommodated within the project site in a safe and efficient manner without unduly burdening on-site circulation or access to parking.

Seconded by Craig Larson

Vote:

AYE: George Zevitas, Brian Florence, Craig Larson, Herbert Bodensiek

NAY: Alex Rodolakis

Motion is made by Brian Florence to grant the relief being sought with the following conditions:

Conditions

1. Special Permit No. 2014-015 is granted to Whole Foods Markets Group, Inc to allow the addition and operation of two mobile food venues accessory to the specialty retail grocery store at 990 Iyannough Road and 65 Independence Drive, Hyannis.
2. This decision shall modify Condition No. 5 of Special Permit No. 2013-055 to remove the prohibition on food trucks/food cantinas. Two mobile food venues shall be permitted as an accessory use in compliance with the terms of this decision.
3. This decision shall modify the conditions of Special Permit 2013-055 so that the approved plans reflect sidewalk, pedestrian and bicycle improvements as shown on the plan entitled "Whole Foods Layout and Dimension Plan" dated (last revised) April 3, 2014, drawn and stamped by Baxter Nye Engineering & Surveying.
4. Outdoor seating to serve the mobile food venues shall be provided in the courtyard area.
5. All pedestrian improvements shown on the plans referenced in Condition No. 3 herein shall be installed prior to the operation of mobile food venues.
6. The recommendations of the March 7, 2014 Traffic Impact Analysis prepared by Vanasse & Associates, Inc shall be implemented and maintained to ensure safe and efficient access. Those recommendations are:

- a. Vehicles exiting the Project site should continue to be placed under STOP-sign control with a market STOP-line provided.
 - b. Signs and landscaping adjacent to the Project site driveway intersections and within the project site should be designed and maintained so as not to restrict lines of sight.
 - c. All signs and pavement markings to be installed within the Project site shall conform to the applicable standards of the *Manual on Uniform Traffic Control Devices* (MUTCD).
 - d. In conjunction with the installation of the proposed crosswalk across the Southwind Plaza driveway to the mobile food venues, it is recommended that pedestrian crossing warning signs be installed at the crossing.
7. The mobile food venues shall be owned and operated by Whole Foods Markets Group, Inc.
 8. All work shall be completed in compliance with the conditions of the April 3, 2014 Site Plan Review approval.
 9. The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of a building permit for the proposed development.

Seconded by Craig Larson.

Vote:

AYE: George Zevitas, Brian Florence, Craig Larson, Herbert Bodensiek

NAY: Alex Rodolakis

GRANTED WITH CONDITIONS

New Business

7:00 PM Appeal No. 2014-048

NSTAR

Commonwealth Electric Company (NSTAR) has applied for an amendment/modification of Variance No. 1978-087 to remove an existing 240.5' tall guyed transmission tower and construct a new tower of the same size, height and style. Additionally, the Applicant seeks to remove and replace the existing fence, compound, and equipment shelter and to install propane fueled emergency back-up power generator, propane tank and associated equipment. The property is located at 2059, 2015 and 2039 Service Road, West Barnstable, MA as shown on Assessor's Map 214 as Parcels 008, 009, and 010. It is in the Residence F and Groundwater Protection Overlay Zoning Districts.

Alex Rodolakis leaves the dais.

Members assigned: George Zevitas, Brian Florence, Craig Larson, Herbert Bodensiek

Representative: Attorney Robert Pare gives a summary of relief being sought. He gives a brief history of relief that was granted. He states that the tower will be the same height with 9 antennas all used by NSTAR. Existing tower is approximately 35 years old.

Brian Florence asks if an approval letter was received from FAA regarding the tower. Elizabeth Jenkins states that they are not required to provide FAA approval to the board but that they would communicate with the airport regarding this. Brian asks if Attorney Pare's clients would have a problem with a condition to that effect and a condition requiring structural certification. Attorney Pare states that his client would not have a problem including both as conditions.

Craig Larson asks for public comment. No one speaks.

Craig Larson asks how long a 250 gallon of propane fuel will last. Daryl Peterson - Engineer from NSTAR responds and states that it will last approximately 48 hours.

Craig Larson confirms with Attorney Pare that they have read and are okay with the staff report.

Brian Florence makes findings:

Variance Findings

Commonwealth Electric Company (NSTAR) has applied for an amendment/modification of Variance No. 1978-087 to remove an existing 240.5' tall guyed transmission tower and construct a new tower of the same size, height and style. Additionally, the Applicant seeks to remove and replace the existing fence, compound, and equipment shelter and to install a propane fueled emergency back-up power generator, propane tank and associated equipment. The property is located at 2059, 2015 and 2039 Service Road, West Barnstable, MA as shown on Assessor's Map 214 as Parcels 008, 009, and 010. It is in the Residence F and Groundwater Protection Overlay Zoning Districts

- 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.
- 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.
- The current function of the tower will not change as a result of the reconstruction. The tower will remain for NSTAR use only.
- The Site Plan Review Committee approved the proposed plan on September 18, 2014.
- The proposal meets all of the requirements of Section 240-107 *Requirements for all personal wireless facilities in all zoning districts*.

Attorney Pare clarifies that the height of the tower is 240.5'

Seconded by Craig Larson

Vote:

AYE: George Zevitas, Brian Florence, Craig Larson, Herbert Bodensiek

NAY: None

Motion is made by Brian Florence to grant relief being sought with the following conditions:

Conditions

1. The request for an amendment/modification of Variance No. 1978-87, is granted to Commonwealth Electric Company (NSTAR) to allow the removal of an existing 240.5' tall guyed transmission tower and construction of a new tower; the removal and replacement of the existing fence, compound, and equipment shelter; and the installation of a propane fueled emergency back-up power generator, propane tank and associated equipment at 2015, 2039 and 2059 Service Road, West Barnstable.
2. The improvements shall be installed as shown on the plans entitled "NSTAR Shootflying Hill Road", dated September 10, 2014, fifteen pages, stamped by James M. Fitzgerald, RPE.
3. The height of the tower and all antennas and appurtenant equipment shall not exceed 257 feet, as authorized by Variance No. 1978-87.
4. The Applicant shall provide a decommissioning bond to cover the cost of removal and disposal of the existing tower in the event that the Applicant fails to comply with the requirement to remove the tower. To determine the amount of the bond, the Applicant shall submit a fully inclusive estimate of the costs associated with removal and disposal, prepared by a qualified Professional Engineer. The amount and form of the performance bond shall be acceptable to the Town Attorney. If the Applicant fails to remove the temporary tower in accordance with the conditions of this variance, the Town may enter the property and physically remove the tower.
5. All work shall be completed in accordance with the requirements of the Site Plan Review approval dated September 18, 2014.
6. Any proposed change in the use of the tower or proposed lease of space on the tower to companies or agencies other than the Applicant shall require review and approval by this Board.
7. This decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of building permits.

8. FAA approval shall be provided to the Building Commissioner prior to construction
9. Structural Certification of the new structure shall be provided to the Building Commissioner at a time that is appropriate to him.

Seconded by Craig Larson

Vote:

AYE: George Zevitas, Brian Florence, Craig Larson, Herbert Bodensiek

NAY: None

GRANTED WITH CONDITIONS

Alex Rodolakis returns to the dais.

Craig Larson reads the following into the record:

7:01 PM Appeal No. 2014-049

King

Michael and Janice King have petitioned for a Special Permit pursuant to Section 240-47.1.A(1) Family Apartments. The petitioners seek to permit a 980 square foot attached family apartment. A special permit is required as the apartment exceeds 800 square feet. The property is located at 305 Lovell's Lane, Marstons Mills, MA as shown on Assessor's Map 078 as Parcel 009-002. It is zoned Residence F.

Members assigned: George Zevitas, Brian Florence, Craig Larson, Alex Rodolakis, Herbert Bodensiek

Representative:: Michael & Janice King.

Mr. King states that his in-laws will be living in the family apartment as they have health issues and are in need of assistance. He states that the addition is larger than the 800 square feet and it was determined that they would need zoning relief.

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

Craig Larson makes findings:

Special Permit Findings

- Site Plan Review is not required for single-family residential structures or family apartments.
- After an evaluation of all the 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.

Vote:

AYE: George Zevitas, Brian Florence, Craig Larson, Alex Rodolakis, Herbert Bodensiek

NAY: None

Motion is made by Craig Larson to grant relief being sought with the following conditions:

Conditions

1. Special Permit No. 2014-049 is granted to Michael and Janice King to authorize a 980 square foot family apartment at 305 Lovell's Lane, Marstons Mills.
2. The family apartment shall be one bedroom unit not to exceed 980 square feet and shall be maintained in substantial conformance with the plans entitled "Family Room/Bedroom Addition", last dated September 5, 2013, drawn by KSA Design.
3. The family apartment shall be maintained in compliance with the requirements of §240-47.1.
4. The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of a Certificate of Occupancy for the family apartment. The rights authorized by this special permit must be exercised within two years, unless extended.

Vote:

AYE: George Zevitas, Brian Florence, Craig Larson, Alex Rodolakis, Hebert Bodensiek

NAY: None

GRANTED WITH CONDITIONS

Alex Rodolakis leaves.

7:02 PM Appeal No. 2014-050

Berkery

Andrew M. and Joan W. Berkery have petitioned for a Special Permit pursuant to Section 240-92.B - Nonconforming buildings or structures used as single- and two-family residences. The petitioners are proposing to expand, alter and renovate the existing principal single-family dwelling and accessory cottage. The principal dwelling is to expand from 1,440 sq.ft., to 2,648 sq.ft. and the cottage is to expand from 493 sq.ft. to 829 sq.ft. Additions to the principal dwelling are located based upon existing nonconforming front- and side-yard setbacks. The property is located at 49 Lafayette Avenue, Hyannisport, MA as shown on Assessor's Map 287 as Parcel 047. It is in the Residence F-1 zoning district.

Members assigned: George Zevitas, Brian Florence, Craig Larson, Herbert Bodensiek

Representative: Tracey Taylor, Esq. Attorney Taylor gives summary of relief being sought. She states that the applicants purchased the residence in 2013 and, as it stands now, the dwelling is uninsurable as it is in disrepair. They want to raise the main house in order to put in a new foundation and move it 3 feet to cure the setback encroachment and in accordance with the list submitted with the application (EXHIBIT A). She gives summary of exterior renovations. She indicates that letters from neighbors in support have been submitted to the board (EXHIBIT B). She states that the cottage will be for guests and family only.

Brian asks Attorney Taylor to elaborate and to speak to the findings for the grant of a special permit. Taylor states that they are maintaining residential usage in a residential neighborhood will not be increasing the nonconformity but making it move livable and that this will not be a detriment to the neighborhood. Brian Florence asks if the cottage was rented in the past. Attorney Taylor is familiar with the property and doesn't recall the cottage ever being rented and is not the intent of the applicant. Craig clarifies that this will be a single family house. Taylor concurs.

Craig Larson asks if there is anyone from the public who would like to speak either in favor or in opposition.

Jennifer Pendry is here to speak for an abutter, Mrs. Spence, who was unable to be here but who had submitted a letter this afternoon to the board (EXHIBIT C). Ms. Pendry asks about the retaining wall and distance.

Craig Larson states that he will clarify with the applicant's attorney about those concerns. He notes that there are also letters from Edward and Susan Gallagher, Richard and Virginia Fanning and Tracy Isham all in favor (See EXHIBIT A). He notes that the letter from Mrs. Wilma Spence has concerns (See EXHIBIT C).

Attorney Taylor rebuts. She states that the retaining wall is old and the applicants are more than happy to work with Mrs. Spence to satisfy her concerns. Craig reads an excerpt from Mrs. Spence's letter about the driveway and about relocating it. Attorney Taylor states that the existing driveway will be moved from the north side to the south side and agrees to put screening in to satisfy Mrs. Spence's concerns. Craig Larson asks if the applicant has spoken with Mrs. Spence. Attorney Taylor states that she believes the applicants had sent out a letter. Craig asks Ms. Pendry to speak to this. Ms. Pendry states that Mrs. Spence doesn't live down her except in the summer, has not

reviewed the plans but wished she was spoken to during the summer to understand how much larger the house is and the details. To her knowledge, Mrs. Spence never mentioned a letter from the neighbors.

Craig recommends natural screening and fencing on the side of the house where the driveway is to be placed. Ms. Pendry would like to include screening, either natural or a fence.

Herbert Bodensiek notes that a pebble drive would be noisy and asks Attorney Taylor if they could put in a paved driveway. Attorney Taylor states that they could put in a paved driveway to accommodate the neighbor's request.

Craig asks Ms. Pendry if Mrs. Spence would be available at another time to attend a meeting.

Motion by is made by Craig Larson and seconded by Brian Florence to continue to December 10, 2014 at 7:00 PM

Vote:

All in favor

CONTINUED TO DECEMBER 10, 2014 AT 7:00 PM

Other Business

Next Regularly Scheduled Hearing December 10, 2014, January 8 & 22, 2015

Adjourn

Motion is made by Craig Larson and seconded by Brian Florence to adjourn.

Vote:

All in favor