



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
Spencer Aaltonen – Associate Member Jacob Dewey – Associate Member
James Tinsley – Town Council Liaison

Staff Support

Elizabeth Jenkins – Regulatory / Design Review Planner - elizabeth.jenkins@town.barnstable.ma.us
Anna Bringham – Principal Planner – anna.brigham@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, May 25, 2016

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

Brian Florence - Chair	Absent
Alex Rodolakis - Vice Chair	Present
David Hirsch	Present
Herbert Bodensiek	Absent
Robin Young	Present
Matthew Levesque	Present
Spencer Aaltonen,	Present
Jacob Dewey	Present

Also present were Elizabeth Jenkins – Regulatory Design/Review Planner, Anna Bringham – Principal Planner and Carol Puckett – Administrative Assistant

Alex Rodolakis calls the hearing to order at 7:04 pm.

Call to Order

Introduction of Board Members – *All members present introduce themselves.*

Alex reads the following with no response:

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.

Alex calls a moment of silence in order to pay tribute to recently departed board member, George Zevitas.

Minutes

Approval of minutes from March 9, 2016, March 23, 2016, April 27, 2016

Motion is made by David Hirsch and seconded by Matt Levesque to approve the minutes from March 9, 2016

Vote:

All in favor

Motion is made by David Hirsch and seconded by Matt Levesque to approve the minutes from March 23, 2016

Vote:

All in favor

Motion is made by Matt Levesque and seconded by David Hirsch to approve the minutes from April 27, 2016

Vote:

All in favor

Old Business

7:01 PM Appeal No. 2016-012

O'Connor

Adam O'Connor has petitioned for a variance to Section 240-14.E – Bulk Regulations. The petitioner is proposing to construct an addition to the existing dwelling located sixteen (16) feet from the property line, where a thirty (30) foot front yard setback is required from Gristmill Path. The property is located at 390 Jones Road, Marstons Mills, MA as shown on Assessor's Map 047 as Parcel 093. It is located in the Residence F Zoning District.

Continued from March 9, 2016.

Continued from March 23, 2016 - Members assigned: Brian Florence, Alex Rodolakis, George Zevitas, David Hirsch, Robin Young, (Matt Levesque present)

Continued from May 11, 2016 due to lack of quorum of members eligible to act

Members assigned tonight: Alex Rodolakis, Matt Levesque, David Hirsch, Robin Young, Spencer Aaltonen

Representative: Adam O'Connor. Mr. O'Connor introduces himself and gives summary of relief being sought and has submitted a new elevation sketch that was requested by the board in the past hearing. He states that it will not be impacting visibility because his lot is on a corner of a dead-end street. He explains that if he had to put the addition on the other side as suggested that it would be a huge expense as he would have to have new piping installed.

Alex Rodolakis states that he has reservations about how far it encroaches into the setback and thinks that the 30 foot requirement is there for a reason. Mr. O'Connor reiterates that the other street is a dead end and that the addition wouldn't be impacting the visibility all that much.

Alex asks for public comment. No one speaks.

The board discusses. Robin Young asks if there was any neighbor comment. Mr. O'Connor states that there are three letters of support previously submitted and that at the last hearing he had a direct abutter speak to the board in support.

David Hirsch 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:

- **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.**

An application for a variance that has met all three requirements "does not confer ... any legal right to a variance." The Board still has the discretionary power to grant or not to grant the variance.

Mr. Hirsch also adds that he believes that the applicant has met the 3 prong test for a variance and by denying him it would be a substantial hardship for the petitioner.

Seconded by Matt Levesque

Vote:

All in favor

David Hirsch makes a motion to grant with the following conditions as stated in the March 29, 2016 staff report being Conditions 1 through 5. Elizabeth Jenkins states that #3 should be updated to reflect the latest plan

Variance Conditions

1. Variance No. 2016-012 is granted to allow the construction of an addition to the single-family dwelling at 390 Jones Road, Marstons Mills, MA.
2. The addition on the south side of the dwelling shall not exceed a footprint of 26 feet by 30 feet, shall be one-story, and shall not be located closer than 16 feet to Gristmill Path.
3. The addition shall be in substantial conformance with the sketch plan submitted to the file and the elevations entitled "26' x 30' Single Story Wood Frame Addition" drawn by Your Plan Store/Allen B. Osgood, dated ~~March 29, 2016~~ April 24, 2016..
4. The above-described addition and the proposed 24' x 24' garage addition shall represent full build-out of the lot. No further additions shall be permitted without approval from the Board.
5. 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 a building permit. The rights authorized by this variance must be exercised within one year, unless extended.

Seconded by Matt Levesque

Vote:

All in favor

GRANTED WITH CONDITIONS

New Business

7:00 PM Appeal No. 2016-020

48 Magnolia Avenue, LLC

48 Magnolia Avenue, LLC. has applied for a Special Permit pursuant to Section 240-91.H(3) Developed Lot Protection. The applicant is proposing to demolish the existing 1,845 square foot dwelling and construct a new, single-family dwelling consisting of approximately 4,463 square feet. The proposed front yard setback from Magnolia Avenue is 21.4 feet and does not comply with the current front yard setback requirement of 30 feet but will be greater than or equal to the existing front yard setback of 21.2 feet. The property is located at 48 Magnolia Avenue (formerly 32 and 34 Magnolia Avenue), Centerville, MA as shown on Assessor's Map 225 as Parcels 011 and 035. It is located in the Residence D-1 Zoning District.

Spencer Aaltonen recuses himself and leaves the dais.

**Members assigned: Alex Rodolakis, David Hirsch, Robin Young, Matt Levesque, Jacob Dewey
Representative: Albert Schulz, Esq.**

Attorney Albert Schulz is representing the applicant. Also with him tonight are Linda Bradley, one of the members of the 48 Manolia LLC and John O'Day from Sullivan Engineering. He shows a site plan on the easel and gives a summary of relief being sought. He has a question on the proposed conditions if this is to be granted being Conditions #3 and 4 and reads them. He asks about the existing old garage which he assumes could be done without coming back before the board and suggests that Condition #4 either be eliminated or modified regarding the setback in order to give the neighbor room in the back.

Alex Rodolakis clarifies that the lots are merged but they are not eliminating the lot line and that they are in common ownership and in the LLC.

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

Robin Young asks if they are planning to do something with the garage. Attorney Schulz states that they will be doing something to the garage but that there will be no bedroom, no kitchen, no expansion and notes that they know that they would have to come back before the board should they decide to expand it. Alex asks for clarification on #6. Attorney Schulz would like to combine #3 and 4, without coming back before the board and wants to remove #4 meaning that they wouldn't have to come back before the board as long as there was no further encroachment into the setback that they could come up to the

maximum allowable, or perhaps somewhere in between, that would allow for the applicants to make some sort of expansion or for other structures such as a shed or a carriage house without having to come back before the board. They discuss. Attorney Schulz comments that Condition #2 sites the March 24th plan from Northside Design and that the first level height level should be 17.5' and not 17'. He can file an amended plan to make reference to that correction.

Robin Young makes findings:

Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

- **The application falls within a category specifically excepted in the ordinance for a grant of a special permit.**
Section 240-91(H)(3) allows for the complete demolition and rebuilding of a residence on a nonconforming lot by Special Permit.
- **Site Plan Review is not required for single-family residential dwellings.**
- **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.**

Further, Section 240-91(H)(3) requires the Board to find that if the proposed demolition and rebuilding cannot satisfy the criteria established in H.(1) As-Of-Right, then the Board may allow the demolition and rebuilding by Special Permit provided the Board finds that:

- **The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building;**
- **The proposed lot coverage shall not exceed 20% of the existing lot coverage, whichever is greater. The proposed lot coverage is 13.5%.**
- **The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished, whichever is greater. The proposed FAR is .18.**
- **The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories. The grade to the top plate is 25 feet 4 inches, and to the ridge is 31 feet 11 inches. The proposed dwelling is 2 ½ stories.**
- **The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.**

Vote:

All in favor

Motion is made by Robin Young to grant the relief being sought with the following conditions:

Conditions

1. Special Permit No. 2016-020 is granted to 48 Magnolia Avenue LLC for the demolition of an existing dwelling and construction of a 4,463 square foot dwelling at 48 Magnolia Avenue, Centerville.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan Improvements at 48 Magnolia Avenue" dated November 10, 2015 with a last revision date of April 29, 2016, drawn and stamped by Sullivan Engineering and Consulting; and the floor plans and elevations dated March 24, 2016 by Northside Design Associates. **Should be 17.5 and not 17 and Schulz will file an amended plan.**
3. The total lot coverage of all structures on the lot shall not exceed 13.5% and the floor-area ratio shall not exceed .18. **without prior approval of the board**
4. The proposed redevelopment shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
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 building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

7. **Nothing will prevent the applicant from renovating the existing garage on the property.**

Vote:

All in favor

GRANTED WITH CONDITIONS

Spencer Aaltonen returns to the dais.

Alex Rodolakis reads the following into the record:

7:01 PM Appeal No. 2016-021

Giatrelis

Daniel J. Giatrelis and Karen L. Giatrelis have applied for a Special Permit pursuant to Section 240-91(H)(3) Developed Lot Protection and a modification of Special Permit No. 2013-032. Special Permit No. 2013-032 approved the demolition of an existing dwelling and reconstruction of a new dwelling with a “garage under”. The Applicant is seeking a modification of the Special Permit to construct the garage adjacent to the house, at grade, and attached by a breezeway. The lot coverage of the original dwelling/structures was 25.3%; the dwelling approved with Special Permit No. 2013-002 had a lot coverage of 17.9%; and the new proposal has a lot coverage of 22.4%. The property is located at 112 Ocean Drive, Hyannis, MA as shown on Assessor’s Map 266 as Parcel 008. It is zoned Residence B.

Members assigned: Alex Rodolakis, Robin Young, David Hirsch, Matt Levesque, Spencer Aaltonen

Representative: Attorney John Kenney gives summary of relief being sought and history. He states that this property came before the board in 2013 and was granted a special permit which allowed for the demo/rebuild on the lot. He shows a slide of the house being rebuilt and states that the house is up gradient from the street and to try to get a driveway with side loading garage would cause it to become a swimming pool of sorts. They are asking to modify the special permit and the plan. The original building was constructed 5 feet within the lot line abutting Ocean Drive and is currently allowed to go between 5 and 20 feet in the front yard setback according to the ordinance. He shows a picture of where the garage would be placed. The garage at level is a better plan than a low side loading, one car garage. He would suggest that it would be a benefit and consistent what is going on in this neighborhood and would suggest that this meets the special permit requirements.

Robin Young asks about the deck and how/if it contributes to the ratio. Attorney Kenney states that it is a patio and agreed that that structures would be 15 feet from the rear property line and that the deck is actually a patio and does not contribute to the lot coverage. As for the porch, he has relied on Down Cape Engineering for the calculation and that the porch would still be within the requirement. Robin Young clarifies that the space above the garage will remain uninhabitable.

Alex has concerns with the cupola, would not have a problem with the garage or the room above the garage if they removed the cupola.

Alex Rodolakis asks for public comment.

Attorney David Lawler is representing the Thompson family. He speaks about the character and charm of the neighborhood. He hands in photos. (EXHIBIT A). One shows foundation being poured and notes that the foundation was not poured to accommodate the garage. As for the other two photos, they were taken in the last couple of days. They are now seeking relief where lot coverage was within the 20% but is not with this request. They are now back pushing the limits in a small neighborhood. They would be willing to talk to the applicant about a unique idea of how to resolve. He also thinks that the scaling and massing is over the limit. He would be agreeable to continuing this in order for his client and the applicant to talk.

Attorney Kenney responds. He states that in reference to the comment about encroachment, he feels that Attorney Lawler’s client’s house is encroaching and that it looks down into his client’s yard. He shows picture of the house and how the neighbor’s house encroaches near his clients (EXHIBIT B). He isn’t sure why there is an issue with the cupola since they are talking about the garage.

The board discusses.

Attorney Kenney asks for a continuance

Motion is made by David Hirsch and seconded by Matt Levesque to continue to June 22, 2016 at 7:00 pm.

Vote:

All in favor

CONTINUED TO JUNE 22, 2016 AT 7:00 PM

7:02 PM Appeal No. 2016-022

Tripp

Steven A. and Denise W. Tripp have petitioned for a variance from Section 240-91-H(1)(b)[1] Lot Coverage. The petitioners seek relief from the maximum of 20 percent lot coverage to allow the demolition of the existing 1,361 square foot, three bedroom dwelling and construction of a new 3,321 square foot, three bedroom dwelling with an attached two-car garage. The proposed lot coverage with attached garage is 22.4%. The property is located at 41 South Street, Osterville, MA and shown on Assessors Map 117 as Parcel 069. It is located in the Residence C Zoning District and the Resource Protection Overlay District.

Attorney John Kenney is representing the petitioner and has requested a continuance.

Motion is made by Matt Levesque and seconded by Jake Dewey to continue to June 22, 2016 at 7:02 PM.

Vote:

All in favor

CONTINUED TO JUNE 22, 2016 AT 7:00 PM

Upcoming Meetings

June 22, 2016; July 27, 2016

Adjournment

Motion is made by Spencer Aaltonen and seconded by Matt Levesque to adjourn.

Vote:

All in favor