



Town of Barnstable

Zoning Board of Appeals



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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

BARNSTABLE TOWN CLERK

2018 FEB 21 PM 1:30

Minutes

Wednesday, October 25, 2017

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

Alex Rodolakis - Chair	Present
David Hirsch – Vice Chair	Absent
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.

As a quorum has been met, Alex Rodolakis opens the hearing 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 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Minutes

Minutes from May 10, 2017

Motion is made by Matt Levesque and seconded by Herb Bodensiek to approve the minutes as submitted.

Vote:

All in favor

Old Business

Alex reads the following into the record:

New Business

7:00 PM Appeal No. 2015-064, REMANDED, Appeal No. 2017-023

Pacheco/Lucien

In 2015, Wayne J. Pacheco and Nancy Lucien petitioned to modify Special Permit No. 2014-018 pursuant to Massachusetts General Law Chapter 40A Section 14. The petitioners sought to delete Condition No. 3 of the decision, which requires “any kitchen or other improvements that represent a second unit on the property be removed by the owner with the required permits from the Building Division.” The Petitioners stated the reason for the request is the decision conflicts with Barnstable Ordinance Chapter 501, Article IV Sections 501-28 and 501-29. On May 27, 2015, the Board of Appeals denied the Applicants request on procedural grounds. The Applicant appealed the denial. By agreement of the Petitioners and the Board of Appeals, the Barnstable Superior Court remanded the matter to the Board for a further hearing and proceedings. The property is located at 791 Pitchers Way, Hyannis MA as shown on Assessor’s Map 271 as Parcel 159. It is in the Residence C-1 Zoning District.

Members assigned: Alex Rodolakis, Herb Bodensiek, Robin Young, Matt Levesque, Spencer Aaltonen
Representative: Brian J, Wall, Esq.

Attorney Wall explains that this is the remand of the 2014 appeal that was before this board previously.

Charlie McLaughlin – Assistant Town Attorney states that the Town Attorney’s Office has been involved and was getting ready for trial in superior court. However, the major obstacle that was encountered at the previous dealings before the board was the presence of a permanent door that would’ve created a second apartment. At that time, the applicant was represented by different counsel and was not willing to remove the door. Currently, they have reached an agreement which he brought back to this board with the suggestion that the door would be permanently removed.

Attorney Wall goes over his memo which he submitted dated October 23, 2017 (Exhibit A) He shows the door (exhibit 6) and states that there is a lengthy history and goes over it briefly. The property is regularly inspected and has a lodging license. In 2014, during an annual inspection by the town, they saw a newer unit in the basement that had not existed before and were concerned as there were no building permits and a door that could be construed as a separate unit. There were further issues with cabinets and a countertop that had been installed and the inspector felt it was a kitchen thus a citation was issued. It also put the lodgers over 6. The applicants then sought counsel. They are seeking to have the use expanded from 6 to 8 lodgers. The board agreed previously to 8 lodgers but there was a condition (#3) he reads from the previous decision (Exhibit B). He reads the lodging ordinance attached to his memo (Exhibit A). Attorney Wall gives the summary of events from the granting of the previous decision to currently which is a remand. Attorney Wall talks about the ordinance about lodging houses and individual cooking facilities and a state law saying that notwithstanding any or ordinance or bylaw to the contrary; lodging houses can have individualized cooking facilities. He thinks that the cabinetry, electric plates and refrigerators are allowed by state law and asks to eliminate Condition #3 so that there is clarity for future inspections. He states that the door at the top of the stairs has been permanently removed and that only the frame exists and his client is prepared to represent that it will stay that way and is okay with a condition to that effect.

Alex Rodolakis thinks a condition regarding the removal of the door to the basement level would solve a lot of problems. Attorney Wall states that exhibit #4 in his memo depicts a laundry room that the lodgers will have access to and to the left to the unit they have been talking about and the door at the top of the stairs will be removed.

Robin Young asks what would prevent the property owner from turning this into a rental unit. Attorney Wall reads a suggested condition from his letter that he had submitted (Exhibit A) and that there is a physical inspection done yearly and that all cooking facilities comply with the permit.

Herb Bodensiek comments that if cooking facilities, as defined, doesn’t have a stove or sink and that they comply and thinks that everything they are asking for, they are entitled to as-of-right and thinks that, in his opinion, Condition #3 should stay. He doesn’t get the point since they are going to comply and asks Attorney Wall why remove the condition should be removed. Attorney Wall states that his client has not been able to get a lodging license because the authorities are reading Condition #3 and seeing what is there and are having a problem regarding cooking facilities. Also, he couldn’t find a definition in the town’s bylaw about kitchens.

Alex asks Attorney Wall if he has seen the staff report. Attorney Wall takes another look at the staff report while there is public comment.

Charlie McLaughlin states that he had suggested perhaps yearly inspections, unannounced to provide assurance and that access would be granted.

Robin Young asks what constitutes a kitchen. Mr. McLaughlin thinks that perhaps this would need to be referred to the Town Attorney.

Alex suggests taking a break to look over suggested conditions.

Tabled until later this evening.

Heard again at 8:18 pm.

Charlie McLaughlin hands in language about the conditions (Exhibit C).

Robin Young suggest the unannounced inspections

Alex recommends access to the basement be open at all times. The board discusses.

Robin Young makes findings:

Special Permit Findings

In considering the request to modify the Special Permit previously granted, the Board should review the evidence presented by the Petitioners, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to the following findings.

1. The Board granted with conditions Special Permit No. 2014-018 to allow for the expansion of a lawfully established preexisting nonconforming lodging house to allow for up to eight lodgers in the dwelling.
2. The Petitioner seeks to amend the Condition No. 3 of Special Permit No. 2014-018 to allow individual cooking facilities consistent with Section 501-29 of the General Ordinance in the basement lodging room.
3. After an evaluation of all the evidence presented, the proposal to modify the conditions of the Special Permit 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 modification to the conditions of Special Permit 2014-018 will not be more detrimental to the neighborhood.

Vote:

All in favor

Robin Young makes a motion to grant the relief being sought with the following conditions:

Conditions

1. A modification of the condition of Special Permit No. 2014-018 is granted to allow for individual cooking facilities in the basement lodging room of the dwelling, as shown on the floor plans submitted to the Zoning Board of Appeals file.
2. The individual cooking facilities shall be installed in compliance with all applicable Building Codes with all required building permits.
3. The site shall be used in accordance with the plan entitled "Certified Plot Plan – 791 Pitchers Way, Hyannis, MA" dated March 26, 2014, drawn and stamped by John L. Libby Consulting.
4. The house on the property shall be a single-family dwelling only. No kitchen or other improvements may be made that would result in a second dwelling unit on the property.
5. The use shall be operated in compliance with all requirements of the Licensing Division and all local, state, and other applicable rules for the operation of lodging facilities.
6. All units shall be in compliance with the Building Code and state and local health regulations. There shall be no more than eight bedrooms in the dwelling.
7. Use of the premises shall be in compliance with the April 1, 2014 Site Plan Review approval.
8. This permit shall not be transferable to any other property owner without prior approval from this Board.
9. 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 by the Board.

Exhibit C:

#2 = the individual cooking facilities shall be installed in compliance with all applicable building codes with all required permits and shall conform to section 501.29 of the towns general ordinances in effect on October 25, 2017.

#4 = the house on the property shall be a single-family dwelling and may be used as a lodging house for the renting of rooms for not more than eight lodgers in one multiple unit dwelling.

Add: The town may perform annual, unannounced inspection of the property and access to the basement shall be unobstructed at all times.

Attorney Charlie McLaughlin states that there should be no door in place on the stairway.

Seconded by Matt Levesque

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:01 PM Appeal No. 2017-065

Facchetti

Francis A. and Anne M. Facchetti, Jr., have applied for a Special Permit pursuant to Chapter 240-92.B - Nonconforming Structures. The applicants are proposing to expand a pre-existing nonconforming garage to be located 6.9 feet from the lot line where a 15 foot side yard setback is required. The applicants are also proposing to relocate an existing bulkhead 7.1 feet from the lot line where a 15 foot side yard setback is required. The property is located at 30 Indian Hill Road, Barnstable, MA as shown on Assessor's Map 336 as parcel 009. It is located in the Residence F-1 Zoning District.

Members assigned: Alex Rodolakis, Herb Bodensiek, Robin Young, Matt Levesque, Spencer Aaltonen

Representative: John Kenney Esq. Also with him are the applicants.

Attorney Kenney gives summary of relief being requested. The existing dwelling does not meet the setback requirements. At the time created, it did meet the setback requirements. Since then it has gone through multiple zoning changes. This is an improvement to the property and enhances their ability to use it. Thinks there is minimal impact.

Alex would like to see plantings around/near the bulkhead and has hesitation about the garage.

Alex asks for public comment. No one speaks.

Board deliberates. Herb would've liked to see a letter from an abutter in favor. Mr. Facchetti states that they have met most of the neighbors and that the street is a dead end. Alex has a problem with the scale of the structure. Attorney Kenney asks if letters from the abutters would be helpful. Herb is still concerned with the setback from the bulkhead but thinks that the plans could be reworked. Attorney Kenney would like to consult with his clients.

Attorney Kenney states that they started with a smaller plan which he shows Alex which they offer in its place. The board looks at the alternative plans. The consensus of the board is that they like the alternate plan better as it is in keeping and scale with the house.

Spencer Aaltonen 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.

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

Section 240-92 allows for the expansion a preexisting nonconforming structure used as a single-family residence with a Special Permit. The proposed bulkhead and garage will encroach into the side yard setback and therefore requires a Special Permit.

2. 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.

Section 240-92 requires the Board to find:

3. The proposed expansion of the dwelling will not be substantially more detrimental to the neighborhood than the existing building or structure.

Vote:

All in favor

Motion is made by Spencer Aaltonen to grant with the following conditions as outlined on the Staff Report dated October 10, 2017:

Conditions

1. Special Permit No. 2017-065 is granted to Francis A. Facchetti, Jr. and Anne M. Facchetti, to allow for the expansion of a pre-existing nonconforming garage to be located 6.9 feet from the lot line where a 15 foot side yard setback is required. The applicants are also proposing to relocate an existing bulkhead 7.1 feet from the lot line where a 15 foot side yard setback is required. The property is located at 30 Indian Hill Road, Barnstable, MA.
2. The proposed alterations will be in substantial conformance with the plan entitled "Certified Plot Plan with Proposed Addition at #30 Indian Hill Road in Barnstable Massachusetts " prepared for Frank Facchetti dated May 18, 2017, drawn and stamped by BSC Group and architectural drawings by ERT Architects received September 25, 2017.
3. This construction shall represent full build-out of the lot. No additional increase in building coverage or gross square footage shall be permitted without prior approval of this Board.
4. This decision shall be recorded at the Barnstable County Registry of Deeds and copies filed with the Zoning Board of Appeals and Building Division. The rights authorized by this special permit must be exercised within two years, unless extended.

Amendments are accepted by Spencer Aaltonen to modify Condition #1:

Change distance from lot line to 10.1 in the front edged corner and 10.5 towards the rear edge corner.

Modify Condition #2 to reflect the revised set of plans submitted tonight to reference Plot Plan with Proposed Addition labeled B Option Plan (Exhibit A).

Vote:

Page 4 of 6

All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:02 PM Appeal No. 2017-067

Salazar

Paul G. Salazar has applied for a Modification and transfer of Special Permit No. 2004-006 in order to operate an acupuncture practice within the existing 484 square foot home occupation space, including a small accessory retail use. The applicant is also seeking to modify Condition No. 8 of Special Permit No. 2004-006 to change the hours of operation to 8:00 am to 5:00 pm, Monday through Saturday. The property is located at 1549 Main Street, West Barnstable, MA as shown on Assessor's Map 197 as parcel 007. It is located in the Residence F Zoning District.

**Members assigned: Alex Rodolakis, Herbert Bodensiek, Robin Young, Matt Levesque, Spencer Aaltonen
Representative: Paul Salazar**

Mr. Salazar explains that he has purchased the property/business and re-opening the same type of business and would like to continue the business but change the hours. He has lived there for 15 months and will remain to do so. He explains that the hours will be Monday through Saturday from 8:00 am to 5:00 pm.

Alex asks for public comment. No one speaks.

Alex asks if Mr. Salazar has looked at the conditions as outlined on the Staff Report (Exhibit A). Mr. Salazar has seen the Staff Report and is okay with the conditions as presented.

Herb Bodensiek 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.

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. *The proposed use is allowed under Section 240-46 Home Occupation.*
2. 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.
3. The site plan has been reviewed by the Site Plan Review Committee and found approvable (see letter dated October 20, 2003).

Vote:

All in favor

Motion is made by Herbert Bodensiek to grant the relief being sought with the conditions as outlined in the Staff Report dated October 11, 2017 (Exhibit A):

Suggested Conditions

Should the Board find to grant the Special Permit No. 2017-067, it may wish to consider the following conditions:

1. Special Permit No. 2017-067 is granted to permit the transfer and modification of a home occupation special permit issued by the Board in 1974 and modified in 2004. This new permit is issued to Paul G. Salazar for an acupuncture office to be located within the area authorized in 1974 as a home occupation.
2. The home occupation shall conform to all of the requirements of Section 240-46 of the Zoning Ordinance except that the area of the home occupation shall be limited to that of 484 sq.ft. authorized in 1974. The Board recognizes this larger area as being a legal non-conformity with respect to home occupation only. It is not a nonconformity in any other manner and can only be used in combination with a home occupation.
3. This permit is issued only to the applicant and is not transferable.
4. There shall be no walk-in clients. All visits shall be by appointment only.
5. The Applicant must reside on the property as required in both 1974 and in 2004 home occupation provisions.
6. There shall be no appointments made on Sundays and holidays.

7. This permit is for an acupuncture practice only. There shall be no retail sales for the premises except as associated with the practice including herbs and supplements.
8. Hours of operation shall be Monday through Saturday, 8:00 AM to 5:00 PM.
9. Not more than one employee who is not a member of the Applicants family shall be permitted.
10. The applicant is responsible for receiving sign permit(s) and any other applicable permits from town departments.
11. 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.

Vote:

All in favor

GRANTED WITH CONDITIONS

Correspondence

Review of 2018 Schedule

Motion to adopt the 2018 schedule by Alex Rodolakis and seconded by Herb Bodensiek

Vote:

All in favor

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

November 8, 2017 and December 13, 2017

Adjournment

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

Vote:

All in favor