



# Town of Barnstable Zoning Board of Appeals



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#### Board Members:

Brian Florence –Chair Alex Rodolakis – Vice Chair George Zevitas – Clerk David A. Hirsch – Associate Member  
Herbert Bodensiek – Associate Member Robin Young – Associate Member Matthew Levesque – Associate Member James Tinsley – Town Council Liaison

#### Staff Support

Elizabeth Jenkins – Principal Planner - [elizabeth.jenkins@town.barnstable.ma.us](mailto:elizabeth.jenkins@town.barnstable.ma.us)  
Carol Puckett – Administrative Assistant – [carol.puckett@town.barnstable.ma.us](mailto:carol.puckett@town.barnstable.ma.us)

## Minutes

**Wednesday, November 18, 2015**

Hearing Room – 2<sup>nd</sup> Floor – 367 Main Street, Hyannis, MA

As a quorum has been met, Brian Florence calls the meeting to order at 7:01 Pm

Brian Florence - Chair	Present
Alex Rodolakis - Vice Chair	Present
George Zevitas - Clerk	Present
David Hirsch	Present
Herbert Bodensiek	Present (arrives after approval of minutes)
Robin Young	Present
Matthew Levesque	Absent

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

### Call to Order

Introduction of Board Members – *All those, with the exception of Herbert Bodensiek, introduce themselves.*

*Brian Florence reads the following with no response:*

### Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 an 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 of September 9, 2015 and September 30, 2015.

*Motion is made by George Zevitas and seconded by David Hirsch to accept the minutes from September 9, 2015 as presented.*

**Vote:**

*All in favor*

*Motion is made by George Zevitas and seconded by David Hirsch to accept the minutes from September 30, 2015 as presented.*

**Vote:**

*All in favor*

**At 7:02, Brian Florence calls the following appeal and reads it into the record:**

**New Business**

**7:00 PM Appeal No. 2015-054**

**Wilhelmina Realty Trust**

Susan M. Crocker, Trustee of the Wilhelmina Realty Trust has applied for a variance to §240-14(E) RF Bulk Regulations and §240-36 Resource Protection Overlay District to divide one lot into two lots which do not meet the current lot area, frontage, and setbacks requirements of the Ordinance. The property is located at 51 Prince Avenue, Marstons Mills, MA as shown on Assessor's Map 077 as Parcel 002. It is in the Residence F and Resource Protection Overlay Zoning Districts.

*Brian Florence states that a letter dated November 17, 2015 has been received from Attorney Jeffrey Ford requesting a continuance to December 9, 2015.*

*Motion is made by George Zevitas and seconded by Herbert Bodensiek to continue this appeal to December 9, 2015 at 7:00 PM.*

*Vote:*

*All in favor*

**CONTINUED TO DECEMBER 9, 2015 AT 7:00 PM**

*Brian reads the following into the record at 7:05 pm*

**7:01 PM Appeal No. 2015-055**

**White**

Russell & Judith White have petitioned to modify and transfer Special Permit No. 1993-17, which issued relief pursuant to §240-94 Nonconforming Uses. The applicants seek to continue use of the property for retail sales, in addition to residential use. The property is located at 4015 Falmouth Road/Route 28, Cotuit, MA as shown on Assessor's Map 040 as Parcel 027. It is in the Residence F and Resource Protection Overlay Zoning Districts.

*Members assigned: Robin Young, David Hirsch, George Zevitas, Alex Rodolakis, Brian Florence*

*Representative: The applicant, Russell White speaks. Mr. White states that in 1993 his mother-in-law had the special permit issued in her name. However, 5 months after the approval she passed away and they never transferred the permit into their name. They want to construct a half bath on the main floor instead of having people utilize their bathroom. The discrepancy arose when they applied for a building permit and it was found that the special permit was never transferred. Brian explains the process.*

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

*Robin Young clarifies that the applicants have been running the business without transferring the permit all these years. Mr. White states that they have been getting a business license for 22 years until they pulled a building permit for the half-bathroom.*

*David Hirsch makes findings:*

**Special Permit Findings**

1. In Special Permit Application No. 2015-055, Russell and Judith White seek to transfer and modify Special Permit No. 1993-17 into their names and to continue to use the property at 4015 Falmouth Road (also 12 Windmill Lane) for retail sales and a residential dwelling.
2. Massachusetts General Law Chapter 40A Section 14 provides the Zoning Board of Appeals authority to modify orders and decisions in conformity with the provisions of said Chapter.
3. The existing use the property for retail sales is a lawful pre-existing nonconforming use. It was established in accordance with Business Limited-C Zoning in effect prior to 1983. The Zoning Board authorized a change in the nonconforming use with Special Permit No. 1993-17 to allow retail sales of antiques.
4. There is no square footage expansion of the retail sales area proposed. The use is located on the same lot and in the same location as when it became nonconforming.

5. 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.
6. The transfer of the permit and the continuation of retail sales on the property will be no more detrimental to the neighborhood than the uses permitted with Special Permit No. 1993-17.

**Vote:**  
**All in favor**

**The board and the applicants discuss closing times. The applicants would like to extend the hours during the week and on Sunday. They would like 10:00 am to 6:00 pm during the week and 12:00 pm to 5:00 pm on Sunday.**

**David Hirsch makes a motion to grant with the following conditions:**

#### **Conditions**

1. Special Permit No. 2015-055 is granted to Russell & Judith White to allow retail sales in the commercial portion of the existing building at 4015 Falmouth Road/Route 28, in addition to the one-family residence at 12 Windmill Lane, Cotuit.
2. The retail use of the property shall be limited to retail sales of specialty items, including antiques, clothing, furniture, and home accessories, new or on consignment. Retail sales of automobiles, restaurant/food service uses, retail sales of gasoline, and convenience stores are prohibited by this permit.
3. The number of commercial tenants on the property shall be limited to one.
4. The retail and residential uses shall operate within the existing structure. No expansion of the retail sales floor on the property shall be permitted without proper permissions from this Board.
5. Site access shall be limited to Windmill Lane; direct access to the property from Route 28 is prohibited.
6. Hours of operation of the retail use shall be limited to 10:00 a.m. to **6:00** p.m. Monday through Saturday; and from 12:00 noon to **5:00** p.m. on Sunday.
7. Signage shall be limited to one sign and a trade flag in conformance to the Sign Code.
8. The placement of other objects to attract customers within the front yard areas of the building is prohibited. All sales and display of merchandise shall be contained within the structure.
9. Parking for the property shall be prohibited on Windmill Lane.
10. No more than three (3) people shall be employed on the site.
11. 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 for this special permit to be in effect. The rights authorized by this special permit must be exercised within two years, unless extended by the Board.

**Seconded by Herbert Bodensiek.**

**Vote:**  
**All in favor**

#### **GRANTED WITH CONDITONS**

**Brian reads the following into the record at 7:16 PM:**

**7:02 PM Appeal No. 2015-056**

**Samra/Pearson**

Nicholas David Samra and Erica Pearson have petitioned for Special Permits pursuant to Section 240-94(B) Expansion of a Pre-existing Nonconforming Use and, as necessary, Section 241-91.H(3) – Developed Lot Protection. The applicants are

Growth Management Department  
Jo Anne Miller Buntich – Director  
200 Main Street, Hyannis, MA 02601 367 Main Street, Hyannis, MA 02601  
Phone: 508-862-4785 Fax: 508-862-4784

proposing to demolish and rebuild two existing single-family residential dwellings and accessory structures on a single lot. The property is located at 265 Seapuit Road, Osterville, MA as shown on Assessor's Map 095 as Parcel 004. It is in the Residence F-1 and Resource Protection Overlay Zoning Districts.

**Members assigned tonight: Herbert Bodensiek, David Hirsch, George Zevitas, Alex Rodolakis, Brian Florence**

**Representative: Sarah Turano-Flores, Esq., from Nutter McClennen & Fish, who states that also with her tonight is the architect, Tom Catalano, and the project engineer, David Michniewicz, from Coastal Engineering, Inc. Attorney Turano-Flores states that tonight they have supplied visual maps utilized in their presentation to the Conservation Commission in order to illustrate the proposal before them. She gives summary of relief. She states that the two single family dwellings pre-date zoning in Barnstable and are shown on a Land Court Plan dated 1916 and that the lot itself is conforming, however, what is not conforming are the two single family dwellings on one lot. The proposal to demolish has historic approval and was also approved by the Conservation Commission on November 5<sup>th</sup>. They will be going before the Board of Health for the septic system. All five structures will conform to the setbacks and states that they will be reducing lot coverage. The use of the lot will remain the same and will not affect the neighborhood. She describes the structures' design. They will also be elevating the structures and will be more in conformance to the flooding resilience of the code. There will be a 25,000 sf native planting plan and the invasive species will be replaced. Overall benefit will provide better flood control and better habitat and thinks this meets the standards and is in keeping with the bylaw and won't have a detrimental affect on the neighborhood.**

**Brian Florence asks if there is anyone from the public who would like to speak. No one speaks.**

**Alex Rodolakis asks about the height of the guest house compared to the main dwelling. Tom Catalano, architect, explains. Mr. Catalano states that the guest house will be lower than the proposed new main structure. They discuss elevations.**

**Robin Young asks if the proposal of eight bedrooms was problematic with the Conservation Commission or the Board of Health. Attorney Turano-Flores states that the saltwater estuary overlay district in which this is located allows for up to eight bedrooms and that this will be going before the Board of Health. She states that the septic treatment will be a better treatment than what currently exists.**

**Brian Florence asks if there is anyone from the public who would like to speak either in favor or in opposition. No One speaks.**

**Attorney Turano-Flores notes that at the Conservation Commission presentation which occurred after she made application to this board, ZBA has on their site plan a beach which the Conservation Commission did not approve but does affect any zoning coverage. Brian Florence asks if Attorney Turano-Flores has read the staff report which she replies yes. She also notes that the staff report references the site plan which needs to be changed. She states that the plan date should be 10-20-15.**

**Date on plan is 10-20-2015 (EXHIBIT A)**

**Alex Rodolakis makes findings:**

#### **Special Permit Findings**

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit: Section 240-94 allows for the expansion, alteration and continuation of a pre-existing nonconforming use with a Special Permit. *The multiple single-family dwellings on the lot predate the adoption of zoning by the town of Barnstable.*
- The use shall conform to the established setbacks for the zoning district in which it is located: The reconstruction of the single-family dwelling and guest house are proposed in conformance with all setback requirements of the RF-1 District.
- The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming. The two preexisting single-family dwellings predate the adoption of zoning in Barnstable and were constructed on the same lot as presently before the Board.
- The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming. All proposed construction will remain within the boundaries of the RF-1 District.

- Site Plan Review is not required for single-family residential uses.
- 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 continuation of the preexisting nonconforming use will be no more detrimental to the neighborhood than the use as it exists today.

**Vote:**  
**All in favor**

#### Conditions

1. Special Permit No. 2015-056 is granted to Nicholas David Samra and Erica Pearson to allow the demolition and reconstruction of multiple-single family dwellings at 265 Seapuit, as shown on the plan referenced in Condition No. 2 herein.
2. The reconstruction shall be in substantial compliance with the site plan entitled "Plan Showing Proposed Site Improvements", dated October 23, 2015, drawn and stamped by Coastal Engineering Company, Inc. (sheet C2.1.3). referring to plan dated **October 20, 2015** stamped by costal
3. The development, use and maintenance of this property shall be in compliance with the requirements of the Order of Conditions issued on November 5, 2015, and as may be amended.
4. This property shall be used for single-family residential use in conformance with zoning.
5. 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. The rights authorized by this special permit must be exercised within two years, unless extended.

**Seconded by Herb Bodensiek**

**Vote:**  
**All in favor**

#### GRANTED WITH CONDITONS

**Brian takes a five minute break**

**Alex Rodolakis leaves for the evening.**

**At 7:42, Brian reads the following**

**7:03 PM Appeal No. 2015-057**

**Chick-Fil-A, Inc.**

Chick-Fil-A, Inc., as lessee, has petitioned for a Special Permit pursuant to Section 240-39(M) or, in the alternative, a modification of Special Permit Nos. 1998-31 and 2008-21. The proposed project is a site redevelopment consisting of the removal of an existing parking lot and the construction of a new 5,219 (+/-) square foot restaurant with drive-through and installation of new parking lot, landscaping, and utilities. The properties are located at 921 Iyannough Road/Route 132, 0 and 104 Enterprise Road Hyannis, MA as shown on Assessor's Map 294 as parcels 018, 019 and 023. They are in the Highway Business (HB), Business (B), Shopping Center Redevelopment Overlay – Drive-Through Restaurant Sub Zone Zoning Districts.

**Members assigned tonight: Robin Young, Herbert Bodensiek, David Hirsch, George Zevitas, Brian Florence**

**Representative: Attorney Michael Ford who introduces Josh Swerling from Bohler Engineering and Scott Goodson – Project Manager from Chick-Fil-A. Attorney Ford gives summary of location and history of the parking lot. He states that the property is currently owned by Simon LLC and the applicant will be a long term lessee pending the necessary approvals. He introduces Mr. Goodson who gives a summary of the background of the applicant. George Zevitas asks who the local franchise operator will be. Scott isn't sure as he does not have that information as of yet.**

**Attorney Ford speaks about the zoning in this area and that in 1998 the Cape Cod Mall moved forward with a Decision of Regional Impact (DRI) and a special permit in order to redevelop the mall all pursuant to the Shopping Center Redevelopment Overlay District (SCROD) which in 1996 prohibited the drive-thrus. In 2008, the Town Council amended to allow drive thru bank on Route 28. Similarly, the Town Council amended the SCROD in March of 2015 to allow a subzone of the district for a drive thru restaurant which could be obtained with a special permit. This was the zoning that enabled them to come before the board tonight for this project.**

**The Cape Cod Commission (CCC) reasons that under their regulations, that if land is subject to a DRI it needs a modification even though this project, on its own, does not trigger any mandatory threshold that would send it to the CCC. As for the CCC, they have had a change of heart lately in regards to modifications, have looked at their regulations and decided that a literal reading does not necessarily require for a modification that CCC approval comes first. And have encouraged them to get local approval first and then go to the CCC after. They have worked on the site plan with the town's staff as well as the staff at CCC. A lot of work and thought has been put into the site plan before them tonight. In the SCROD district it is required that an informal site plan must be done, which they did, then a formal site plan review, which they have also done. They are still awaiting some revisions to the storm water and drainage plans which they think has been accomplished. However, it has not been completely reviewed (by site plan review committee) yet but do anticipate that the formal letter will be forthcoming.**

**They have worked with the staff at CCC regarding all the plans such as landscape, etc. he talks about the formal site plan review, which they did and are still awaiting revisions to some drainage and storm water and anticipates that the formal letter will be an approval. He asks not to close the public part of the hearing but will also ask for a continuance. Chick Fil-A will be paying for the peer review of traffic study and will have the results hopefully before the upcoming holiday. They will talk about the traffic at the next hearing when they receive that data. The traffic will also be looked at by the commission once completed. He summarizes the compilation of the lots into the lot on which the proposed structure will be built.**

**Mr. Swerling from Bohler Engineering points out the site entrances and exists and explains. The plan consists of 44 trees and overall 700 plus or minus plantings. He talks about the textural change to the pavement in order to slow down cars at the entrance from 132. There will be pedestrian connectivity to Route 132 and bicycle racks installed.**

**Attorney Ford gives the seating capacity and talks about the outdoor seating (30 seats outside). He talks about the special permit criteria in the SCROD district and development standards and that most are site plan related standards. The landscaping plan has been changed a couple of times and one of the abutters has commented on the landscape plan on the westerly side which is something that can be worked out. All utilities are to be placed underground where appropriate and the structure will be on sewer and that the storm water has been designed so that water will be captured on site.**

**David Hirsch believes that originally the use for the proposed site was to be a parking lot for employees of the mall with a shuttle. Attorney Ford is not unaware of that but will investigate and bring that information back to this board.**

**Brian Florence asks for public comment:**

**Stuart Bornstein, local business owner and resident of the Town of Barnstable, comments on the exhaust system and food cooking odors and states that he believes that the odors can be neutralized but otherwise he thinks that this is a good project for the cape.**

**Mark Thompson, CEO and President of the Independence Park, Inc., points out on the map, the area covered by his company. He requests to keep the public part of the hearing open for comments. He is concerned about the private way, which over the years, motorists have been using as a cut through during the busy season. He also has concerns about the landscaping abutting the property where Andrew Court of 42 Pineneedle Lane lives and suggests a fire crash or ranch gate that they could control.**

*Nelly Sheehan owns Suits you Swimwear which abuts the proposed site. She is in support of the project but is concerned about accessing her property on a daily basis as well as during construction.*

*Andrew Court of 42 Pineneedle Lane reiterates Mr. Thompson's comments and that the most important aspects are the screening from the proposed site and the private way access. He suggests being notified of any future discussions or meetings on this project for any other boards.*

*Attorney Ford points out Mr. Court's house on the map and is optimistic about working out concerns regarding the private way and landscaping. As for the Suits You Swimwear lot, Attorney John Kenney has been in contact with Chick-Fil-A corporate counsel on this.*

*Attorney Ford also states that this is the first public hearing for this applicant which required abutter notification. He also states that this will be going before the Cape Cod Commission that will also notify abutters when that hearing will occur. Attorney Ford asks to continue to the next meeting which will be on December 9<sup>th</sup>.*

*Motion is made by Herbert Bodensiek and seconded by David Hirsch to continue this to Wednesday, December 9, 2015 at 7:00 PM.*

*Vote:*

*All in favor*

**CONTINUED TO DECMEBER 9, 2015 AT 7:00 PM**

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#### **Adjournment**

*Motion is made by David Hirsch and seconded by Herbert Bodensiek to adjourn*

*Vote:*

*All in favor*