



Town of Barnstable Zoning Board of Appeals



www.town.barnstable.ma.us/ZoningBoard

Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek - Clerk
Robin Young – Regular Member Matthew Levesque – Associate Member
Spencer Aaltonen – Associate Member Jacob Dewey – Associate Member
James Tinsley – Town Council Liaison

Staff Support

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

Minutes

Wednesday, July 12, 2017

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

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

Also present were Anna Brigham – Principal Planner and Carol Puckett – Administrative Assistant.

David Hirsch reads the following with no response:

Call to Order

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

David 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.

Executive Session

The Zoning Board of Appeals may vote to go into Executive Session under G.L. c. 30A §21(a)(3), if the chair declares that an open meeting may have a detrimental effect on the litigating position of the Committee, the Zoning Board of Appeals may vote to go into executive session to discuss litigation strategy with regard to the following pending case:

- Pacheco v. Town of Barnstable Zoning Board of Appeals

If so voted, the Executive Session will be held in the Town Council Conference Room at 7:00 P.M.

David Hirsch makes a motion to go into Executive Session under G.L. c. 30A §21(a)(3) and that an open meeting may have a detrimental effect on the litigating position of the Committee, the Zoning Board of Appeals may vote to go into executive session to discuss litigation strategy with regard to the following pending case: Pacheco v. Town of Barnstable Zoning Board of Appeals. The board will reconvene in open session following the executive session.

Roll call vote:

David Hirsch = AYE

Herb Bodensiek = AYE

*Robin Young = AYE
Spencer Aaltonen = AYE
Jacob Dewey = AYE*

David Hirsch calls the ZBA hearing back in session at 7:16 pm.

David opens the Darling hearing first and reads it into the record:

New Business

7:02 PM Appeal No. 2017-053

Darling

Michael and Kristyne Darling, as prospective owners, have applied for a modification of Special Permit No. 2004-064 which was issued for an addition that intruded into two required setbacks. The applicants are proposing to modify condition No. 7 of Special Permit No. 2004-064 in order to allow the construction of a pool. The property is located at 53 Island Avenue, Hyannisport, MA as shown on Assessor's Map 265 as Parcel 032. It is located in the Residence F-1 Zoning District.

7:03 PM Appeal No. 2017-054

Darling

Michael and Kristyne Darling, as prospective owners, have applied for a Variance as alternative relief to a modification of Special Permit No. 2004-064 issued for an addition that intruded into two required setbacks. The applicants are proposing to construct a pool approximately five (5) feet from the property line where a side yard setback of fifteen (15) feet is required. The property is located at 53 Island Avenue, Hyannisport, MA as shown on Assessor's Map 265 as Parcel 032. It is located in the Residence F-1 Zoning District

Members assigned: David Hirsch, Spencer Aaltonen, Jacob Dewey, Herb Bodensiek, Robin Young

Representative: Michael Schulz, Esq.

Attorney Schulz gives summary of relief being sought and hands in a map highlighted (Exhibit A). Attorney Schulz talks about previous relief granted. He states that most of the homes encroach into the setbacks which affects the neighborhood in general. This property has frontage on three sides and that the lot changes in topography relating to height as it goes up the hill. The only flat location is where they are proposing to construct the pool. As for the previous relief that was granted, Attorney Schulz asks to remove Condition #7:

- 7. The dwelling, garages, decks, and covered porches, shall be considered full build-out for the lot and the structure shall not be expanded in area or in footprint, nor shall any other accessory structures be permitted, without further permission from the Zoning Board of Appeals.**

Attorney Schulz talks about the previously granted relief and how most of the homes in the area encroach into setbacks which affect the neighborhood in general. This subject property has frontage on 3 sides coming up the hill with a large topographical change in height. The only flat location is where they are going to set the pool. He cites the existing special permit, condition #7 above and that the reason they are asking to modify condition #7 is so that they can install the pool which, at its closest, would be 5.1 feet from the property line. They have talked to other abutters and one in particular is here represented by Attorney Dan Chamberlain with whom they have had discussions with and who is not in opposition to the project.

Jake Dewey discloses that he knows the owner and the abutters, has no financial interest, and asks if there is any objection to him sitting on this. No one objects.

David Hirsch comments that he has read the conditions from the previous special permit granted in 2004 about screening the HVAC equipment which he believes was never done and if this board were to grant this special permit would like to see it as a condition in this permit. Attorney Schulz agrees and thinks it is a reasonable request.

Attorney Dan Chamberlain speaks. He is representing the owners of 79 & 87 Island Avenue. There were initial concerns by his clients. They have reached out to the applicant and their attorney and have worked out a resolution. They would want to make sure that a condition of the enclosure of the mechanicals and the sound proofing are added to the decision. If so, his clients have no objection to this project.

David Hirsch reads a letter in opposition from the property manager, Pauline Skiver, at 99 Island Avenue whose clients oppose any setback less than ten (10) feet from the property lines (Exhibit B). David then reads another email from Pauline Skiver dated July 12, 2017 removing their opposition to the project (Exhibit C).

Robin Young is concerned about the Egan's who are the direct abutters who they never heard from. He thinks that the applicant's should've received some correspondence from them as to their concerns or support of the project. Spencer is also concerned about not hearing from the Egan's. Attorney Schulz states that they have heard from the seller's real estate agent, Kathy Deerman.

Kathy Deerman with Robert Paul Properties, on behalf of the Turwitz's who own the property, states that her boss, Paul Grover, was contacted by Mr. Egan pursuant to the notice sent out by the ZBA. They have had numerous conversations with Mr. Egan who is not opposed to the project but is uncomfortable with submitting a letter in support of the project.

The board discusses density on the lot. Attorney Schulz thinks it can be handled under the modification of the special permit and not a variance. He thinks it is in character with the neighborhood.

Attorney Schulz suggests language for the condition that Attorney Chamberlain would like if so granted:

Spencer makes findings:

Proposal & Relief Requested

The applicants are proposing to modify Condition No. 7 of Special Permit No. 2004-064 in order to allow the construction of a 16 x 32 pool in the southeast corner of the property.

Condition No. 7 reads: *The dwelling, garages, decks, and covered porches, shall be considered full build-out for the lot and the structure shall not be expanded in area or in footprint, nor shall any other accessory structures be permitted, without further permission from the Zoning Board of Appeals.*

In the alternative, the applicants are seeking a variance from Section 240-13 E. Bulk Regulations of which the minimum side yard setback is 15 feet. The proposed pool will have a 5.15 foot setback from the southeast lot line and 5.15 foot setback from the southern lot line.

Special Permit Findings

Should the Board find to grant the modification of Special Permit No. 2017-053, it may wish to consider the following findings:

1. In Application No. 2017-053, Michael and Kristyne Darling, as prospective owners, have applied for a modification of Special Permit No. 2004-064 which was issued for an addition that intruded into two required setbacks. The applicants now seek to modify condition No. 7 of Special Permit No. 2004-064 in order to allow the construction of a pool.
2. The property is located at 53 Island Avenue, Hyannisport, MA as shown on Assessor's Map 265 as Parcel 032.
3. 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.
4. The proposed use of the property will not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.

Vote:

AYE: David Hirsch, Spencer Aaltonen, Herb Bodensiek, Robin Young

NAY: Jacob Dewey

With the addition of #6:

#6 = Michael and Kristyne Darling agree to enclose all pool equipment including but not limited to the mechanicals, plumbing, filtration systems, within an enclosure to take reasonable efforts to soundproof said enclosure.

David Hirsch would like to add Condition #7

To enclose mechanical equipment already there that was part of the conditions of the special permit in 2004.

Vote:

AYE: David Hirsch, Spencer Aaltonen, Herb Bodensiek, Robin Young all because there was no opposition by abutters.

NAY: Jake Dewey because it is too much for the size of the lot

GRANTED WITH CONDITIONS

Attorney Schulz asks to withdraw the variance request

Motion is made to withdraw variance 2017-054 by Herb Bodensiek and seconded by Spencer Aaltonen to withdraw the variance.

Vote:

All in favor

WITHDRAWN

Old Business

7:00 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

Time Extension signed 05-24-17. New Decision Due: 08-05-17

Continued from March 8th, March 22, 2017, April 12, 2017, May 10, 2017, May 24, 2017. No members assigned. No testimony taken. Continued again to June 14, 2017 – Members assigned: Brian Florence, David Hirsch, Herb Bodensiek, Robin Young, Spencer Aaltonen

Request was received on 07-06-17 from Attorney Schulz to continue this to July 26, 2017.

7:01 PM Appeal No. 2017-038

Centerville Village Apartments Realty Trust

Adam J. Hostetter and Kristen Williams Haseotes, Trustees of the Centerville Village Apartments Realty Trust, have applied for a Special Permit pursuant to Section 240-94.A – Change of a Nonconforming Use to another Nonconforming Use as an alternative form of relief to that as set forth in Appeal 2017-014. The applicant is proposing to relinquish use of the property for a gasoline filling and service station, relocate and preserve the filling station structure, demolish the remaining buildings on site and construct nine (4, two-bedroom and 5, one-bedroom) single family dwellings. The property is located at 981 Main Street, Osterville, MA as shown on Assessor's Map 117 as Parcels 026 and 178. The property is located in the Residence C (RC) and Wellhead Protection (WP) Overlay Zoning Districts.

Continued from May 24, 2017 and June 14, 2017. No members assigned. No testimony taken.

Request was received on 07-06-17 from Attorney Schulz to continue this to July 26, 2017.

David Hirsch notes that there is a request by Attorney Michael Schulz to continue this to July 26, 2017 at 7:00 pm.

Motion is made by Spencer Aaltonen and seconded by Robin Young to continue this to July 26, 2017 at 7:00 pm

Vote:

All in favor

Attorney Schulz notes that there have been some issues raised and is working with the abutters.

CONTINUED TO JULY 26, 2017 AT 7:00 PM

Adjournment

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

Vote:

All in favor