



Town of Barnstable

Zoning Board of Appeals



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

Minutes

Wednesday, August 23, 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	Present
Spencer Aaltonen	Present
Jacob Dewey	Absent

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

David Hirsch is chairing the hearing.

As a quorum has been met, David Hirsch calls the hearing to order at 7:02 pm

Call to Order

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

David reads the following without 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.

Minutes

Approval of minutes of March 22, 2017, April 12, 2017 and April 26, 2017

Motion is made by Herbert Bodensiek and seconded by Spencer Aaltonen to approve the March 22nd minutes as submitted.

Vote:

All in favor

Motion is made by Matt Levesque and seconded by Herbert Bodensiek to approve the March 12th minutes as submitted.

Vote:

All in favor

April 26th;

Motion is made by Robin Young and seconded by Spencer Aaltonen to approve the April 26th minutes as submitted.

Vote:

All in favor

Old Business

New Business

7:00 PM Appeal No. 2017-055

Ciluzzi

John E. Ciluzzi, as prospective owner, is appealing the decision of the Building Commissioner to deny a building permit (B-17-1393) for the construction of a single-family home on a nonconforming lot. The property is located at 149 Beech Leaf Island, Centerville, MA as shown on Assessor's Map 187 as parcel 063-005. It is located in the Residence D-1 (RD-1) and Resource Protection Overlay Zoning Districts.

Members assigned tonight: David Hirsch, Herb Bodensiek, Robin Young, Matt Levesque, Spencer Aaltonen
Representative: Jeffrey Johnson, Esq., from Hyannis representing John Ciluzzi. Attorney Johnson states that a variance had been attempted previously. However, in his opinion, no variance should've been required and had voiced his opinion to Paul Roma – Interim Building Commissioner that this lot has been separate for all abutting lots and remained in separate ownership since 1984. He outlines the locus and lots on a plan displayed on the easel. He states that the way has been in existence for some time. He has aerials from the 50's and 1989 which depict existence of the way (Exhibit A). He notes that in the staff report Mr. Haney questions the property in purple abuts up to his lot. He states that he also has the seller of the property here tonight to tell the board that as long as her family has owned the property in purple, that that has been the way out to the street. He gives history of conveyance of the lots and some building permits were issued. He refers to Page 1 of the staff report (Exhibit B). He states that he could get an expert to testify that there is that parcel in between. They don't abut, and even if they did abut, they are separated by an ancient way. He refers to the deeds. He also notes that in the staff report, the discussion and the rationale behind the Building Commissioner's decision, but as you can see from the language that he used, he even admits in his denial that it necessitates additional clarification. Attorney Johnson states that he was never asked to sit with him (the Building Commissioner) or to provide any further information. He denied the permit and that is why they are here. They responded in a timely fashion and respectfully submit that this is a separate lot and has been maintained in separate ownership since 1984.

The property owner and seller, Andrea Woods Gauvreau, speaks. She states that her parents lived in the house on the developed lot. When this development went in on Beech Leaf Lane, her parents purchased one of the lots with house plans with the intention that one of the children would live there or be part of their inheritance. Her mother always reminded her that if they were to sell the lot that it was not to be entered from Beech Leaf Lane. Her sisters and she have owned it since 1995 and have paid taxes on it for the last twenty-five (25) years and is assessed as a buildable lot.

David Hirsch asks if anyone else from the public would like to comment.

Attorney David Reid from South Yarmouth is here on behalf of four of the neighbors who are in support of the Building Commissioner's decision: The Robinsons at 151 Beech Leaf Island Road, The Cirellos at 153 Beech Leaf Island Road, the Delaneys of 143 Beech Leaf Island Road and the Gerlovins (518 South Main Street). He states that the report from Mr. Haney was commissioned by the Fosters family whose attorney, Michael Davis is here tonight also. The staff report indicates that the GIS maps are incorrect regarding the intervening area highlighted in purple. He states that part of the problem is that the property at 520 South Main Street is not shown on any separate recorded plan either on a subdivision or a single lot plan. He refers to a 2014 plot plan by a registered land surveyor of that property as it was being sold to the current owners. You will note that it shows property on both sides of the way (the 10 foot way) including as its northerly terminus a 231 foot boundary line. He refers to the current deed. The ordinance does not say that a lot cannot have a way running through it. He refers to the Town of Barnstable's ordinance's language in Section 240-128 for the definition of lot. He cannot find any subdivision plan or plan approved by the Planning Board and doesn't think this qualifies as a street. In terms of common ownership, it seems from his research that the Wood's family had control in several different variations. He believes that the BC's decision is correct.

Attorney Michael Davis of Foxboro is here representing Silvia Forster of 147 Beech Leaf Island Road. He addresses the merger issue and states that in 2015 when this development was first proposed, his client's late husband, Neil Forster provided the Building Inspector's office with a title analysis by Land Court Examiner, Mark Haney, concluding that the subject lot 7 was, for a time, in common ownership with the adjacent lot. Since then, they have asked Mr. Haney to reanalyze to which Mr. Haney has reaffirmed his conclusions which were submitted to the board today. He goes over the information. He reads the map

disclaimer from Town of Barnstable's GIS maps. He addresses comments in the appeal file. He refers to case law in Preston vs Town of Hull 51 Mass. App. Ct. 236. He mentions impact concerns such as the Resource Protection Overlay District. He believes that the Building Commissioner had valid grounds and good reasons in appropriately denying the applicants request for a permit.

Angela Forster Davis whose mother currently resides at 147 Beech Leaf Island Road and could not be here tonight, speaks. She states that her father, Neil Forster objected to this applicants efforts to develop this nonconforming lot in 2015. In the months prior to her father's passing, Mr. Ciluzzi had called her mother repeatedly asking for his acquiescence to this development. She wants to make sure that the applicant will not use this opportunity to navigate around the law.

Maria Gavaris at 520 South Main Street states that the comments about the lot lines is true and that she has been talking to the Town about having it changed because the property line is owned by her and she supports the board's decision and will uphold the rejection.

Attorney Jeffrey Johnson rebuts. He notes that the plan that Attorney Reid submitted states on it states that "this plan was not made from an instrumented survey, it is for the use of the bank only" would suggest that he has one more deed to pass out to the board. He states that when this property went to Land Court by the Silvia's a dispute arose about the Way and whether it is separate from the title to this property. There was a resolution arrived at between the Silvia's and the Wood's. There is a deed: book 5867 page 259 where the Silvia's released their interest in the Way. He hands in copies of the document to the board (Exhibit C). He suggests a continuance in order to have a surveyor look at this. It is the applicant's position that there is a parcel between the former Wood's property and the Way. He also disagrees with Attorney Reid's narrow interpretation of street/way.

Attorney Michael Davis rebuts. He states that he is looking at a quick claim deed from Marjorie Woods in the Mark Haney materials to SPRE Cape Realty Trust and that deed describes, on the northeasterly boundary, 231 feet consistent with the plan that Attorney Reid handed to the board earlier.

Attorney Jeffrey Johnson asks for a continuance. They discuss dates.

Motion is made by David Hirsch and seconded by Matt Levesque to continue this to October 11, 2017 at 7:00 pm

Vote:

All in favor

CONTINUED TO OCTOBER 11, 2017 AT 7:00 PM

David Hirsch reads the following into the record:

7:01 PM Appeal No. 2017-060

Cape Cod Five Cents Savings Bank

The Cape Cod Five Cents Savings Bank has applied for Special Permits pursuant to 240-125(C): Zoning Board of Appeals Special Permit Provisions. The Applicant seeks permits for a Conditional Use pursuant to Section 240-25(C) Highway Business District Conditional Uses for a bank with drive-through; and, and relief pursuant to 240-93: Nonconforming buildings or Structures Not Used as Single- or Two-Family Dwellings to address preexisting landscape buffers, parking lot design, and, if necessary parking lot location and natural state requirements. The Applicant is proposing to combine and redevelop several parcels with a new state-of-the-art banking center. The proposal is to demolish the existing one-story, 32,255 gross square foot building at 1520 Iyannough Road and a 5,904 square foot, two-story office building at 131 Attucks Lane and replace with an approximately 78,220 square foot, two and half story office building. Also proposed is construction of a two-level parking structure with 99,733 square feet of raised covered parking deck, extensive renovations and improvements to the site entries, parking, driveway, and landscaping. The properties are located at 1520 Iyannough Road and 131 Attucks Lane, Hyannis, MA as shown on Assessor's Map 253 as Parcels 020-T00, 020-H00, 020-B00 and Map 254 as Parcel 012. The parcels are located in the Highway Business (HB) and Wellhead Protection Overlay Zoning Districts.

Members assigned: David Hirsch, Herb Bodensiek, Robin Young, Matt Levesque, Spencer Aaltonen

David Hirsch clarifies with Attorney Singer that this will include the parking garage with have a ground level with 2 levels above.

Representative: Andrew Singer, Esq. Also with him tonight is Matt Eddy from Baxter Nye Engineering, Burt Talaman – 1st Executive Vice President & Executive Lending Officer from Cape Cod Five, Matthew Eddy from Baxter Nye Engineering, Curt Raber from Brown Lindquist Raber and Architects, Randy Hart - Director Transportation Planning & Engineering of VHB and Nancy Pometier – Landscape Architect.

Attorney Singer gives summary of existing conditions and proposed. There are four (4) curb cuts on the property; two on Route 132 and two on Attucks Lane which will remain. This office building will include a retail branch with a drive through which will require a Conditional Use Special Permit. He refers to the section of the ordinance for which they need relief being proposed. Some of the nonconformities will be removed. The property is centrally located with access into and out of Hyannis. One of the reasons they chose this site was to redevelop a site that needed an upgrade and do it as a benefit to everyone involved. Benefits: three Title V septic systems will be removed and the applicant will construct a new extension of the municipal sewer from Phinney's Lane to the subject property which will include a new municipal lift station and a force means of a gravity collection which will be capable of handling not only wastewater from this property but from the area watershed. The applicant will then ultimately donate it to the Town of Barnstable. There will be a deed restriction placed on that part of the property where the pond is located. The Conservation Commission (ConComm) has approved the parts of the proposal under their jurisdiction. The parking structure will be the first detached commercial parking structure on the Cape which will allow for the parking of approximately 240 cars. It will be an environmental benefit whereas they won't have to spread out the parking over a large space. There will be a sidewalk down to Route 132 to Attucks Lane and a signalized pedestrian crossing. They have been to Site Plan Review (SPR) and to the Cape Cod Commission (CCC). He goes over the criteria for the granting of a special permit, has reviewed the conditions as outlined in the Staff Report and asks for clarification on three of those conditions. He goes over his suggested conditions. As for Condition #6, he would ask that the applicant could begin construction, site preparation as soon as possible and for that reason it is unlikely that the recorded sewer easement would be finalized and on record before it be time for the building permit.

David Hirsch asks for public comment.

Attorney Christopher Kirrane is representing clients located at 1575, 1555 and 1513 Iyannough Road. His clients were concerned about the sewerage and wastewater and want to be a part of the wastewater/sewerage plan.

Attorney Singer and Matt Eddy clarify that the lift station, etc., would be available but that everyone else could connect at their discretion.

Robin Young asks about left hand turns onto Route 132. Randy Hart explains that they are proposing that the signalization be OptiCom technology which will be current to the traffic flow.

Herb asks about the undersized parking stalls. Matt Eddy replies.

David Hirsch makes findings per staff report dated August 9, 2017 (Exhibit A).

Vote:

All in favor

Motion is made by David Hirsch to grant the relief being requested as outlined in the updated conditions 1-7 (Exhibit B).

Seconded by Matt Levesque

Vote:

All in favor

GRANTED WITH CONDITIONS

Correspondence

- Received 08-10-17 from Cape Cod Commission – Decision for the Cape Cod Training Center project that was approved by the Cape Cod Commission on August 3, 2017
- Received 08-10-17 from Cape Cod Commission – Notice of Referral to the Cape Cod Commission from the Town of Barnstable through the Building Commissioner to review a DRI application for Eco-Site Wakeby Road Wireless Communication Facility

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

September 13, 2017, September 27, 2017, October 11, 2017, October 25, 2017, November 8, 2017, December 13, 2017

Adjournment

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

Vote:

All in favor

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

