

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
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, February 10, 2016

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

Brian Florence - Chair	Present
Alex Rodolakis - Vice Chair	Present
George Zevitas - Clerk	Present
David Hirsch	Present
Herbert Bodensiek	Absent
Robin Young	Present
Matthew Levesque	Present

Also present were Elizabeth Jenkins – Regulatory Review/Design Planner and Carol Puckett – Administrative Assistant.

As a quorum has been met, Brian Florence calls the hearing to order at 7:05 PM.

Call to Order

Introduction of Board Members – *All members present 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 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 October 28, 2015, November 18, 2015 and December 9, 2015.

Motion is made by Matt Levesque and seconded by Robin Young to approve the minutes of October 28th as submitted.

Vote:

All in favor

Motion is made by Matt Levesque and seconded by David Hirsch to approve the minutes of November 18th as submitted.

Vote:

All in favor

Motion is made by Matt Levesque and seconded by Robin Young to approve the minutes of December 9th as submitted.

Vote:

All in favor

Brian calls the ER&C at 7:08 PM and reads it into the record:

Old Business

7:00 PM Appeal No. 2016-002

E R & C Enterprises, LLC

E R & C Enterprises, LLC has applied for a Special Permit pursuant to Section 240-25(C)(1) – Conditional Uses in the Highway Business District for a retail convenience store and food establishment with drive-through. The Applicant, who currently operates a preexisting nonconforming gas station with car wash and retail, intends to remove the existing drive-through car wash, including all equipment and underground tanks, and construct a 980 square foot addition with a relocated drive-through at the rear of building. The drive-through would be converted to a takeout beverage and food lane. The retail sale of gasoline, a preexisting nonconforming use, is proposed to continue. The property is located at 577 West Main Street, Hyannis, MA as shown on Assessor's Map 269 as Parcel 003. It is located in the Highway Business (HB) Zoning District and the Wellhead and Groundwater Protection Overlay Districts.

Continued from January 13, 2016.

Members assigned: Brian Florence, Alex Rodolakis, George Zevitas, Herbert Bodensiek, Robin Young

Representative: David Lawler, Esq.

Members assigned tonight: Brian Florence, Alex Rodolakis, George Zevitas, Robin Young

It is noted that Herbert Bodensiek is not here tonight but present are the other four members that sat on this at the last hearing. Elizabeth Jenkins notes that at the next meeting either Matt Levesque or David Hirsch can invoke the Mullin rule. Elizabeth Jenkins summarizes that this board requested that an independent consultant be retained to do a traffic study and that they have agreed on a scope of work. Growth Management, on behalf of the ZBA, then put out 3 quotes and received only one from Vanasse & Associates and that it would be up to the board to recommend this company. Brian Florence clarifies that only one vendor responded. Ms. Jenkins clarifies that the quotes were sent to Vanasse & Associates (VAI), Vanasse Hangen Brustlin (VHB) and Robert Vanasse.

The board discusses. George Zevitas is prepared to vote tonight without a future hearing. Brian Florence would like to review a traffic study to see what it encompassed. Robin Young thinks that it should be kept to the same standard as another application such as BJ's gas station at a previous hearing and has questions about the land that the site uses which is owned by the Town of Barnstable and the neighbor's concerns.

Attorney Lawler states that he had met with the Town Manager and Assistant Town Manager and is confident that a document that will allow, if approved, the applicant to go forward. He states that the front of the parcel would be under the adopt-a-space program in order to care and maintain it and the small space where there would be parking, they would enter into a licensing agreement which could be revoked at any point.

Robin Young would like to see environmental issues addressed. Attorney Lawler states that he will meet with Elizabeth Jenkins on the engineering plans.

George Zevitas asks how they can add a coffee shop when they don't have a permitted variety store to begin with and thinks that it should be corrected. Attorney Lawler states that is part of what they are asking for.

Motion is made by young to accept the recommendation for a traffic study seconded by Alex Rodolakis

Vote:

AYE: Brian Florence, Alex Rodolakis, Robin Young

ABSTAINED: George Zevitas

Jenkins recommends March 23, 2016 for the continuance.

Motion is made by Alex Rodolakis and seconded by Matt Levesque to continue to March 23, 2016 at 7:00 PM

Vote:

All in favor

CONTINUED TO MARCH 23, 2016 AT 7:00 PM

At 7:21, Brian reads the following into the record:

New Business

7:00 PM Appeal No. 2016-005

Gundlach

Andrew Gundlach, as prospective owner, has applied for a transfer of Special Permit 1988-086 to continue the use of an existing family apartment in excess of 800 square feet. Pursuant to Section 240-47.1.A(1), family apartments in excess of 800 square feet require a special permit from the Zoning Board of Appeals. The property is located at 116 Deer Jump Hill Road, West Barnstable, MA as shown on Assessor's Map 132 as Parcel 040. It is in the Residence F Zoning District.

Members assigned tonight: Brian Florence, Alex Rodolakis, George Zevitas, David Hirsch, Matt Levesque

Representative: Andrew Gundlach who is here representing himself and his wife. Mr. Gundlach states that the family apartment currently exists and is asking to continue the use of the family apartment so that his wife's parents may reside there. He states that the family apartment has existed since 1988 and would just like to continue that use. It has been occupied as an in-law space with an in-law living that and are asking to do the same thing and doesn't believe it is any different than what the previous family has done.

George Zevitas clarifies as to who has been living there. Cheryl Gillespie, the previous owner, states that her mother-in-law has been living there since 1988.

Brian Florence asks for public comment. No one speaks.

The board discusses. Alex Rodolakis asks if the applicant understands the rules and regulations of the family apartment ordinance and asks if he has read the conditions as stated the staff report. Mr. Gundlach states that he has read the staff report, has seen the conditions and understands the procedures.

Alex Rodolakis makes findings:

Special Permit Findings

Section 240-47.1(A)(1) of the Zoning Ordinance allows for a family apartment greater than 800 square feet, not to exceed 1,200 square feet, with a Special Permit from the Zoning Board of Appeals.

- 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. In as much as this has been used as a family apartment since 1988

Vote:

All in favor

A motion is made by Alex Rodolakis to grant the relief being requested with the following conditions:

Conditions

1. Special Permit No. 2016-005 is granted to Andrew Gundlach to authorize an existing family apartment of approximately 1,135 square feet at 116 Deer Jump Hill Road, West Barnstable.
2. The family apartment shall be a two bedroom unit and shall not be expanded without further relief from this Board.
3. The family apartment shall be maintained in compliance with the requirements of §240-47.1.
4. There shall be no renting of rooms or lodging permitted on the property during the life of this permit.
5. When the family apartment is vacated or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use of the family apartment shall be terminated and this permit shall become null and void. The applicant or property owner shall be responsible for the removal of the kitchen, unless the unit is properly permitted under the Accessory Affordable Apartment Program.
6. 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:

All in favor

GRANTED WITH CONDITIONS

Brian Florence calls the next application and reads it into the record:

7:01 PM Appeal No. 2016-006

Haddock

Lucinda Haddock has petitioned for a variance to Section 240-14.E Bulk Regulations. The petitioner is requesting a variance to construct a carport within a required side yard setback. The property is located at 108 Buckwood Drive, Hyannis, MA as shown on Assessor's Map 272 as Parcel 082. It is located in the Residence C -1 Zoning District.

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

Representative: Matt White - Builder states that they will be building the carport. He states that because of the bad weather the applicant wanted to build a simple carport to keep the snow and rain off her car without battling the elements too much. Brian Florence asks Mr. White to speak to the three prong test. Mr. White states that Ms. Haddock injured her shoulder in the previous winter because there was nothing protecting her car, the carport would not meet the setbacks and doesn't see it a detriment to the neighborhood.

Alex Rodolakis notes that there aren't any plans showing the setbacks. Mr. White didn't have the property surveyed but states that the fence is approximately two feet off the property line.

Brian Florence asks for public comment. No one speaks.

They discuss the plan. Mr. White states that he took the site plan that the building department had on file and drew the carport on it. David Hirsch recommends an engineered plan with a letter from the closest neighbor in support.

Brian informs the applicant of his options at this point. Mr. White asks that this be continued in order to get the documents together for a future hearing.

Motion is made by Matt Levesque and seconded by George Zevitas to continue this matter until Wednesday, March 23, 2016 at 7:00 PM

CONTINUED TO MARCH 23, 2016 AT 7:00 PM

7:02 PM Appeal No. 2016-007

Walton/Weigel

Myles A. Walton & Annalisa L. Weigel have petitioned for a modification of Variance No. 1991-061 and a variance to Section 240-23.G Bulk Regulations. The petitioners are proposing to modify Use Variance No. 1991-061 to allow expansion of the residence and are seeking relief from the bulk regulations of the Marine Business-B District to allow the dwelling to have two and ½ stories, where the ordinance permits only two stories. The property is located at 139 Freezer Road, Barnstable, MA as shown on Assessor's Map 300 as Parcel 019. It is in the Marine Business B zoning district.

Members assigned tonight: Brian Florence, George Zevitas, Alex Rodolakis, Matt Levesque, Robin Young

Representative: Attorney John Kenney. Also present with him tonight are Steve Cook from Cotuit Bay Designs, LLC., and Ms. Weigel.

Attorney Kenney gives a summary of where the property is located. He states that this project has been before the Conservation Commission (ConComm) and received approval as well as approval from the Old King's Highway (OKH) Historical Committee and that the project's final stop is this board. He gives history of the zoning district in which it is located and the reason that they are here is to amend conditions of the 1991 variance and apply for another variance for it to be 2.5 stories. He cites Huntington vs Hadley (CATHARINE HUNTINGTON vs. ZONING BOARD OF APPEALS OF HADLEY & another, 12 Mass. App. Ct. 710 - September 18, 1981 - December 4, 1981 - Hampshire County) whereas a zoning board can change conditions in a prior variance. He turns it over to Steve Cook from Cotuit Bay Designs, LLC. Mr. Cook states that this property has tight restrictions, it is in the flood zone, and is within the 50 & 100' buffer zone. He states that this is a narrow small house and that the current house is on pilings. When there is a storm the backyard floods. They designed the house keeping the gables and is more of a Greek Revival style. They have to raise the house to get it out of the flood elevation and the foundation will be built with flood vents and access panels. They will also build a two foot small stone wall to dampen the height of the structure. Mr. Cook states that they had been before the Old King's Highway Historical Commission twice to work out the design. They were also

before the Conservation Commission (ConComm) who liked the mitigation plantings plan. He shows a picture from across Rendezvous Lane to show scale of surrounding buildings. He refers to pictures in Attorney Kenney's memorandum (Exhibit A)

Attorney Kenney speaks to the variance conditions noting that the conditions from 1999 still exist. However, they are expanding the structure 6 feet to the north. The shape of this lot is unique and surrounded by wetlands which results in a very small buildable portion of the lot which is narrow and impacted by conservation commission regulations which makes it unique to this lot. As for hardship which was noted in the original variance is the inability to make practical uses in this zone. As for desirable relief, the residential use is in harmony with the area. The family wants a quiet place to conduct their business privately and will be living there in the summer.

Alex Rodolakis asks what the peak of the roof is. Mr. Cook states that is 28.9'.

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

Robin Young is concerned about the height of 44 feet off the ground, the bulk, parking and asks how would this house improve the appearance of the harbor. Mr. Cook responds and states that the height is only 35 feet from existing grade and that the only view is diagonal from Rendezvous Lane to the harbor and will be difficult to view from the harbor.

Attorney Kenney states that one of the goals of the local comprehensive plan is to improve the appearance of the harbor and that this house will be new construction and architecturally nicer than what currently exists. It will also be tucked behind the Barnstable marina.

Alex Rodolakis asks what the peak is of the current structure. Mr. Cook states that it is 22' from existing grade and will go 29' from top of foundation.

Alex Rodolakis makes findings:

Variance Findings

The statutory requirement of MGL Chapter 40A, Section 10 for granting a variance is a three-prong test. The Board is required to find that each of the following three requirements has been met in order to consider granting the variance.

Modification of Variance No. 1991-61: & on the height variance:

- 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; and unique nature of the lot and wetlands that encroach makes for very little land which can be used and for both requests sought today that
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and that the property used now would be limited use as residence and ability to make any change going forward
- that desirable 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. with respect to modification of 1999-61 and that the use as a residence and as proposed to continue would not be a detriment as it has been used as a residence and designed as a residence with respect to the variance being sought from the Marine Business he would find again that the relief allowing it to be continually used as a residence and not as a business is not going to be a detriment to the public good as it is a residential neighborhood that must be entered in order to access this property

Vote:

All in favor

Modification of 1999-61 as set forth in the staff report dated February 5, 2016, being Conditions 1 – 6. (Exhibit B)

Vote:

All in favor

For the relief being sought for the height variance, Alex Rodolakis makes a motion to grant the relief being sought according to the conditions in the staff report dated February 5, 2016, being Conditions 1 – 6.

Seconded by Matt Levesque

Vote:
All in favor

GRANTED WITH CONDITIONS

Brian calls a 5 minute recess at 8:20 pm.
Back in session.

7:03 PM Appeal No. 2016-008

First Hyannis Realty, LLC

First Hyannis Realty, LLC has applied for Special Permits pursuant to Section 240-56 Schedule of Off-Street Parking Requirements and Section 240-57 Circumstances Warranting Reduction of Requirements. The applicants are proposing to build an approximately 19,438 square foot addition to the existing 67,179 square foot BJ's Wholesale Club. Prior to the addition, the Zoning Ordinance required 346 parking spaces and 351 parking spaces have been provided. With the addition, the Zoning Ordinance requires 444 spaces and the Applicant is proposing to keep the parking spaces provided at 351. The property is located at 420 Attucks Lane, Barnstable, MA as shown on Assessor's Map 274 as Parcel 040-001. It is located in the Business Zoning District.

Members assigned tonight: Brian Florence, Alex Rodolakis, George Zevitas, David Hirsch, Robin Young
Representative: Attorney John Kenney and Nelson Cabral – Manager of Site Development from BJ's. Attorney Kenney gives summary of where the property is located which is on a limited access road. He points out the proposed building and the existing on the easel. He gives a summary of relief being sought. The total site has been through three (3) different Development of Regional Impact (DRI) decisions with the Cape Cod Commission. He notes that there was an appeal of one of the DRI's and that litigation has been resolved. This proposal has been before Site Plan Review and received approval. They will not meet the requirements for off street parking. They want to do the addition without increasing the parking. He gives a history of the BJ'S Wholesale Club and thinks that the parking is adequate. He clarifies that they will not be adding a tire center.

David Hirsch asks if the addition is for the sales of apparel.
Nelson Cabral – Manager states that their prototypical store is roughly 88,000 square feet and that this will not be just for apparel but to accommodate more general retail and a balance of what they are trying to provide.

Brian Florence asks for public comment. No one speaks.

The board discusses.

George Zevitas makes findings:

Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C) that support:

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:

Section 240-57 of the Zoning Ordinance allows the Zoning Board of Appeals to reduce the minimum parking requirements of Section 240-56 by granting a Special Permit.
- In granting the reduction, the Board must find:
Lesser off-street parking is shown to be adequate given special circumstances such as "characteristics of use invalidating normal methods of calculating parking demand."
- Site Plan approval was granted for the proposed project, as evidenced by a letter dated February 3, 2016.
- 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:
All in favor

George Zevitas makes motion to grant the relief being sought with the following conditions:

Conditions

1. Special Permit No. 2016-008 is granted to First Hyannis Realty, LLC to allow a reduction in the required number of on-site parking spaces from 444 to 351 spaces. The reduction allows for a 19,438 square foot addition to the building with no change in the number of parking spaces provided.
2. Site development and improvements shall be completed in substantial compliance with the plans entitled "The Tarkinow Group, BJ's Wholesale Club Addition" dated (last revised) December 23, 2015 drawn and stamped by Coastal Engineering Company, Inc, four sheets.
3. All site work shall be in compliance with the requirements of the Site Plan Review approval dated February 3, 2016 and the Cape Cod Commission Limited Development of Regional Impact approval (TR/LR 09015).
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 building permit for the expansion. The rights authorized by this special permit must be exercised within two years, unless extended.

Seconded by Robin Young

Vote:

All in favor

GRANTED WITH CONDITIONS

Correspondence

Received 01-20-16 – Notice of License Application - Waterways License Application for 109 Eel River Road Nominee Trust to construct and maintain a pier, ramp and float and maintain an existing outhaul post at 109 Eel River Road, Osterville, MA

Matters Not Reasonably Anticipated by the Chair

Adjournment

Motion is made by Alex Rodolakis and seconded by George Zevitas to adjourn.

Vote:

All in favor

Exhibits

2016-007 – Walton/Weigel

- Exhibit A = Photos – See ZBA file
- Exhibit B = Staff Report dated February 5, 2016 – See ZBA file