



Town of Barnstable

Zoning Board of Appeals



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Staff Support

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 Anna Brigham – Principal Planner – anna.brigham@town.barnstable.ma.us
 Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, March 22, 2017

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

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

Also present were Ana Brigham – Principal Planner, Elizabeth Jenkins – Interim Director , and Carol Puckett – Administrative Assistant

As a quorum has been met, Alex Rodolakis – Vice Chair calls the hearing to order at 7:02 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 in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Alex reads the following into the record:

7:02 PM Appeal No. 2017-014

Centerville Village Apartments Realty Trust

Adam J. Hostetter and Kristen Williams Haseotes, Trustees of the Centerville Village Apartments Realty Trust have applied for Special Permits pursuant to §240-93(B) Nonconforming Buildings or Structures not used as single or two-family dwellings and §240-94(B) Expansion of a Preexisting Nonconforming Use. The Applicant seeks to expand the preexisting nonconforming multi-family residential use on the property. The proposal is to relocate and preserve the existing filling station building on the property; demolish the remainder of the structures; and construct nine single-family dwellings (four two-bedroom units and five one-bedroom units). The property is located at 981 Main Street, Osterville, MA as shown on Assessor’s Map 117 as Parcels 026 and 178. It is located in the Residence C and Wellhead Protection Overlay Zoning Districts.

Please note: Applicant has requested a continuance to April 12, 2017.

Motion is made by Spencer Aaltonen and seconded by Matt Levesque to continue this matter to April 12, 2017 at 7:00 PM.

Vote:

All in favor

CONTINUED TO APRIL 12, 2017 AT 7:00 PM

7:04 PM Appeal No. 2017-017

Shay

Joseph F. Shay, Jr. has applied for a Special Permit pursuant to Section 240-92(B) Nonconforming Buildings or Structures. The Petitioner is proposing to construct an exterior elevator shaft on the southwest side of a pre-existing nonconforming structure that will intrude into the side/rear yard setback. The property is located at 76 Washington Avenue, Hyannis Port, MA as shown on Assessor's Map 287 as Parcel 096. It is located in the Residence F-1 Zoning District.

Please note: Applicant has requested a continuance to April 12, 2017

7:05 PM Appeal No. 2017-018

Shay

Joseph F. Shay, Jr. has petitioned for a variance from Section 240-13.E – Bulk Regulations. The Applicant is seeking relief from the existing side/rear yard setback requirement of fifteen (15) feet to construct an exterior elevator shaft which will result in a thirteen and a half (13.5) foot side/rear setback. The property is located at 76 Washington Avenue, Hyannis Port, MA as shown on Assessor's Map 287 as Parcel 096. It is located in the Residence F-1 Zoning District

Please note: Applicant has requested a continuance to April 12, 2017

Motion is made by Matt Levesque and seconded by Jake Dewey to continue both appeals to April 12, 2017 at 7:00 pm.

CONTINUED TO APRIL 12, 2017 AT 7:00 PM

Alex reads the following into the record:

7:01 PM Appeal No. 2017-013

Hot Water II Realty Trust

James B. Goodwin, Trustee of the Hot Water II Realty Trust has applied for a Special Permit pursuant to Section 240-94(B) Expansion of Pre-existing Nonconforming Use. The Applicant seeks to expand the automobile body and repair facility into a new, additional building. The property is located at 1364 Phinney's Lane, Hyannis, MA as shown on Assessor's Map 274 as Parcel 019. It is located in the Residence G, Residence F-1 and Business Districts and the Groundwater Protection Overlay District.

Continued from March 8, 2017. Members assigned: Alex Rodolakis, David Hirsch, Herbert Bodensiek, Matthew Levesque, Spencer Aaltonen

**Members assigned tonight: Alex Rodolakis, Herbert Bodensiek, Matt Levesque, Spencer Aaltonen, Jake Dewey
Representative: Mark Boudreau, Esq.**

Attorney Boudreau summarizes what happened at the last meeting and that public comment was closed and that the board wanted staff to look at floor drains and oil water separator as well as signage. They are in agreement with the suggested comments.

Alex states that at the last meeting they discussed transfer of the special permit only with approval from the board. Attorney Boudreau does not recall that and states that it would affect his client's ability to do something down the line and if they had to come back it could be a denial. Attorney Boudreau states that this is not a multi use building, is predominately in a residential district and anything they do would have to be before the board. Alex asks if they sold the property now the special permit would go with the buyer. Boudreau says yes.

Alex asks about limitation of businesses. Boudreau is not looking to expand the business that is here now but down the road his client would want to lease out the building for the same use. Alex asks for clarification about designated vehicle drop area. Boudreau is okay with keeping it impervious and with signage. The vehicles that come in, the leakage of fluids/hazardous materials have been depleted en route and they are not talking about gallons of liquids. Alex refers to the orange area on the plan and how is that going to be indicated on the ground. Mr. Goodwin speaks and states that it is already the designated drop area that the tow truck drivers are familiar with that area but that they will be putting up a new sign for that area also.

Jake Dewey asks for clarification on the car storage area. Attorney Boudreau states that it will be only for car storage and that they will not be doing anything else in that easement area. Jakes asks if this is an accessory use. Mark says it has been there and is pre-existing. Alex asks where in the conditions or the request is that relief being sought. Mark says there were not addressing that and that the town did not want any additional activities taking place in the easement area and is okay with that.

Alex asks about the colors as to any structures on the property and changing Condition #9 and that the future building shall remain as neutral as Honda blue. They don't have to change the existing building color now but any future structures on the property will be those colors. Alex makes findings:

Proposed 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.

1. James B. Goodwin, Trustee of the Hot Water II Realty Trust ("Applicant") seeks a Special Permit pursuant to Section 240-94(B) Expansion of Pre-existing Nonconforming Use. The subject property is located at 1364 Phinney's Lane, Hyannis, MA as shown on Assessor's Map 274 as Parcel 019 ("the Property"). It is located in the Residence G, Residence F-1 and Business Districts and the Groundwater Protection Overlay District.
2. Section 240-94(B) allows for the expansion/intensification of a preexisting nonconforming use by Special Permit. The Property is currently zoned RG. The preexisting nonconforming use of the Property is automobile service and auto body repair, specifically the repair of physically damaged vehicles. The applicant seeks to expand the use by constructing a new 4,650 square foot building on the Property containing ten (10) new service bays.
3. The auto service and auto body uses are also preexisting nonconforming to the Groundwater Protection Overlay District. The Applicant is not proposing to increase the storage of hazardous materials on site at any one time, but proposes more frequent deliveries of hazardous materials to the Property.
 - a. The Applicant is currently permitted under Massachusetts General Law Chapter 148 Section 10A for up to 650 gallons of hazardous materials storage on site. The Applicant has not requested to increase the total quantities of allowed hazardous materials storage on site, but has stated the inventory on hand will be reduced from a 6-month supply to a two-three month supply. To address the additional delivery of hazardous materials, the existing building and the new building will include secondary containment measures as shown on the plans entitled "Proposed New Building" and "Proposed Renovations/Addition" dated (revised) 3/16/17 drawn and stamped by ConServ Group, Inc.
 - b. The Applicant is also proposing to pave a parking area, currently gravel. The lot coverage of the site is proposed to increase to 90,252 sf. A stormwater management system, including subsurface stormwater management systems, catch basins, an oil/water separation and a filtering bio-retention area, will be added to the site to collect, treat and filter stormwater runoff.
4. According to the Applicant, the building was constructed in 1975 when the property was zoned Business (B) and permitted "retail stores and salesrooms, gasoline oil filling stations and garages." The auto body repair use and the proposed expansion thereof is on the same lot as occupied by the nonconforming use on the date it became nonconforming.
5. The proposed expansion of the use is not expanded beyond the zoning district in existence on the date it became nonconforming.
6. The proposed expansion of the auto body repair use reflects the nature and purpose of the use when it became nonconforming. The use began providing auto body services to trucks when it opened in 1975. The expansion is similar in quality, character and degree as the use when it became nonconforming; the services provided in the new building are substantially the same as the services provided on site today.
7. The proposed expansion of the use is not different in its effect on the neighborhood. The expanded use will occur in a newly constructed building, conforming to setback requirements, and
8. The nonconforming use will be expanded into an additional structure, which will conform to setbacks within the district in which it is currently located. The proposed expansion of the use into a new structure shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.
9. Site Plan Review issued a letter of approval dated February 7, 2017.
10. 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

Alex makes motion to grant with the following conditions according to the staff memorandum dated March 22, 2017:

Suggested Conditions

Should the Board find to grant the Special Permit No. 2017-013, it may wish to consider the following conditions:

1. Special Permit No. 2017-013 is granted to James B. Goodwin, Trustee of Hot Water II Realty Trust for the expansion of a preexisting nonconforming use at 1364 Phinney's Lane, Hyannis, MA as shown on Assessor's Map 274, Parcel 019.
2. Use of the site shall be for automobile service and auto body repair, specifically the repair of physically damaged vehicles, in accordance with all conditions herein. There shall be no further extension or expansion of this use or associated accessory uses added without prior approval from the Board.
3. The permitted expansion shall consist of the construction of a new 4,400 square foot building containing ten service bays, plus associated office and storage areas; and associated site improvements, including, but not limited to an 82-space paved vehicle storage area with stormwater management facilities.

4. The improvement and use of the property shall be in substantial conformance with the site plans entitled "Hyannis Honda Body Shop Building, 1364 Phinney's Lane, Barnstable, MA" drawn and stamped by Baxter Nye Engineering and Surveying dated October 25, 2016 with last revision date of January 27, 2017 and depicting the "designated damaged vehicle drop area"; and floor plans for the existing and new buildings by ConServ dated 3-15-17 with a revision date of 3-16-17, sheets A-1 and A-2.
5. Impervious surface coverage on the site shall be limited to 90,252 square feet and shall not be increased without prior approval from the Board.
6. Any increase in on site hazardous materials storage beyond the 650 gallons of hazardous materials storage currently permitted under Massachusetts General Law Chapter 148 Section 10A is prohibited.
7. The Applicant shall designate a drop-off area for damaged vehicles within the paved area of the site as shown on the Layout and Dimension Plan, sheet C3.1. The area shall be physically marked on the site and properly signed and illuminated.
8. The auto body use and associated storage of damaged vehicles shall be limited to the buildings and paved areas as delineated on the approved site plan, and shall not extend to the area within the utility easement.
9. The proposed building shall remain a neutral color.
10. Business identification signage not to exceed six square feet in area, along with necessary directional signage shall be allowed on the new building.
11. All site lighting shall be downward directed as not to shine or glare onto adjacent properties. All lighting shall be contained on site.
12. The conditions of the February 27, 2017 Site Plan Review letter is hereby incorporated as conditions of this Special Permit.
13. 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.

Alex makes an amendment to Condition #9 that any structures on the property shall remain in neutral color including the color: Honda blue.

Jake Dewey asks for clarification on where they ended up regarding # of businesses on the property. Alex clarifies that it is for the potential # of businesses operating on the property and restriction of the occupancy of the two buildings by separate businesses. It would prevent a tenant from coming to the board for approval. Jake doesn't see why they wouldn't they ask them to come back since this is in an environmental sensitive area. Attorney Boudreau states that the business would not be changing and if it did they would need to come back to the board and is if they leased out the new building which has 10 bays, they could do nothing else and that his client is okay with car storage and auto body repair only.

Jake would like to see a condition on the # of tenants. Attorney Boudreau says that for the new building, there should be one tenant and is agreeable to that. Alex clarifies that there shall be no more than one tenant in the freestanding building not including the applicant. Attorney Boudreau is okay with a condition that there shall only be one tenant in the building.

Staff and the board discuss verbiage regarding that condition. Elizabeth Jenkins suggests that "there shall be no more than one additional tenant on the property without prior approval of the board". They discuss. Attorney Boudreau consults with his client and states that perhaps they could limit the main building to no more than three (3) tenants including the applicant bringing it to a total of four (4) on the property. Alex clarifies with Elizabeth and Attorney Boudreau that there shall not be more than one tenant per building on the property without prior approval from the board.

They discuss the transferability. Alex clarifies that as for Condition #7, the area shall be physical marked on the site and properly illuminated as the vehicle drop area which has potential containment.

Attorney Boudreau agrees with amended conditions.

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

Old Business

Marvin and Diane Glick are appealing the Building Commissioner's constructive denial of a request for zoning enforcement. The Appellants seek enforcement of a zoning violation on 305 Baxters Neck Road, specifically the construction of a retaining wall inside of the zoning setback area adjacent to the Glick property located at 285 Baxters Neck Road. The appeal is filed pursuant to Massachusetts General Law 40A Section 7, citing Sections 240-123 (enforcement), 240-14 (RF Zoning District) and 240-128 (Definitions) of the Zoning Ordinance. The property that is the subject of this appeal is located at 305 Baxters Neck Road, Marstons Mills, MA as shown on Assessor's Map 075 as Parcel 009. It is located in the Residence F (RF) Zoning District.

Continued from February 22, 2017. No members assigned. No testimony taken.

Members assigned tonight: Alex Rodolakis, Matt Levesque, Herbert Bodensiek, Jake Dewey, Spencer Aaltonen

Representative: Gene Guimond, Esq., from Baker, Braverman & Barbadora, P.C., is here representing the Glicks. He asks if the board has read the staff report which was given this morning. Alex says members have read it. Guimond refers to the question pertaining to if this board has jurisdiction to hear this appeal on the enforcement action and if this was filed timely. He notes that one of the things that is looked at when filing an appeal is whether or not the person who files the appeal for the enforcement action received adequate notice of the issuance of the building permit. Generally, under the enforcement section, there is a 30 day appeal period after a building permit is issued but that normally is if a person is aware of it. He explains that the Glick's normally leave for Florida in the first part October and return around the first part of May. He has conversed with the Glick's who stated that they never received notification that a building permit was applied for and issued for the demolition of the building, the rehab, and a third permit issued for the pool. He explains that the first time the Glick's were aware of the construction of the retaining wall was in November. He explains that in mid-November, the 30 day window to appeal would've already expired. He also notes that the Building Inspector has acknowledged that the zoning ordinance requires that there is a building permit applied for and issued for each structure. This retaining wall is basically fourteen (14) feet high and one hundred (100) feet long and is a structure that would require a separate building permit. To date, no building permit is issued for the wall structure. Therefore, it is the Glick's position that the request for enforcement order is timely filed due to the fact that there is no building permit issued. They are requesting that this board order zoning enforcement officer and the building inspector to

- a) Require that a building permit would be applied for
- b) Make a determination that the fifteen (15) foot side yard setback would be applicable and that either the retaining wall that has been built for the section that is within that 15 foot setback be relocated or the property owner applies for a variance within that 15 foot setback

Elizabeth Jenkins gives history of what permits have been applied for which is the demo/rebuild for the house, a permit for the guest house and a permit for the pool. Jenkins confirms that after a conversation with the Building Commissioner, he stated that the retaining wall itself needs to retain an independent building permit.

Attorney Guimond clarifies that the permits issued never mentioned the building of a retaining wall. Also, no valuation for the retaining wall was indicated on any building permit.

In reference to issue of a retaining wall being a landscape feature, it is Attorney Guimond's contention that, in regards to definitions of a structure and setback, it clearly states that the setback applies to structures. What the Building Inspector qualified is that a retaining wall would not be required because in the past the building department did not treat retaining walls as structures that required a setback. He refers to a local case on Horseshoe Lane.

This is a monster wall that violated all purposes of the zoning by law. There was a SJC case, which is narrow in scope, which was trying to classify a generator as a structure which the judge thought was going a little too far. Once again there are references in the ordinance that structures are subject to a side yard setback. Pools are a structure that are subject to side yard setback and he believes that the size and scope of this retaining wall needs a building permit and if a building permit were applied for, it should be denied on the fact that that sections that fall beyond the setbacks requirements would require a variance.

Alex asks Elizabeth Jenkins if the Building Inspector agreed that a building permit should've been applied for. Jenkins states that is correct and that she believes that the property owner has been notified by the Building Division confirming that, and after her conversation with the Building Commissioner, is that any retaining wall over four (4) feet in height is required to obtain a building permit under the auspicious of the state building code.

Alex asks for public comment.

Attorney Sarah Turano-Flores, who is representing the owners, Mr. & Mrs. Daniel Schwinn and Wingaway Trust speaks. She gives history of how the home owner's acquired the property and their process in the development of that lot which included a hearing before the Conservation Commission and the Zoning Board of Appeals for which the Glick's would've been notified. In the summer of 2015 when plans were ready, there were communications between landscape architect and the Building Commissioner and it was confirmed that no relief was needed for the landscape feature and could be in that area without zoning relief. The building permit application was made in September of 2015 and issued on October 20, 2015. Both the site plan, which shows the retaining wall, and the landscape construction plans, were stamped by the Building Division on October 1, 2015. The building permit then issued on October 20th and was the understanding of the applicants and the building department also that the retaining wall was included in that permit.

From the testimony of the Glick's attorney, by mid-November they (the Glicks) were aware of this project and if the building permit issued October 20th they would've had until November 30th to take that appeal. Her contention is that this appeal is untimely.

In December of 2015 they (the Glicks) were sent copies of the plan for the purpose of accessing that side to construct the retaining wall. There were communications back and forth at that time and did not bring forth the appeal then. There were again communications again in May of 2016 when they returned indicating that they were unhappy about the wall. They are well outside the 30 day notification period. What case law says is if you had adequate notice of a building permit and did not take notice within the 30 days, you cannot subsequently thereafter take a request of zoning action because of a statute of limitations. She refers to the Gallivan (Gallivan v.Board of Appeals of Wellesley, 71 Mass. App. Ct. 850, 855 (2008)) and Connors 460 Mass at 767 cases.

She states that the board needs to decide, as a threshold question, whether or not they have jurisdiction and if this was untimely. The building permit, whether a permit issued on October 20, 2015 is clouded here because the Building Commissioner is now asking them to apply for a separate permit for the retaining wall and is not because a separate permit is required. The building code does not require a separate building permit for the retaining wall yet the retaining wall needs a building permit under the state building code in excess of 4 feet in height that hold back unconsolidated soil requires a building permit. The permit for the wall was included in the initial building permit. On February 21st, the Building Commissioner asked them to apply for a separate building permit for the wall. She hands in letter from BC requiring a building permit (Exhibit A). She thinks that she has a good case that ZBA should uphold the BC and that it was properly built. She explains that the wall is of varying elevations and not 14 feet all the way and does not tower over the Glick's house. She was out there today and took pictures that she hands in (Exhibit B). She states that the ordinance and the definition of setback is used with the word principal or accessory preceding it.

Alex is troubled with the fact that if they apply for the permit, that the Glicks will ask the BC not to issue and will end up coming back to the ZBA.

Herb asks questions about engineering requirement. Sarah says that J.M. O'Reilly is the person who engineered it.

Attorney Guimond disagrees with the wall being sitely and hands in photos that were included in his initial application to the board (Exhibit C). They would suggest that it was not a landscape feature. He believes that the retaining wall is a substantial structure. He gives example of definition of structure in CBD AND CV zoning districts.

Board and Attorney Guimond discuss procedure.

Attorney Turano-Flores says that there are 3 issues: permit filed, needs to be filed, does this wall violate zoning bylaws for setbacks.

Board discusses the questions about what they are deciding.

Jake Dewey asks if the house could've been built without the wall. Attorney Turano-Flores says no.

Herbert Bodensiek thinks a new building permit should be applied for and would not be in favor of overruling the BC.

Jenkins suggests perhaps continuing so that the board can understand fully the scope of the issues.

Attorney Turano-Flores would like to reserve the fact that the wall was applied for in the original building permit. Attorney Guimond wants clarification that counsel said that if they applied for the permit they would get the COO and is not under the impression of that from the building inspector. They discuss a continuance. Attorney Guimond agrees to 30 days and will sign an extension.

Motion is made by Spencer Aaltonen and seconded by Herbert Bodensiek to continue this matter to April 26, 2017 at 7:00 PM.

Vote:

All in favor

CONTINUED TO APRIL 26, 2017 AT 7:00 PM

New Business

Alex reads the following into the record:

7:01 PM Appeal No. 2017-015

JEND, LLC

JEND, LLC seeks a Special Permit to expand and separate a conditional use presently granted under Section 240-25(C)(1) and to modify Special Permit No. 2015-002. The applicant seeks to expand the existing service and sales use to a new business in space currently occupied by a retail/wholesale use and to maintain the existing wholesale/warehouse space. Further, the Applicant seeks to modify condition No. 2 of Special Permit No. 2015-002 to allow for storage of greater than household quantities of household materials. The subject property is located at 37 Hinckley Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 018. It is in the Business, Highway Business, and Groundwater Protection Overlay Zoning Districts.

Members assigned: Alex Rodolakis, Herbert Bodensiek, Matt Levesque, Jake Dewey, Spencer Aaltonen

Representative: David Lawler, Esq., who is also with the owner of Atlantic Aero Support.

Attorney Lawler gives history of the previous appeal regarding the tile company that occupied 2/3 of the building along with Heritage Turbines who occupied the remainder. He states that the new business will be handling high end airplane parts and will inspect and clean under tight control. They have to report to FAA. The process will be very stringent and careful and will be in full conformance with the bylaw. This is lesser impact on the area than the existing tile company. The rear of the building will remain as a wholesale and warehouse portion of the business and could be rented out to a third tenant for that particular use and would rather have it kept in the new special permit. The only issue was the use of toxic chemicals. The Board of Health (BOH) was there on Friday and stated there were minimal hazardous materials. The site is located off Route 132 right after BJ's gas. It is an appropriate use.

No questions from the board

Alex asks for public comment. No one speaks.

Anna Brigham states that after the BOH inspection, it was determined that there were minimal quantities. Alex asks Attorney Lawler if he has seen the staff report and is okay with it. Lawler is okay with it.

Matt Levesque does findings (Exhibit A).

Vote:

All in favor

Matt makes a motion to grant with the conditions as outlined in the staff report dated 03-13-17 (Exhibit A).

Seconded by Alex Rodolakis

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:02 PM Appeal No. 2016-023

Tavilla

Anthony and Josephine Tavilla have petitioned for a variance from Section 240-44(A) – Accessory Uses which requires that an accessory lot be “adjoining or immediately opposite and across a road from the lot on which the principal use it serves is located”. The applicants are proposing to construct and maintain a small, seasonal dock and boardwalk on an accessory lot separated from the principal lot by the Centerville River. The accessory lot is located at 0 Long Beach Road, Osterville, MA as shown on Assessor’s Map 185 as parcel 050-001. The principal lot is located at 103 Main Street, Osterville, MA as shown on Assessor’s Map 185 as parcel 022-001. Both lots are located in the Residence F-1 Zoning District.

Members assigned: Alex Rodolakis, Herbert Bodensiek, Matt Levesque, Spencer Aaltonen, Jake Dewey
Representative: Arlene Wilson from AM Wilson and Associates is representing the applicants.

Arlene Wilson explains that the petitioners are seeking a variance. The lots were acquired in October of 2004, on same deed and owners are identical. Lots were created by an Approval Not Required (ANR) plan approved by the Planning Board in 1979 that requires that these two lots be used together. At time of creation, the residential lots were required to have 70% upland and since these lots do not, the definition of upland and wetland have not changed since the time these lots were created. The accessory lot does not meet the minimum lot and it is clear that the lot continue a long standing ownership pattern. The only practical means of accessing this lot is by boat or to drive to Long Beach Road in Centerville in the parking lot on Cross Street, walk down, crossing 16 privately held parcels and would be trespassing and not a good situation if they had to do this. In the 30’s a lot of the houses had piers. Some of the piers were wiped out because of hurricanes during the 30’s and 40’s. She cannot find recorded variances or special permits for the existing piers which might be because it was prior to zoning. It has become more of the practice to have a building permit for piers. The language for accessory uses has changed from time to time. The language included across the street. There were issues on East Bay Road regarding large homes on the inland side of the street and some on the bay side and the piers were across the street. The allowance for accessory uses across the street was at least partially influenced from that problem. She refers to the conditions for a variance. For first prong it could include development patterns and in this case, no servicing road and only access by water. As for literal enforcement, family spends a lot of time at the home, no space to utilize the beach at the principal lot. There is a salt marsh fringe which is very soft and muddy and somewhat dangerous to wade. Physical hardship would be in trying to access the lot. As for the detriment to the neighborhood: the barrier beach provides protection and utilizing the beach by pulling p boats would damage the salt marsh and could be a potential investment problem for the town and emergency personnel. She notes that the plans as noted in the staff report have been revised and should cite June 15, 2016 for sheets 1 & 3 and September 26, 2016 for sheet 2. Those plans have been provided to the board.

Alex asks for public comment. No one speaks.

Jake makes findings:

*Showed it was landlocked and feels that the applicant met this by showing they would have to use a boat to get there
Dock is better for the environment and will comply with conservation requirements.*

Vote:

All in favor

Jake Dewey makes motion to grant with conditions as outlined in staff report (Exhibit A) dated March 14, 2017 and to amend Condition #2 adding the plans with the appropriate dates (June 15, 2016 for sheets 1 & 3 and September 26, 2016 for sheet 2).

Seconded by

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:03 PM Appeal No. 2017-016

Graham

Gary C. Graham, as prospective owner, has applied for a Special Permit pursuant to Section 240-25.C(1) – Conditional Uses in the Highway Business (HB) Zoning District. The petitioner seeks establish use of the existing commercial property for a commercial construction, landscaping, and property management company, to include overnight storage of commercial vehicles. The property is located at 358 West Main Street, Hyannis, MA as shown on Assessor’s Map 269 as Parcel 053. It is located in the Highway Business (HB) Zoning District.

Members assigned: Alex Rodolakis, Matt Levesque, Herbert Bodensiek, Jake Dewey, Spencer Aaltonen

Mr. Graham is representing himself. He explains that he and his wife are the owners and managers of the business. There are seven employees with approximately five vehicles. Most of his clients are located in the Hyannis area which makes this location a central location for their operation. He will keep some vehicles on site in the fenced in area that they will be able to secure which will include a backhoe and a bobcat on a trailer. 75% of the time these utility vehicles will be at work site. They also have a dump truck with a landscape trailer and would like to store the truck at this site overnight. The trucks will arrive no later than 4:00 pm and will leave at approximately 7:30 am. The hours of operation at this site will be 7:00 am to approximately 5:00 pm. They will have safety meetings first thing in the morning with the trucks then leaving around 7:30 and coming back between 3:00 and 4:00 pm. There will be no maintenance of trucks on site and no storage of construction materials in the yard. Only thing the yard will be is for storage of vehicles or equipment. They will beautify the front to make it inline with how they maintain their properties. They will be willing to put a buffer between them and the residence. They are aware of the back-up sensors and would position the vehicles so that there would be no noise created.

Jake asks what type of business this is. Mr. Graham explains that it is a construction/commercial remodeling, landscape and property management company. He also explain that they would like the option to have meetings with potential customers to iron out proposals at the site and that the office will not be open to street traffic. There might also be two employee vehicles in the lot daily. He explains access to the lot. Spencer Aaltonen asks where the other employees will park. Mr. Graham explains that they would park out back. Alex clarifies that the employees would not park on Woodland Street.

Alex asks for public comment.

Monica Frenza who is here with her husband Kenneth, are abutters at 23 Woodland Avenue is concerned about the noise from the trucks, screening and appearance. Alex Rodolakis discloses that he had worked with Monica and doesn't feel there would be a conflict hearing her testimony.

Mr. Graham states that he is prepared to be a good neighbor and is agreeable to plantings and minimizing noise levels by parking the trucks in a way that won't invoke back up sounds early in the morning.

Alex asks Mr. Graham if he has read the staff report and is okay with it. Mr. Graham has read it and is okay with it.

Alex suggests a condition about the start and end time and the screening.

They agree that the additional screening on the back facing the residential property line which will consist of arborvitae or cypress or something tall and dense enough to buffer the noise. Also, that the hours of operating the trucks will not be prior to 7:00 am. Spencer suggests up until 6:00 pm.

Spencer makes findings as outlined in the staff report dated March 14, 2017 (Exhibit A):

Vote:

All in favor

Spencer makes motion to grant with the conditions as outlined in the staff report dated March 14, 2017 (Exhibit A) and add condition to #11 that the start time be no earlier than 7 and not later than 6 pm for commercial activity at the site and that the evergreen/arborvitaes screen abuts the residential area

Vote:

All in favor

GRANTED WITH CONDITIONS

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

April 12, 2017, April 26, 2017, May 10, 2017

Adjournment

Motion is made by Spencer Aaltonen and seconded by Jake Dewey to adjourn

Vote:

All in favor

For exhibits, please see corresponding ZBA file.

Please Note: The list of matters are those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Board may go into executive session. The Board may also act on items in an order other than they appear on this agenda.

* Public files are available for viewing during normal business hours at the Zoning Board of Appeals office located at 200 Main Street, Hyannis, MA

Approved