



# Town of Barnstable

## Zoning Board of Appeals



[www.town.barnstable.ma.us/ZoningBoard](http://www.town.barnstable.ma.us/ZoningBoard)

Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek - Clerk  
 Robin Young – Regular Member Jacob Dewey – Associate Member Paul Pinard – Associate Member  
 James Tinsley – Town Council Liaison

Staff Support

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

### Minutes

**Wednesday, February 14, 2018**

Selectman’s Conference Room – 2<sup>nd</sup> Floor – 367 Main Street, Hyannis, MA

Alex Rodolakis - Chair	Present
David Hirsch – Vice Chair	Present
Herbert Bodensiek - Clerk	Present
Robin Young	Absent
Jacob Dewey	Present
Paul Pinard	Present

*Also present were Anna Brigham – Principal Planner and Stacey Hurwitz – Administrative Assistant.*

*Since a quorum has been met, Alex Rodolakis calls the hearing to order at 7:06 pm*

#### Call to Order

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

*Alex reads the following into the record:*

#### Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 an 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 August 23, 2017

*Motion is made by David Hirsch and seconded by Jacob Dewey to accept the minutes as submitted*

*Vote: Aye. All in favor*

Minutes from September 27, 2017

*Motion is made by David Hirsch and seconded by Jacob Dewey to accept the minutes as submitted*

*Vote: Aye. All in favor*

Minutes from October 11, 2017

*Motion is made by David Hirsch and seconded by Jacob Dewey to accept the minutes as submitted*

*Vote: Aye. All in favor*

Minutes from October 25, 2017

*Motion is made by David Hirsch and seconded by Jacob Dewey to accept the minutes as submitted*

*Vote: Aye. All in favor*

*Alex reads the following into the record:*

#### Old Business

7:00 PM Appeal No. 2017-071

Beauregard

Todd and Anne Beauregard have applied for a Special Permit pursuant to Section 240-92(B) Nonconforming Buildings or Structures used as Single- and two-family residences. The applicants are proposing to construct a two-story, 1,180 square foot addition which will encroach into a front yard setback creating an intensification which requires a Special Permit. The subject property is addressed 8 East Avenue, Osterville, MA, as shown on Assessor's Map 139 as Parcel 075. It is located in the Residential F-1 Zoning District

Opened January 24, 2018. During assignment of members, Herb Bodensiek recuses himself. Attorney Ford is asked if he would go forward with four members, he declines and asks to continue to February 14<sup>th</sup> when perhaps there will be five members. No testimony taken.

**Members assigned: Alex Rodolakis, David Hirsch, Jacob Dewey, Paul Pinard, Herbert Bodensiek has recused himself.**

**Attorney Mike Ford submitted a letter dated February 14, 2018 to continue this hearing in order to have five (5) members present.**

**Motion is made by David Hirsch and seconded by Paul Pinard to continue this matter to February 28, 2018 at 7:00 PM.**

**Vote: Aye. All in favor**

## CONTINUED TO FEBRUARY 28, 2018 AT 7:00 PM

### New Business

*Alex reads the following into the record:*

#### 7:00 PM Appeal No. 2018-009

#### 259 North Street, LLC

259 North Street, LLC has petitioned for a Use Variance pursuant to Section 240-24.1.3. A. (1) HVB Hyannis Village Business District. The petitioner is requesting relief to allow for medical office use where, currently, medical office use is not a permitted use in the HVB. The property is located at 259 North Street, Hyannis, MA as shown on Assessor's Map 308 as Parcel 073-002. It is located in the Hyannis Village Business (HVB) Zoning District.

**Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jacob Dewey, Paul Pinard**

Representative: Stuart Bornstein representing himself. Mr. Bornstein explains that this property had been the Social Security Office for about 20 years, they outgrew the office so it is now vacant. It's on a little sliver of land. 85% of the area around us is zoned medical, this one just fell through the cracks. He is looking to get it re-zoned to regular medical use and is not looking to change the look of the building at all. Also asking to designate 8 parking spots in front as medical use because most of the clientele would be elderly. This use will only be needed during the day. The only time the parking lot is used heavily is in July & August at night.

Pinard: Social Security has moved out? Bornstein: Yes

Hirsch: You are looking to just get the Board's approval for a variance for medical for this building not the three story building? B: Yes. The 3 floor building will be workforce housing, a 3 floor condominium building which has been approved by this Board and is at land court now.

Rodolakis: I have a problem with the way the town has zoned this part of Hyannis. Normally you would be in front of the Planning Board. It is only because of the use variance that you are in front of the Zoning Board. In 2005 when they rezoned it to Hyannis Village Business District (HVB) they took it away from the Zoning Board (ZBA). We are talking about an area we don't normally have jurisdiction over. I advise that this should go to the Town Council and get the Town Council to modify the zoning district to allow for the use. The proper remedy is for the Town Council to say they are going to enter into a special Regulatory Agreement with you and modify the use. In 2005, they took medical office as not a permitted use, and they could have allowed it. The town at the end of the day is responsible for the zoning. A variance is an extraordinary relief. I think the Town's comprehensive zoning for this area, this is my view of how it should be.

Bornstein: This could get hung up for a long time. I hear what you are saying but if we could have a vote with the idea that we go to the Town Attorney and then if they say okay. We're not really looking of changing anything there.

Rodolakis: We did it in Cotuit where we modified the use to allow a veterinarian to be turned into apartments. The use variance is very narrow. My concern is very jurisdictional, we have another governing body that controls this area of the town since 2005. My concern that we are overstepping what the town wants to do. I have real hesitation on this use variance.

Hirsch: I feel the exact opposite. Mr. Bornstein has come here in good faith. The Town zoning states that it is office for anything other than medical and one other use unless the ZBA grants a variance and he is coming here before us to get a variance.

Rodolakis: There is an alternative remedy here for him to go to the town and have them amend it (zoning). There is another governing body that controls every other here. The only reason Mr. Bornstein is in front of us is for the use variance.

Bornstein went in front of Planners and we went over it with the building department as well on how we should do this and at the end of the day they told me to come in front of the ZBA for a variance. Mr. Bornstein asks for a vote again and states he would bring that to the Town Council.

Hirsch: The whole town, other than that zone that is designated for medical use is zoned for office use but only by special permit or variance can they have a medical office, we went through this like 2 weeks ago. ca

Rodolakis: For the use variance, there is an alternative remedy - to go to the Town Council & have them grant relief. They have created the zoning for a reason. They set this up to encourage walking in the HVB and most people will be driving to this building, not walking.

Hirsch: When they created the district HVB they did not say the ZBA could not grant a variance.

Bornstein: When we changed the district, One Medical Place was zoned out of it. The reason why, is because it was next to the housing authority complex in the back. They wanted walking on Main Street, but this is not Main Street it's in between, no man's land so to speak.

Bodensiek: I don't have a problem with it, but in fairness to the applicant, the alternative suggestion could take some time. If there is some way to make it agreeable in the language of our approval. All in all I don't have a problem with it.

Medical and Dental Office definition is discussed. Pinard proposes the zoning be changed from medical use, to medical or dental office.

Dewey: Agrees with Rodolakis because the HVB was well thought out and well planned, it holds high authority for us to step in on.

Rodolakis asks for public comment: There is none.

Rodolakis: If you want to get relief there is a governing body above us, the Town Council (TC), ask them to grant you relief. We are dealing with 2005 changes to the zoning by Town Council. By granting a use variance, we are going against the Town Council. To me this is a jurisdictional issue. I can't recall another application asking for a variance in the HVB since I have been on the board.

Bornstein: The use is an office, basically we are using this as an office. 85% of the buildings on North Street are zoned medical. If I do what you say it could be 8 months to a year. It's a huge building 8,000 sq. ft. but it is pretty small compared to the medical use around that building on North Street.

Bodensiek: When are you planning to get under way with this use? Is our decision final? I don't see any input from the Planning Board. We would need to hear a hardship. How many offices existed there previously? I don't see the TC being able to see this in less than 6 weeks.

Rodolakis: The Town can't appeal our decision, once we grant the use variance, it is granted. The Planning Board likely doesn't know about it.

Brigham: Perhaps the applicant might want to argue the criteria for the variance. There are specific criteria that need to be met.

Bornstein: We have 5 or 6 people wanting to get in the building or buy the building. This use serves the community of Hyannis & has ample parking. 40% of the buildings on Main Street are vacant, this will bring people to the restaurants and shops there. It is good use for the building, it is strictly medical use, not for clinics to treat opiate addictions or anything of that sort. The building is empty right now we are paying taxes, the insurance and upkeep on the building. We keep the lights on at night so it is lit, we also clear the sidewalks right up to Main Street and we have no tenants in there right now. One Financial Place, are offices & they have been sitting vacant for 5 years. A lot of people don't want to come down town, whole buildings have emptied out because of what goes on downtown. They leave Hyannis and go elsewhere. I am just trying to make it better, we have been here supporting down town for 40 years. It's a great building, well designed. The traffic will be somewhat less than Social Security. Any kind of restrictions you want to put on it, I'm okay with it. Social Security Office had 25-40 people working there, this office will have about 15-20 people in there.

Paul Pinard reads the findings into record for appeal 2018-009 : 259 North Street, LLC has petitioned for a Use Variance pursuant to Section 240-24.1.3. A. (1) HVB Hyannis Village Business District. The petitioner is requesting relief to allow for medical office use where, currently, medical office use is not a permitted use in the HVB. The property is located at 259 North Street, Hyannis, MA as shown on Assessor's Map 308 as Parcel 073-002. It is located in the Hyannis Village Business (HVB) Zoning District.

## Background

The property is a .85 acre parcel frontage on North Street between Bassett Lane and Sea Street Extension. It is developed with two structures:

- a 12,550 square foot, 2.5 story (plus basement) building closest to North Street, constructed in 1988, recently permitted by the Board for conversion into 14 residential condominium units; and
- a 8,055 sq.ft, one story office building constructed in 2001, currently housing Social Security Administration offices and a vacant tenant space. The lot is adjoining and accessible through the Town's public North Street parking lot.

The lot also contains 32 parking spaces which are encumbered by an easement that allows for public access.

The property has the benefit of Zoning Board of Appeals Special Permit No. 1994-56, which allowed for the construction of the second office building by allowing a reduction in required on-site parking. *The Board should note that Condition No. 3 reads, "That the use of all structures is limited to office use only and shall not include banks or medical offices; and that the existing three level structure shall be limited to a maximum of three office suites and the single level structure to one office suite."*

That permit was modified by Permit No. 2001-107 to allow for a second office suite within the building. It was modified again by Permit No. 2005-48, permitting a further reduction in required on-site parking to allow for expanded use of the northerly building and additional offices suites. *The Board should note that Condition No. 2 reads, "Use of the site is limited to no more than six (6) separate uses (suites): four (4) of which shall be office use only not including banks or medical offices; one (1) of which is limited to personal services not to exceed 3,168 square feet; an one (1) of which is limited to institutional/educational use not to exceed 7,200 square feet"*.

In 2013, the Board endorsed an Approval Not Required Plan put forward by the Applicant to divide the lot. The plan was never recorded. Condition No. 4 of the 1994 Special Permit prohibits division of the lot.

In **Special Permit No. 2017-03**, the Planning Board granted modification of previous Special Permits to allow the conversion of existing offices to 14 residential units in 259A.

*The Board should also note that the Petitioner has a Regulatory Agreement pending with the Planning Board. The Petitioner has requested a zoning change to allow medical and dental clinics.*

Discussion:

## Proposal & Relief Requested

The Petitioner, 259 North Street LLC/Stuart Bornstein, seeks a Use Variance to include medical use in the building noted as 259B. Under Section 240-24.1.3.A. (1), medical use is not listed as a Principal Permitted Use in the HVB District.

## Proposed 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:

1. 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;
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
3. 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.

Vote: In Favor: Bodensiek, Hirsh, Dewey, Pinard

Opposed: Rodolakis

## Suggested Conditions

Should the Board find to grant Use Variance No. 2018-009, it may wish to consider the following conditions:

1. Use Variance No. 2018-009 is granted to 259 North Street LLC/Stuart Bornstein to allow for medical use at 259B North Street, Hyannis, MA only.
2. Ambulatory medical services including laboratory services, patient treatment or direct patient care shall require site plan review prior to issuance of a building permit.
3. 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.

Vote: In Favor: Bodensiek, Hirsch, Dewey, Pinard

Opposed: Rodolakis

The Use Variance is granted with the suggested conditions listed above.

***Rodolakis recuses himself from the next two Cape Cod Five Cents Savings Bank 2018-010 and 2018-011 appeals and leaves the meeting room. David Hirsh reads the following into the record:***

### **7:02 PM Appeal No. 2018-010**

### **The Cape Cod Five Cents Savings Bank**

The Cape Cod Five Cents Savings Bank, is seeking a Special Permit pursuant to Chapter 240-93 Nonconforming buildings or structures not used as single or two-family dwellings and if necessary, pursuant to Section 240-25 (C) HB District. The Applicant is proposing to alter the easterly lot line in order to convey a portion of the land to the property located to the east (1520 Iyannough Rd). This will result in a change to the parking and driveway configuration on the preexisting nonconforming site. Also proposed is a vehicular interconnection between the two properties. The property is located at 1582 Iyannough Road (Route 132) Hyannis, MA as shown on Assessors Map 254, Parcel 014. It is located in the Highway Business (HB) Zoning District.

Discussion: Andrew Singer representing Cape Cod Five. Also in attendance Chris Raber from Cape Cod Five, Matt Eddy – Project Engineer, Kurt Raber – Project Architect.

Singer: Subsequent to your previous approval of 1520 we were able to purchase 1582. In order to make the reconfigured parking structure, work we need to change the lot lines because right now the parking garage would go right through the lot lines. We met with the Building Dept. and Site Plan Review. On 1582 we are asking for permission to alter the preexisting non-conforming conditions to alter the lots lines. The size of the lot & the number of parking spaces are all still conforming. The pre-existing non-conformities still remain but will not be any more detrimental with the change of the lots lines. We are going in front of the Planning Board later this month. The 1582 property will remain on septic so we are going in front of Conservation this month for the change of the size of the lot. The 1582 lot is getting larger and the 1520 lot is getting smaller. When we reconfigure the parking structure – there is going to be a gated access on 1582 lot between the two lots so employees can get access to the building.

1520 – The bank branch and the drive through will be eliminated to allow more parking and additional landscaping. The biggest change; when you reconfigure the parking garage; it will be 2 levels instead of the initial 3 that was originally proposed. You don't need the ramps anymore because you can drive in from the ground from the lower level and from the upper level. The parking structure will now be only 48 inches above grade. From a visual point of view it will not be as visible. We are adding parking and landscaping where the ATM would have been. Conservation has approved the landscaping changes, minor changes to the buffers. We will be going in front of the Planning Board and will also seeking a minor modification from the Cape Cod Commission (CCC). They wanted us to speak to you first. It is going to be a significant improvement to the area, we don't believe there will be any detriment to the area.

The Board doesn't have any questions and no issues whatsoever. Hirsch asks for public comment: No response.

Dewey reads the findings: The Cape Cod Five Cents Savings Bank, is seeking a Special Permit pursuant to Chapter 240-93 Nonconforming buildings or structures not used as single or two-family dwellings and if necessary, pursuant to Section 240-25 (C) HB District. The Applicant is proposing to alter the easterly lot line in order to convey a portion of the land to the property located to the east (1520 Iyannough Rd). This will result in a change to the parking and driveway configuration on the preexisting nonconforming site. Also proposed is a vehicular interconnection between the two

properties. The property is located at 1582 Iyannough Road (Route 132) Hyannis, MA as shown on Assessors Map 254, Parcel 014. It is located in the Highway Business (HB) Zoning District.

## Background

The property, which is located in the Highway Business (HB) Zoning District and totals 77,298 square feet of upland and improved with an existing bank building of 11,698 square feet of floor area.

Previous Board of Appeals actions:

**1978-61** Denied request for a Use Variance to construct a 104 room hotel.

**1983-67** Use Variance to permit commercial use in a residential district.

**1993-05** Modification of Variance No. 1983-67 to permit retail sales.

**1996-38** Modification of Use Variance 1993-05 to change retail office bldg. to a kitchen and bath showroom.

**1999-105** Modification of Use Variance No. 1983-67 as modified by Appeal No's 1993-05 and 1996-38 to permit the conversion of the building back to its original use.

**2001-04** Modification of Use Variance No. 1999-105 to permit three office uses.

**2002-93** Modification of Use Variance to permit conversion of half of the building back to bank.

**2002-141** Modification of Variance 2002-93 to allow banking use and strike the restriction of signage

## Proposal & Relief Requested

The Applicant is seeking a Special permit to alter the easterly lot line of the property in order to convey a portion of its land to the property located to the east (1520 Iyannough Rd). There will be no change in use and the property will remain a conforming lot. Building coverage, impervious coverage, and natural state will all remain conforming. The number of parking spaces (33 provided) will remain conforming. The preexisting nonconformities at the site (front building setbacks, landscape setbacks and interior parking lot landscaping) will remain at the property.

## Other Approvals

The Applicant received administrative approval by the Site Plan Review Committee on January 30, 2018.

## 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. 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 240-25 with a Conditional Use 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.
3. A Site Plan has been reviewed and found approvable with conditions. *(Letter pending).*

Further, Section 240-25 (C) (1) (a) requires the Board to find that:

4. Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.

Vote: Aye - All in Favor: Dewey, Hirsch, Bodensiek and Pinard

## Suggested Conditions

Should the Board find to grant Special Permit No. 2018-011, it may wish to consider the following conditions:

1. Special Permit No. 2018-010 is granted to The Cape Cod Five Savings Bank to alter the easterly lot line and reconfigure the parking and driveway. The property is located at 1582 Iyannough Road, Hyannis, MA.
2. The improvements shall be in substantial conformance with the site plan entitled "1582 Iyannough Road Hyannis MA 02601" by Baxter Nye Engineering and Surveying dated January 19, 2018.
3. The Applicant is required to attain all required permits, approvals, and licenses for the proposed new configuration.
4. All landscaping and landscape screening shall be maintained on the site.
5. Site Plan Review conditions of approval are hereby incorporated into this Decision.
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.

Vote: Aye - All in Favor: Dewey, Hirsch, Bodensiek and Pinard

Special Permit Granted with the suggested conditions above.

*David Hirsch reads the following into the record:*

**7:03 PM**

**Appeal No. 2018-011**

**The Cape Cod Five Cents Savings Bank**

The Cape Cod Five Cents Savings Bank, is seeking a modification of Special Permit No. 2017-060 or a new Special Permit to alter the previously approved bank/parking structure redevelopment design pursuant to Chapter 240-93 Nonconforming buildings or structures not used as single or two-family dwellings and if necessary, pursuant to Section 240-25 (C) HB District. The Applicant is proposing to eliminate the drive through window and ATM, reconfigure and lower the appearance of the parking structure, add parking in the area of the former drive-up window and ATM, and adjust the landscaping around the reconfigured parking structure and building. Also proposed is a vehicular interconnection between the two properties. The property is located at 1520 Iyannough Road (Route 132) Hyannis, MA as shown on Assessors Map 253 Parcel 020-T00, Map 253 Parcel 020-H00, Map 253 Parcel 020-B00, Map 254 Parcel 012. It is located in the Highway Business (HB) Zoning District.

Dewey reads the findings into record:

The Cape Cod Five Cents Savings Bank, is seeking a modification of Special Permit No. 2017-060 or a new Special Permit to alter the previously approved bank/parking structure redevelopment design pursuant to Chapter 240-93 Nonconforming buildings or structures not used as single or two-family dwellings and if necessary, pursuant to Section 240-25 (C) HB District. The Applicant is proposing to eliminate the drive through window and ATM, reconfigure and lower the appearance of the parking structure, add parking in the area of the former drive-up window and ATM, and adjust the landscaping around the reconfigured parking structure and building. Also proposed is a vehicular interconnection between the two properties. The property is located at 1520 Iyannough Road (Route 132) Hyannis, MA as shown on Assessors Map 253 Parcel 020-T00, Map 253 Parcel 020-H00, Map 253 Parcel 020-B00, Map 254 Parcel 012. It is located in the Highway Business (HB) Zoning District.

## Background

The property, which is located in the Highway Business (HB) Zoning District and totals 8.7 acres of land, was improved with a retail building, previously housing an Ethan Allen Furniture store and Mid-Cape Home Design Center, and an adjacent office building that had been used by the Applicant. The buildings and site improvements on the property were pre-existing nonconforming as to front setbacks, parking space size, front landscape buffers, and possibly parking space location. The property had four curb cuts, two each on Route 132 and Attucks Lane. The site is currently under construction as allowed by Special Permit No. 2017-060.

Previous Board of Appeals actions:

**1968-145** - The Board granted a Variance to construct a retail store in a Residential District.

**1973-32** - The Board allowed the applicant to construct a basement within the building allowed by the 1968 Variance.

**1987-03** The Board granted a modification to the previous Variance to allow construction of an addition to the existing furniture store.

**2017-060** The Board granted this Special Permit to allow the Applicant to combine and redevelop several parcels with a new state-of-the-art banking center.

## Proposal & Relief Requested

The Applicant is proposing to modify Special Permit 2017-060 by:

Eliminating the drive-through windows and ATM on the new building, thereby eliminating the need for a Conditional Use Special Permit under Section 240-25 (C),

- Reconfiguring and lowering the appearance of the parking structure by eliminating one level in conjunction with expanding the footprint (the approved design accommodated 240 vehicles, the new design will accommodate 217 vehicles),
- Adding an interconnection between the properties,
- Adding parking in the area of the former drive-through windows and ATM. There will be a total of 354 parking spaces on the site, a decrease of three spaces from the previously approved plan,
- Adjusting the landscaping around the reconfigured parking structure and the building where the drive-through windows have been removed.
- Adjusting the lot lines to create a larger lot area.

The applicant believes this revision to the approved design will continue to result in a significantly more attractive, environmentally friendly, and functional commercial property in a commercial zone.

## Other Approvals

The Applicant has received approval with conditions as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act on July 20, 2017. The Applicant will be required to return to the Cape Cod Commission for a Minor Modification of the DRI.

The Applicant will be applying to the Planning Board for an Approval Not Required Plan (ANR).

The Applicant received approval by the Site Plan Review Committee on February 1, 2018.

The Applicant is on the Conservation Commission agenda for February 13, 2018.

## 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. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. *Eliminating the drive-through window and ATM eliminates the need for a Conditional Use Special Permit. This is a modification of conditions of Special Permit No. 2017-060 for relief granted under Section 240-93.*
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. A Site Plan has been reviewed and found approvable with conditions. (*Letter pending*).  
Further, Section 240-25 (C) (1) (a) requires the Board to find that:
4. Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.

Vote to accept: Aye - All in favor: Bodensiek, Pinard, Dewey and Hirsch

### Suggested Conditions

1. Should the Board find to grant Special Permit No. 2018-011, it may wish to consider the following conditions:
2. Special Permit No. 2018-011 is granted to The Cape Cod Five Savings Bank for a modification of Conditional Use Special Permit 2017-060 for the elimination of the drive-through and ATM, reconfiguring and lowering the parking structure, adding parking and adjusting the landscaping. The property is located at 1520 Iyannough Road and 131 Attucks Lane, Hyannis, MA.
3. Special Permit No. 2017-060 Condition No. 2 shall be modified as shown on the site plan entitled "1520 Iyannough Road and 131 Attucks Lane Hyannis MA 02601" by Baxter Nye Engineering and Surveying dated June 19, 2015 with last revision date of January 16, 2018 and architectural design plans by Brown Lindquist Fenuccio Raber Architects, Inc.
4. All conditions set forth in Special Permit No. 2017-060 shall remain in full force and effect.
5. 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 to accept: Aye – All in Favor: Bodensiek, Dewey, Hirsch and Pinard

**7:01 PM**

**Appeal No. 2018-013**

**TowerNorth Development LLC**

**TowerNorth Development LLC has petitioned for a Variance pursuant to Section 240-14 E. Bulk Regulations in the RF Zoning District, maximum building height of 30 feet. The petitioner proposes to construct and install a 170 foot tall wireless communications monopole, along with supporting equipment and site improvements, to serve up to six personal wireless service carriers, including T-Mobile, Sprint and AT&T who were formerly located on a water tower at the property that has recently been demolished. The property is approximately 158 acres and is located at 414 Main Street, Cotuit, MA, as shown on Assessors Map 038 Parcel 004. It is located in the Residence F (RF) Zoning District.**

Paul Pinard recuses himself from this appeal and leaves the room.

Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek and Jacob Dewey

Representing Tower North: Attorney Jeffrey Angley on behalf of Tower North LLC, Burt Stern Vice President of Business Development at Centerline Communications representing TowerNorth, Vic Meduno with CSquared an RF Consultant for AT&T & Spring and Jose Hernandez Engineer with T-Mobile. Atty. Angley states AT&T, Sprint & T-Mobile are co-applicants on the project. Tower North Development LLC is a company engaged in wireless infrastructure throughout the Northeastern U.S., and is a subsidiary of Centerline Communications (Raynham, MA).

Discussion - Atty: Angley: On March 22, 2017 Tower North Development LLC was awarded a contract with the Cotuit Fire District to construct a new wireless communications facility on property owned by the Cotuit Water District on 414 Main St Cotuit. The purpose was to replace an existing water tank that had wireless infrastructure on it. That tank had to be decommissioned due to structural issues. The tower resided on the 170 ft. high water tank. Currently they have cell on wheels 85 & 106 ft. which is not sufficient coverage. We are here this evening for dimensional variance to exceed the maximum building height of 30 ft. We are here this evening for a dimensional variance. This is 170 ft. monopole style wireless facility to serve 3 carriers AT&T, Spring & T-Mobile and it has ability to serve 3 additional carriers. Relief is required for anything taller than 30 feet. This process has been through the Development of Regional Impact (DRI) process with the Cape Cod Commission (CCC) and the DRI permit was issued by the CCC on December 13, 2017. Site Plan Review (SPR) was granted by the Town of Barnstable on February 1, 2018.

We are here because of the RFP issued by Cotuit Fire District which Tower North LLC was the successful bidder. There are 3 carriers, there are contractual obligations that need to be fulfilled which is why the RFP had been issues. They wanted to maintain the heights they were at on the previous water tank which was 170, 160 AND 150 ft. They want to be at the same height (each are brought down about 4 feet from the original) to 166, 156 and 146 ft. Design objectives in the RFP were to provide the carriers with the closest possible location to that of the previous water tank to keep the same coverage. Locating the tower even 300-400 feet does change the coverage. Objectives: they wanted to shift it a little bit away from the closest home, use existing coverage to screen the tower, meet the all the setback requirements for the Town & CCC bylaws and minimize the disturbance & impact on the environment and natural resources. Location and access drive photos shown. The existing conditions & proposed plans are reviewed. The location of the proposed site has been shifted about 330 feet north further into the Cotuit Water District property. It is a gravel base surrounded by 8 ft. barrier fence it will be set back 417 ft. off of Main Street and 365 ft. from the nearest home, 178 ft. from the nearest lot line. Access road is a 10 ft. wide access road up to the site. The Site meets all the dimensional regulations under the bylaw except for the height. The site

is well screened there is good tree cover & existing vegetation. All utilities for the site will be located underground electric & fiber optic cable (no water or septic). The amount of clearing is pretty minimal 13,000 sq. ft. of total disturbed area. The project is proposing 170 ft. monopole with pads for the proposed carriers, also a single generator shared by two of the carriers (fueled by propane tanks). No hazardous waste, no wetlands, no rare or endangered species, all storm water is controlled on site. Only visible from a few locations – map is shown where it can be seen from; 474 Main St., Narrows Way, 350 Main St. & 349 Main St. & then shows various nearby sites that it is not visible from.

Once the water tank came down there was a gap in coverage. The tower will provide service to about 5000 people it covers a carrier area 1.78 - 3.68 square miles in Cotuit. The coverage area includes Main St, School St, Old Mill Rd, Sampson Rd, Old Oyster Rd & Santuit-Newtown Rd. 170 ft. is required in order to not lose coverage to those customers. The coverage gap for all 3 carriers because of the loss of the water tower is reviewed for the Board.

The site being proposed is the only site that can replace the coverage. The only other site is another water tank but the Cotuit Fire District does not allow telecommunications on a water tank. The site is 330 ft north of the water tank in the wooded area so they don't have to clear a lot of woods and not encroach too much on the Cotuit water district. All around is residential, single family lots and does not warrant a tower anywhere else. Total emissions are 1.39% of the FCC MPE allowable limit (not close to the maximum at all).

Fills gap in coverage, restores service to first responders, well screened from the surrounding community, low impact on natural resources and historic areas, assists cotuit fire district in meeting contractual obligation while providing revenue to support operations, committed to providing location on tower to public safety.

The reason for the request for a variance has to do with the Telecommunications Act of 1996 – to counteract the strict zoning laws. The findings I suggest to the board is that there is significant gap in coverage from the previous site and this is the only feasible site. This site was specifically selected by the Cotuit Fire District.

Discussion:

Rodalakis: Any idea why the Cotuit Fire Department no longer allow telecommunications equipment on water tanks?

Claykamp, Engineer: The reason they don't allow equipment on the new water tank is access/safety issue. If you have a 4ft cat walk on the top of the water tank and antennas sticking off of it, it is not safe for people to maintain or work on it. Access, safety and security reasons. They also have to be painted every 10-15 years. When the antennas are installed they are attached to the water tank which can start corrosion.

Bodensiek: What is the height of the new water tank?

Claykamp: It's unique because this a case where the tank isn't going back up.

Rodalakis: Multiple towers of lower height? Atty Angley: Cannot replicate the coverage on a lower site. They need the height to talk to other existing towers and replace coverage that was already provided.

Claykamp & Atty: Currently they are at 106 ft. and 85 ft. that has AT&T & Sprint. The tree cover is 165 ft. they are barely getting over the trees now.

Dewey: You show there is the ability to add carriers to the tower. If others are added what needs to be done to the site?

Meduno: We are supplying a generator that has the capacity to host all carriers. The two propane tanks will support additional carriers or public safety on the site. In terms of equipment you would just need (to add) some antennas, radio heads and cables that run inside the tower. Small equipment pad and some refrigerator sized cabinets with radios etc. We (TowerNorth Development) servicing & maintaining the generator it is part of the DRI approval & Site Plann Approval that the generator will only run during regular business hours for 30 minutes at a time. Maintaining the fence and signs as well.

Public Comment:

Wayne Coluccini, resident of Main Street, Cotuit: The issue is with the pictures you see, there is no foliage now & you will see that tower from Main Street if it is at 170 ft. tall (in winter). Look at the RF study where the coverage is from 150-170 and where the coverage takes effect. Look at the coverage where it takes over the areas of the town is at 150, keep the tower at 150 ft. There has been no compromise for the residents of the town for a pine monopole. I have lived in other areas and I am an Engineer I have been on committees and have instituted pine monopoles because they blend better with the environment. This will stick out. I have tried to get it discussed with the CCC and no one has looked at it. Asks the Board to look at the data, the coverage area and at 150 ft. you lose the sight of the tower but at 170 ft. you see it everywhere. Cotuit is a village not an interstate & it will have an effect on the village.

Rodalakis: Refers to a letter the Board received from Councilor Jessica Rapp-Grassetti who is opposed to the height of the tower. In the letter Rapp-Grassetti states her opposition to the height and has issues to where it is being sited around the locust trees.

Claykamp: Although the monopole is 170 ft. the carriers are only at 167, 157 and 147. Any reduction would reduce each carrier/coverage quite a bit because they are staggered.

Atty Angley: Pine monopole attempts to be disguised as a pine tree which doesn't look anything like a pine tree. A monopole can be seen, that's how they work. When you use a monopole color gray you are reducing the impact & the visual field, blends into the background. Angley states the pine shielding makes it look more visible. We did an analysis because 150 ft. was the height that the CCC set as a limit but we were able to get approval from CCC for 170 ft. because of the loss of coverage at 150 ft. 15 -20% reduction in population coverage with the loss of 20 feet of pole.

Rodalakis: These are necessary or unnecessary evils because we are so reliant on cell phones. Believes the applicant has made a compelling argument for the necessity of the tower.

Hirsh: Are there lights on it? Meduno Answers: No. It does not impact flight paths or any airports that are nearby so no lights needed.

Findings are read by Rodolakis: TowerNorth Development LLC has petitioned for a Variance pursuant to Section 240-14 E. Bulk Regulations in the RF Zoning District, maximum building height of 30 feet. The petitioner proposes to construct and install a 170 foot tall wireless communications



monopole, along with supporting equipment and site improvements, to serve up to six personal wireless service carriers, including T-Mobile, Sprint and AT&T who were formerly located on a water tower at the property that has recently been demolished. The property is approximately 158 acres and is located at 414 Main Street, Cotuit, MA, as shown on Assessors Map 038 Parcel 004. It is located in the Residence F (RF) Zoning District.

Rodlakis finds that as the Applicant has suggested, there is a gap in service coverage that is vital to the community relating to the removal of the water tower and that the replacement of the monopole at the same height as the former Cotuit Fire District Water Tower will not be any more detrimental to the public good, that the literal enforcement of our zoning provisions with respect to the height restriction on this monopole would involve substantial hardship financial and other to the petitioner and to the community. Those would be my proposed variance findings.

Vote: In Favor - Aye: All, Rodolakis, Bodensiek, Hirsch and Dewey

## Background

The property is located within a Residence F Zoning District and contains approximately 158.42 acres of land in Cotuit owned by the Cotuit Fire District. The former water tank at the property supported three wireless service providers which each entered into a lease agreement and co-located their equipment on the water tank in 1999, 2000 and 2003. In May, 2016, the Cotuit Fire District put out an RFP for a new communication tower because the water tower had to be demolished due to structural concerns. TowerNorth Development LLC entered into an agreement with Cotuit Fire District to install a 170 foot monopole capable of supporting the three existing wireless carriers plus three additional co-locators and/or public safety equipment.

## Proposal & Relief Requested

The Petitioner is proposing to construct a 170 foot monopole located within a 75 foot by 75 foot fenced equipment compound, which itself is located within the 80 foot by 80 foot area of the property leased by TowerNorth Development LLC. The proposed compound includes a generator, (2) 1000 gallon propane tanks, meter bank, equipment pads and topped with gravel. The site is located in a densely wooded area adjacent to an existing gravel access drive on the property. Access to the site will be over the existing gravel drive, which will be widened/partially relocated to a width of 10 feet, and laid out within a 20 foot wide access and utility area.

The existing tree cover and vegetation distance from the road, and a purposely-designed curve in the access drive at approximately 150 feet in from Main Street will visually shield the Replacement Tower and Facility from view from the public way. The monopole tower will be light-grey in color.

The project site is located within the Residence F zoning district, as well as the Groundwater Protection Overlay District and Well Protection Overlay District. The Replacement Tower will be set back 417 feet from the entrance to the property on Main Street and will be 365 feet from the closest residence, and 178 feet from the nearest lot line. The proposed communication tower is no higher than the previous water tank. The project meets all setback requirements and the fall zone criteria of the Cape Cod Commission.

The Petitioner is seeking a variance from the 30' height requirement in the Residence F Zoning District (§240-14 E. Bulk Regulations) to permit the 170 foot tower. The ordinance, along with state and federal regulations as noted below, permits the use, but a variance is necessary for a structure that exceeds the maximum height requirements in the district.

Based on prior findings of this Board, the use of the site for a telecommunications facility is permitted by Sections 240-106 through 109 of the Zoning Ordinance, and in consideration Massachusetts General Law Chapter 40A Section 3 and the Telecommunications Act of 1996, which provides for the location of facilities to satisfy the needs for communication.

## Other Approvals

The Petitioner has received approval with conditions as a Development of Regional Impact (DRI file No. 17019) pursuant to Sections 12 and 13 of the Cape Cod Commission Act on December 14, 2017.

In considering the request from the Petitioner, the Commission reviewed the following issues:

- Potential alternative sites for location of the tower. The Cotuit Fire District has stated it will no longer allow co-location of telecommunications equipment on its towers.
- The Commission did not retain a wireless consultant to review the existence of a gap in wireless service, because the tower is replacing a facility that is currently on the site. The Applicant provided evidence that the tower was necessary to maintain existing equivalent and acceptable levels of coverage.
- Views of the tower from various "regionally significant public viewsheds" around Cotuit, including from the water.

The project was found to be consistent with Barnstable's Local Comprehensive Plan and the Regional Policy Plan.

The Petitioner received approval by the Site Plan Review Committee on February 1, 2018.

## Proposed 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:

4. 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;
5. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
6. 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.

## Suggested Conditions

Should the Board find to grant Variance No. 2018-013, it may wish to consider the following conditions:

1. Variance No. 2018-013 is granted to TowerNorth Development LLC., to construct a 170 foot high wireless communication tower with supporting equipment and site improvements. The property is located 414 Main Street, Cotuit, MA.
2. The improvements shall be in substantial conformance with plans "Centerline Cotuit Relo 414 Main Street, Cotuit, MA 02635 Site No.:MA-032 Site Type: Raw Land – Monopole, dated with a last revision date of December 20, 2017, Sheets T-1, C-1, C-2, C-3, C-4, A-1, A-2, A-3, EC-1.
3. The Petitioner is required to attain all required permits, approvals, and licenses for the proposed new use including those required by the Cape Cod Commission DRI Decision.
4. All landscaping and landscape screening shall be maintained on the site.
5. The facility shall be in compliance with all conditions of the Cape Cod Commission Development of Regional Impact Decision dated November 9, 2017 including, but not limited to:
  - a. TowerNorth shall done and allow space on the wireless communications tower for telecommunications-related, emergency response equipment of the Town of Barnstable, should the Town desire to arrange with the Applicant to place and maintain equipment on the tower. (C10)
  - b. There shall be no more than one backup generator for the Project to be shared by all its users, which shall only be fueled by natural gas or propane. Routine generator testing shall only be performed on weekdays during day-time hours.
6. Site Plan Review conditions of approval are hereby incorporated into this Decision.
7. 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.

Based on the favorable findings Rodolakis proposes the Board grant Variance #2018-013 with the suggested conditions that are listed as #1-7 in the staff report dated 1/29/2018 (as outlined above).

Vote: Aye: All, Rodolakis, Bodensiek, Hirsch, Dewey  
The Variance is granted.

*Rodolakis reads the following into the record:*

### **7:04 PM Appeal No. 2018-012 Eco-Site**

Eco-Site has petitioned for a Variance pursuant to Article X Section 240-107 and Article III Section 240-14 E. Bulk Regulations in the RF Zoning District, maximum building height of 30 feet. In the alternative, the petitioner is seeking a Use Variance. The petitioner proposes to construct a 145 foot tall wireless communications monopole, along with supporting equipment and site improvements. The property is approximately 17.74 acres and is located at 830 Wakeby Road, Marstons Mills, MA, as shown on Assessors Map 013 Parcel 003. It is located in the Residence F (RF) Zoning District.

In attendance: Daniel Glissman the Attorney on behalf of Eco-Site & co-applicant T-Mobile. Eco-Site is proposing 145 ft. monopole telecommunications tower at 830 Wakeby Rd. The core of these projects is the gap in coverage and they send out Eco-Site to find an undeveloped site in this case a 2 mile search area to find an appropriate location. This is an undeveloped 17 acre parcel that would be able to provide coverage in that area. 830 Wakeby Rd. has a lot of existing vegetation to provide coverage for the tower. We are proposing to place the tower 288 ft. back from Wakeby Rd., a 50 x 50 fenced in compound, 12 ft. wide access drive, it will be surrounded by additional landscape buffer. This project also went through the CCC Development of Regional Impact (DRI) review process – a condition of the DRI is to continue to maintain the buffer area to provide for consistent tree cover in perpetuity as long as the monopole is there. 50 x50 ft. area for the compound. Proposed plans are reviewed. At 145 ft. this monopole tower will be capable of hosting all 4 major carriers T-Mobile is the top carrier at 145 ft. The critical component and hardship is the gap in coverage. Coverage maps are reviewed. There is no visibility from Santuit pond or from Long pond. Seasonal visibility is reviewed – it will be visible seasonally from Wakeby Rd., Mockingbird Ln., Dove Ln. & Cardinal Ln.

Proposed telecommunications tower will fill a gap in coverage, it is the only viable site to fill the gap in coverage for T-Mobile. The only carrier signed on at this time is T-Mobile. This site is unique in that it is 17 undeveloped acres in this area. FCC Act provides that if there is a gap in coverage that provides both a unique lot (this undeveloped 17 acres) and a hardship (gap in coverage which is considered a hardship).

Discussion:

Bodensiek: Would there be a use restriction on the entire parcel of land? From subdivision, from residential uses?

Glissman: There is no use restriction per say. This was a topic of conversation with the CCC as well. Having the tower here, we think would deter future development on the property. We did have the property owner submit a letter that at his time they don't have any intent of developing this property further.

Dewey: Could we put a suggested condition saying that this represents full build out of the lot, unless they come back in front of the Board?

Rodolakis asks Glissman: Do you have the authority to agree to that?

Glissman: We don't. I would have to back to Eco-Site and they lease the land from the property owner. We certainly don't have the authority to restrict the whole 17 acre parcel. The owners don't have any intent of developing the land at the moment. It is a family owned property and I'm sure they would likely want to keep their options open. Eco-Site is a tower developer to keep them in use.

It is clarified that it is a 20 year lease with extension rights.

Rodolakis asks for Public Comment. There is none.

Rodolakis: It is a necessary evil, we have made our lives so we need these towers. It devalues the land of the land owner. I do not have an issue with the use of the land.

Hirsch: I find the monopoles much more unsightly than the pine poles.

## Background

The property is located within a Residence F Zoning District and contains approximately 17.74 acres of vacant land in Marstons Mills, on the Sandwich Town line. T-Mobile is licensed to construct and operate a wireless communication network in various markets around the world, including the Town of Barnstable. One of the key design objectives of its system is to provide seamless coverage. Such a system requires a grid of radio transmitting and receiving links located approximately 0.5 to 2 miles apart.

## Proposal & Relief Requested

The Petitioner is proposing to construct a 145 foot high monopole and will be located within a 50 foot by 50 foot leased area. The total project area consists of approximately 1.04 acres of the 17.74 acre site, set back approximately 285 feet from Wakeby Road. This T-Mobile facility will consist of twelve (12) wireless communications panel antennas and two (2) square dish antennas at a centerline height of 140 feet, together with equipment cabinets on a concrete pad, an ice bridge, a GPS antenna and Remote Radio Heads with accessory junction boxes and surge suppressors mounted alongside the antennas. The antennas will be connected via coaxial cable installed within the Monopole to appurtenant radio equipment.

The compound will be surrounded by an 8 feet high chain link fence and a 15 foot wide landscape easement. The facility will be accessed by a 12-foot wide gravel access drive on Wakeby Road, contained within a 40 foot utility easement.

Pursuant to FCC mandate, enhanced emergency (E911) service is required to meet nationwide standards for wireless telecommunications systems. To comply with this federal standard, T-Mobile will install one (1) E911 Global Positioning System antenna.

After installation, the T-Mobile Facility will be unmanned and will require only biweekly visits by a single vehicle for routine maintenance. The only utilities required to operate this facility are standard 120-volt electrical power as well as telephone service. Finally, the Monopole and the T-Mobile Facility will comply with all applicable local, state and federal safety codes, including FCC regulations related to radio frequency emissions.

## Other Approvals

The Petitioner has received approval with conditions as a Development of Regional Impact (DRI file No. 17019) pursuant to Sections 12 and 13 of the Cape Cod Commission Act.

In considering the request from the Petitioner, the Commission reviewed the following issues:

- The existence of a significant gap in wireless telecommunications coverage;
- The possibility of suitable sites for co-location of the proposed wireless facility on existing towers or structures;
- Potential alternative sites for location of the tower, which were rejected because of the existence of a current lease agreement on the subject property, site constraints, and distance from the needed coverage area.
- Visibility of the proposed tower from various "regionally significant public viewsheds" in and around Marstons Mills/Sandwich.
- That proposed height of the tower was the minimum necessary to achieve the desired coverage improvements.

After review of these issues, the Commission issued a Development of Regional Impact Decision on November 9, 2017.

The project was found to be consistent with Barnstable's Local Comprehensive Plan and the Regional Policy Plan.

The Petitioner received approval by the Site Plan Review Committee on December 27, 2017.

## Proposed 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:

1. 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;
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
3. 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.

Bodensiek reads the findings; Eco-Site has petitioned for a Variance pursuant to Article X Section 240-107 and Article III Section 240-14 E. Bulk Regulations in the RF Zoning District, maximum building height of 30 feet. In the alternative, the petitioner is seeking a Use Variance. The petitioner proposes to construct a 145 foot tall wireless communications monopole, along with supporting equipment and site improvements. The property is approximately 17.74 acres and is located at 830 Wakeby Road, Marstons Mills, MA, as shown on Assessors Map 013 Parcel 003. It is located in the Residence F (RF) Zoning District.

Bodensiek makes a motion to accept the Variance Findings; In addition to the Federal Telecommunications Act 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 and it fills that coverage gap.

Vote: Aye – All in Favor: Hirsch, Rodolakis, Dewey, Bodensiek and Pinard

### Suggested Conditions

Should the Board find to grant Variance No. 2018-012, it may wish to consider the following conditions:

1. Variance No. 2018-012 is granted to Eco-Site, Inc., to construct a 145 foot high wireless communication tower with supporting equipment and site improvements. The property is located at 830 Wakeby Road, Marstons Mills, MA. Relief is granted from the 30 foot height requirement in the Residence F Zoning District.
2. The improvements shall be in substantial conformance with plans entitled "Eco-Site, 240 Leigh Farm Road, Suite 415, Durham NC 27707 Site Name: Mockingbird Ln-Baker Site #: MA-0045, T-Mobile Site #:4HY0600A" Sheets T-1, C-1, C-2, C-3, C-4, C-5, C-6 and C-7.
3. The Petitioner is required to attain all required permits, approvals, and licenses for the proposed new use including those required by the Cape Cod Commission DRI Decision.
4. All landscaping and landscape screening shall be maintained on the site.
5. The facility shall be in compliance with all conditions of the Cape Cod Commission Development of Regional Impact Decision dated November 9, 2017 including, but not limited to:
  - a. The tower shall provide for co-location for at least 5 carriers. Communication devices are restricted to antenna-type only and shall not include any dish or drum type devices exceeding 48-inches in diameter and located no higher than 100 feet on the tower. The Applicant shall be responsible for notifying the Building [Department] and the Zoning Board [of Appeals office] of each and every carrier located on the Tower prior to installation of any antennas.
6. Site Plan Review conditions of approval are hereby incorporated into this Decision.
7. 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.

Bodensiek makes a motion to grant the variance with Suggested Conditions #1-7 proposed on the staff report dated 1/29/2018 (as outlined above).

Vote: Aye - All In Favor: Rodolakis, Bodensiek, Hirsch, Dewey and Pinard  
The Variance is granted.

### Correspondence None

### Matters Not Reasonably Anticipated by the Chair

### Upcoming Meetings February 28, 2018, March 14, 2018, March 28, 2018

### Adjournment

Motion is made by Hirsh to adjourn the meeting, seconded by Pinard.

Vote: All in favor. Meeting adjourned at 9:06 PM.

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