



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 Jacob Dewey – Regular Member Paul Pinard – Associate Member Kyle Evancoe – Associate Member
Todd Walantis – Associate Member Mark Hansen – Associate Member
James Tinsley – Town Council Liaison

Staff Support

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

Minutes

Wednesday, March 28, 2018

Hearing Room – 2nd 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 |
| Kyle Evancoe | Present |
| Todd Walantis | Present |
| Mark Hansen | Present |

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

As a quorum has been met, Alex Rodolakis – Chair opens the hearing at 7:00 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 an in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Old Business

**Alex states that they have received a request from Attorney Losordo asking to continue this to April 11, 2018 at 7:00 pm
7:01 PM Appeal No. 2018-015 JNJ Holdings, LLC**

JNJ Holdings, LLC have applied for a Special Permit under Section 240-25 HB Conditional Use, Section 240-35 Well Protection Overlay District, Section 240-53 Landscape Requirements for Parking Lots and Setbacks, Section 240-54 Location of parking lot in relationship to building, and Section 240-57 Circumstances Warranting Reduction of Requirements. The Applicant is proposing to demolish the existing structure, remove the underground tanks, and construct a quick change oil facility building of 6,324 square feet, five service bays, with paving and landscaping. The property is located at 326 West Main Street, Hyannis, MA as shown on Assessors Map 269 Parcel 159. It is located in the Highway Business (HB) and Residence B (RB) Zoning Districts and Well Protection (WP) Overlay District.

Opened February 28, 2018 – Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Kyle Evancoe. Continued to March 14, 2018. Open and continued from March 14, 2018 – No testimony taken.

Motion to continue this to April 11, 2018 at 7:00 PM

Vote:

All in favor

Alex then calls the Beauregard appeal and reads this into the record:

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 14th when perhaps there will be five members. No testimony taken. Continued from February 14, 2018. No members assigned, no testimony taken. Continued again to March 14, 2018. Open and continued from March 14, 2018 – No testimony taken.

Members assigned tonight: Alex Rodolakis, David Hirsch, Jake Dewey, Paul Pinard, Todd Walantis

Herbert Bodensiek recuses himself and leaves the dais

Representative: Attorney Michael Ford

Attorney Ford gives summary of existing conditions and history of parcel. It is a small structure given the neighborhood. In 2006, the owners, at that time, appeared before ZBA under the raze and replace ordinance and sought a Special Permit in order to build a new house which was granted. His clients bought the house in 2009 and the raze and replace did not occur. However, the special permit was under the permit extension act. His clients bought the house with the benefit of the special permit. However, they didn't want to tear it down but now have a designer to seek an expansion of the existing house. The expansion is to the right with a small connector. The gross square footage with the shed, if allowed, would be 2,530 square feet. It is under what the SP was granted for previously. This house is over 75 years old and would need to go to the Barnstable Historical Commission (BHC). The new design has a porch similar to the existing porch. He has a handout (Exhibit A) showing the sizes of the houses in the neighborhood. In the last SP it was said to have the shed taken down. The shed does afford them storage of lawnmowers, etc. and does not think that it will be more detrimental to the neighborhood. He is unaware of any comments from abutters. He has seen the staff report and thinks that the proposed findings are ones that this board can make and the conditions are not problematic.

Alex asks about the driveway/road as it pertains to East Avenue. Alex notes that there is no letter from the abutter who's house sits to the right. Alex thinks that the shed could be moved. Attorney Ford doesn't think that it would be problematic to move it.

Alex asks if there is anyone from the public. No one speaks.

David Hirsch thinks that they should add Condition #5 to move the shed to conform with the setback requirements. Attorney Ford would like a distance. They agree that it should be made to conform.

Paul Pinard makes findings:

Proposal & Relief Requested

The Applicants, Todd and Anne Beauregard, seek to construct an addition to their pre-existing nonconforming single family dwelling at 8 East Avenue, Osterville. The proposed addition will be 2 stories and will not result in the creation of any new nonconformity. The addition will consist of two bedrooms upstairs and a living room, kitchen, and dining room downstairs. The addition will increase the total bedroom count to 4.

Section 240-92 allows for expansion of a preexisting nonconforming single- or two-family dwelling provided that the expansion will not be substantially more detrimental to the neighborhood than the existing structure.

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:

Section 240-92 allows for the expansion a preexisting nonconforming structure used as a single-family residence with 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

Paul Pinard makes a motion to grant with the relief being requested with the following conditions and adding Condition #5 to say that the shed should conform to the applicable zoning requirements.

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex then reads the following into the record:

7:01 PM Appeal No. 2018-007

MPG Corporation and 1617 Falmouth Rd. Series of PB&C

MPG Corporation (Centerville Convenience Center) and 1617 Falmouth Rd. Series of PB&C, LLC., as co-applicants, are seeking a Special Permit pursuant to Chapter 240-93 Nonconforming buildings or structures not used as single or two-family dwellings and Chapter 240-94 Nonconforming Use. The Applicants are proposing to demolish the existing gas station and construct a 5,000 square foot building plus canopy and gas islands, service station with gasoline/diesel dispensers, automobile repair, and retail. The building will consist of retail sales, including 14 seats and a drive-through window. Numerous site improvements are also proposed. The property is located at 1617 Falmouth Road (Rte. 28), Centerville as shown on Assessors Map 209, Parcel 085. It is located in the Highway Office (HO) and Residence C (RC) Zoning Districts.

Opened January 24, 2018. Members Assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jacob Dewey, Paul Pinard. Continued to February 28, 2018 – No testimony taken. Continued again to March 14, 2018. Open and continued from March 14, 2018 – No testimony taken.

Members assigned tonight: Alex Rodolakis, David Hirsch, Herbert Bodensiek, Jake Dewey, Kyle Evancoe.

Attorney David Lawler is standing in for Attorney Mark Crossen. Also with Attorney Lawler tonight is Peter Garrett on behalf of the applicant, Coleen Medeiros – Traffic Consultant, and Matt Eddy – P.E. from Baxter and Nye Engineering.

Alex Rodolakis removes Kyle from members assigned and assigns Paul Pinard as he had sat on this previously.

Matt Eddy states that the main concern of the board from the previous hearing was the drive-through. They took a look at that and took the drive through off. The traffic study was then resubmitted and went through Site Plan Review (SPR) and approved by them. They have submitted that information to the ZBA file. The traffic study had the drive-through still included but had the traffic engineer amended it without the drive-through. The landscape plan is straight forward and he will answer any follow-up questions. Alex asks if there is a new layout of what the parking would look like. Mr. Eddy states that there is no modification to the parking and that they have 25 spaces that were required and have provided 21 standard spaces and 8 at the pumps. The Building Commissioner felt this was reasonable and to pass it along to ZBA.

Herb Bodensiek asks about revisiting the issue of the drive-through should Route 28 ever get reconfigured. Matt Eddy states that the applicant would like to reserve the right to come back before this board for the drive-through at some point in the future.

Attorney Lawler would like a notation to that affect to avoid any potential problem.

Alex asks Anna Brigham if there is an updated staff report. Anna replies no.

Jake asks about interior changes without the drive through.

Paul confirms that the auto repair was removed. Alex tells the board that they can have a traffic study if so inclined, but doesn't feel they need one. Attorney Lawler notes that Roger Parsons noted that there wasn't a need for a traffic study.

Alex asks for public comment

Marcel Poyant, owner of the Centerville Shopping Center asks to look at the revised plan.

Nilesh Marfatia, owner of 1673 Falmouth road which is a convenience store adjacent to this proposal is not against competition but is concerned about the road/traffic safety. He feels that this is not an extension but a change of use. He doesn't think it meets the requirements of the ordinance because it requires more parking than the previous use, it generates more traffic than the previous use, it will increase noise, it will increase the number of employees and tenants on site and will increase the gross floor area and increases the number of nonconforming uses. He also has a traffic study from the last five years which shows 193 accidents within a quarter of a mile from the intersection.

Alex states that he was not in favor of the drive-through because of the impact on traffic but would approve without the drive-through.

Jake asks about plans for signage. Matt Eddy doesn't have a plan but it would conform and has no request for variation.

Herb asks for clarification about taking a left out of the site. Attorney Lawler states that one of the curb cuts would be in/out and be consistent with what is there now. Herb would like to see restrictions on left hand turns, a sign, if nothing else and is hesitant to approve this.

Jake Dewey makes findings:

Special Permit Findings

The Applicant, MPG Corporation and 1617 Falmouth Road Series of PB&C LLC, as co-applicants, seek a Special Permit to improve the site. The proposal is to demolish the existing gas station/retail building and construct a new 5,000 square foot retail building and new canopy and 4 gas pumps. The building will consist of retail sales, including 14 seats ~~and a drive thru window~~. Site improvements will include parking for 29 vehicles, improvements to vehicle circulation and site entrance configuration onto Falmouth Road. There will be improvements to the structure setback, landscaping, drainage and storm water management, utilities and lighting.

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.**

Under Section 240-94 B, a preexisting nonconforming use may be expanded/intensified by special permit from the Zoning Board of Appeals.

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 (see letter dated November 16, 2017). *Jake asks if there is a new date for that. Matt Eddy replies: 02-16-18 and that those plans were resubmitted and should be part of the file.***

Section 240-94 B. requires the Board to find:

4. **The proposed expansion of the dwelling will not be substantially more detrimental to the neighborhood than the existing building or structure;**
5. **Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties.**
6. **The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.**
7. **The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.**
8. **At the discretion of the Zoning Board of Appeals, improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:**
 - (a) Greater conformance of signage to the requirements;**
 - (b) The addition of off-street parking and loading facilities;**
 - (c) Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;**
 - (d) Increase of open space or vegetated buffers and screening along adjoining lots and roadways;**
 - (e) Accessory uses or structures to the principal nonconforming use may be required to be brought into substantial conformance with the present zoning.**

Vote:

All in favor

Motion is made by Jake Dewey to grant with the conditions as outlined in the staff report dated January 9, 2018, 1-4. Attorney Lawler would like to have another condition to address coming before the board in the future for the drive-through:

Conditions

Should the Board find to grant the Special Permit No. 2018-007, it may wish to consider the following conditions:

1. Special Permit No. 2018-007 is granted to MPG Corporation and 1617 Falmouth Rd Series of PB&C LLC, as co-applicants, to allow for the expansion/intensification of the preexisting nonconforming uses at 1617 Falmouth Road, Centerville, MA.
2. The proposed alterations will be in substantial conformance with the plan entitled "Centerville Convenience Center" prepared for MPG Corporation dated October 31, 2017, drawn and stamped by Matthew W. Eddy of Baxter Nye Engineering & Surveying.
3. This alteration shall represent full build-out of the lot. No 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.
5. **The applicant reserves the right to come back, without prejudice, before the Zoning Board of Appeals and apply for a drive-through**

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:00 PM Appeal No. 2018-014

Gerardin

Marie and Robert Gerardin are applying for a Special Permit in accordance with Section 240-131. 4. D. (2) Change, Expansion, Alteration by Special Permit and Section 240-7.G. (1) Setbacks to Wetlands. The applicants are proposing to enclose an existing covered porch, adding 206 square feet of living space, and to add a flat roof which is not in compliance with the ordinance requirements of maintaining a pitch of at least six over twelve. The property is located at 23 Laurel Avenue, Centerville, MA as shown on Assessor's Map 226 as Parcel 077. It is located in the Craigville Beach District (CBD) and the Craigville Village Overlay (CV) Zoning Districts.

Opened February 28, 2018 – No members assigned, no testimony taken. Continued to March 14, 2018. Open and continued from March 14, 2018 – No testimony taken.

Members assigned tonight: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Kyle Evancoe

Representative: Attorney Albert Schulz for Attorney Michael Schulz. Also with him tonight are the applicants. Attorney Schulz gives summary of relief being sought and states that the only proposal before the board is the setback relief request. After speaking with staff, it was determined that the other relief being sought is not necessary and therefore would like to withdraw, without prejudice, the other relief being sought. He states that the applicant is lifting the house out of the flood zone and will be adding an addition and a deck. The proposed deck will encroach into the required setback. He believes that the house will be an improvement to the environment because of the fact that they are lifting the dwelling out of the flood zone. They have been before the Barnstable Historical Commission and the Conservation Commission and received approvals. They were also given approval and support from the Christian Camp Meeting Association. The construction of the 200 square foot addition is 10.7% of the structure in existence but is still under the 25% for a building that was in existence as of July 1, 1989. The lot coverage will not be increased and will remain. Does not increase flood hazards in the neighborhood and is not in a velocity zone. Does not think that this proposal is in detriment to the neighborhood.

Alex asks for public comment. No one speaks.

Alex asks why the flat roof. Marie Gerardin speaks and states that the flat roof is necessary so as not to cover the second floor windows. Also, Conservation Commission was supportive regarding the deck in order to keep people off the ground.

David Hirsch 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.

Staff has outlined all of the findings required by the DCPC ordinance. Those findings which are not applicable to the project are demarcated with a "■" symbol and noted as not applicable (n/a).

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

Section 240-131.4(D)(2) allows for expansion of an existing lawfully established structure in existence as of January 19, 2011 and relief from dimensional requirements with a special permit from the Board.

- 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.**

Further, §240-131.4 of the Craigville Beach DCPC ordinance states that in granting a special permit, the Board shall find that:

- The proposed alterations and expansions are not substantially more detrimental to the environment, community and/or historic character of the neighborhood than the existing building or structure.**

Comply with § 240-131.1, Purposes and intent:

The purpose and intent of §§ 240-131 through 240-131.8 are to guide development in the Craigville Beach District pursuant to the Guidelines of Barnstable County Ordinance 09-10 to ensure that development and redevelopment meets the following standards:

- Contributes to and respects the character and historic development patterns of the area and minimizes inconsistent redevelopment impacts to the historic and community character resources in this area;**
- Protects and preserves scenic views and vistas and ways to the water.**
- Protects and improves natural resources, including but not limited to the barrier beach and groundwater and coastal water quality and minimizes development and redevelopment impacts to the natural resources and ecosystems in this district;**
- Protects human life and property from the hazards of periodic flooding.**

- Preserves the natural flood control characteristics and the flood control function of the floodplain

and with the performance standards and design guidelines for the neighborhood overlay area in which the development is located, in accordance with § 240-131.7, Neighborhood District Overlay regulations, with the exception of the roof form of § 240-131.7H (3) (d) [4]:

General performance standards:

- The development complies with the setbacks and lot coverage requirements set forth herein, and is in character with surrounding structures, particularly structures that predate it. *Relief is being requested for expansion of the structure in accordance with § 240-131.4D and 240-7 G.*
- The redevelopment complies with the height limitations set forth herein.¹
- Exposed foundation walls for raised septic systems and/or elevated structures are prohibited; foundation walls shall be screened through the use of foundation plantings and/or the use of other natural materials.
- Stormwater management and erosion control for nonresidential uses comply with best management practices through low-impact development or other adaptive management practice - n/a
- Up to 50 square feet of roof deck may be allowed atop the first or second floor of a structure if the railing and support structure for the roof deck are constructed fully below the tallest part of the roofline they are contained within. - n/a
- All new non-water-dependent development shall be set back at least 50 feet from the top of the coastal bank resource area. Change, alteration, or expansion of existing structures shall not be sited closer to the top of the coastal bank resource area than the existing development to the maximum extent feasible.
- Existing natural vegetation within the fifty-foot buffer area to salt marsh and undisturbed buffer areas 50 feet landward of the mean high-water mark of coastal water bodies shall be preserved to the maximum extent feasible.
- No direct untreated stormwater discharges shall be permitted into any coastal waters or wetlands, including discharges above or below the mean high water level. Stormwater discharge shall be located and treated the farthest practicable distance from wetlands and water bodies and shall be located a minimum of 50 feet from wetlands or water bodies. n/a

Under Section 240-131 4. E. the SPGA may provide relief from minimum yard setbacks when such relief ensures that the proposed development:

- Is consistent with § 240-131.1, Purposes and intent;
- Is consistent with the performance standards for the neighborhood district where the development is located in accordance with § 240-131.7, Neighborhood Overlay regulations; and
- The applicant demonstrates undue hardship without desired relief.

Under Section 240-131.7.F.(3) Craigville Village Neighborhood performance standards. All development and redevelopment shall meet the following standards:

Building design. The guidelines shall apply to construction of new structures and expansions and alterations of existing structures.

[1] Preserve the original massing of historic structures (pre-1945).

[2] Additions should be attached to secondary or less prominent facades of the building (the side or rear facades), and should be stepped back from the front and rear corners of the building so as to preserve the original massing of the structure, including its roof form.

[3] Work with modest massings. Additions should be scaled to be consistent with or smaller than the size of the original historic structure, following the neighborhood tradition of expanding small cottages incrementally with modest additions. Additions should generally have a lower roofline than the original structure to maintain the prominence of the original building, though some additions may be slightly taller than the original structure if attached to the original structure with a smaller connecting mass.

[4] Roof forms. The roof pitch on new construction and additions should complement the roof pitch of the original historic structure and should maintain a pitch of at least six over 12.

[5] Retain original architectural details and unique forms. Additions should be placed so as to limit the removal of distinctive architectural trim and features that are unique to the building. Additions and alterations should not interfere with character-defining features, such as open porches, steeply pitched roof forms, unique windows, and carpenter gothic trim along eaves and entries. Siding materials used on the original structure should be retained, though other regional siding materials may be appropriate on additions.

Vote:
All in favor

David Hirsch makes motion to grant the relief being requested with the conditions on the Staff Report Dated February 20, 2018, Conditions 1 through 4.

Attorney Schulz and Marie Gerardin are agreeable to the conditions as outlined in the Staff Report.

Conditions

¹

Should the Board find to grant the Special Permit No. 2018-014, it may wish to consider the following conditions:

1. Special Permit No. 2018-014 is granted to Marie and Robert Gerardin for the alteration and expansion of the dwelling and deck located within the setback to wetlands and elevating the dwelling out of the floodplain at 23 Laurel Avenue, Centerville pursuant to Section 240-131.4 of the Craigville Beach District.
2. The alterations and expansions shall be constructed in substantial conformance with the site plan entitled "Site Plan of 23 Laurel Ave Craigville" by Down Cape Engineering dated August 8, 2017 and design plans stamped by Mark McKenzie.
3. The above-described alterations shall represent full build-out of the lot. No further alterations shall be permitted without approval from the Board.
4. 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 special permit must be exercised within two years, unless extended.

Vote:
All in favor

GRANTED WITH CONDITIONS

New Business

Alex reads the following into the record:

7:00 PM Appeal No. 2018-018

Mullen

Paula Mullen is applying for a Special Permit in accordance with Section 240-47.1.A.(1) Family Apartments. The applicant is proposing to construct a family apartment within the principal dwelling in excess of the 50% of the square footage of the existing single-family dwelling allowed by the Ordinance. The property is located at 18 Frazier Way, Marstons Mills, MA as shown on Assessor's Map 057 as Parcel 006-002. It is located in the Residence F (RF) Zoning District.

Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Mark Hansen

Steve Cook from Cotuit Bay Designs is here representing the applicant. Mr. Cook states that the applicant is looking to construct an apartment for her elderly mother and that the existing dwelling is a small ranch. They meet the 800 square foot requirement for a family apartment but due to the size of the primary dwelling that they are over the 50% requirement. He states that the apartment will have a crawlspace and will meet the design of the existing dwelling.

Alex asks if there anyone from public. No one speaks.

Alex asks the applicant if they are aware and agreeable to the requirements/conditions for the family apartment. The applicant says yes.

Alex makes findings:

Proposed Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

1. **The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-47.1. B. allows a Special Permit for a Family Apartment greater than 50% of the existing dwelling.**
2. **Site Plan Review is not required for single-family residential dwellings.**
3. **After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.**

The Board is also asked to find that:

4. **The proposed new addition with a family apartment would not be substantially more detrimental to the neighborhood than the existing dwelling.**

Alex also notes that no comments in opposition were received and that the proposal meets the setbacks.

Vote:
All in favor

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

Conditions

Should the Board find to grant the Special Permit No. 2018-018, it may wish to consider the following conditions:

1. Special Permit No. 2018-018 is granted to Paula Mullen to construct an addition for a family apartment that exceeds 50% of the existing dwelling at 18 Frazier Way, Marstons Mills, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan" prepared for Paula Mullen dated August 10, 2017 with a last revision date of December 21, 2017 drawn and stamped by Warwick & Associates, Inc. and the architectural drawings by Cotuit Bay Design LLC.
3. The proposed redevelopment shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
4. The Applicant must comply with the restrictions in Section 240-47.1 Family Apartments C. Conditions and Procedural Requirements 1-4 of the Ordinance.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
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 the issuance of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Steve Cook asks if full buildout in Condition #3 would include a shed. Alex asks how big the shed would be. Steve Cook states that a 10 X 12 is permitted without a building permit. Alex agrees that anything larger would need further approval from the board.

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:01 PM Appeal No. 2018-020

120 Yarmouth Road, LLC.

120 Yarmouth Road, LLC., as prospective owners, have petitioned for a Variance from Section 240-35.G – WP Well Protection Overlay District regulations. The petitioners are proposing to demolish two existing structures, one at 100 Yarmouth Road and the other at 120 Yarmouth Road, Hyannis, MA and to construct a new, 5,155 square foot, one-story medical office building. The current maximum lot coverage by impervious surfaces in the Wellhead Protection Overlay District is 50%. The proposed impervious lot coverage is proposed at 63.33%. The subject properties are located at 100, 106 and 120 Yarmouth Road, Hyannis, MA as shown on Assessor's Map 328 as parcels 194, 196 and 197. It is located in the Medical Services (MS) and WP Well Protection Overlay Zoning Districts.

Members assigned tonight: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard

Representative: Attorney Albert Schulz for Attorney Michael Schulz

Attorney Schulz states that Dr. Tierney has a Purchase and Sales agreement on the three lots mentioned and gives summary of relief being requested. He states that the existing structures are in poor condition and that they had applied to the Barnstable Historical Commission for a Notice of Intent and a letter allowing the demotion was issued. According to the USDA soil maps, urban soils may have contaminants and that covering them is better than leaving them pervious. They will be demolishing the existing buildings and reconstructing a one-story medical clinic that will meet the setbacks. There will be two separate parking lots; one for employees only and one for patients and is seeking more parking since her facility is unique. Some of the procedures performed allow a longer stay.

They are asking for a Variance and to speak to each of the requirements of the three-prong test:

- **Due to the soil conditions of the urban fill, the increase in allowable lot coverage in the Wellhead would be preferred and would limit the urban soil fills. If filled, it would prevent leaching of the urban soils which would in turn protect the aquifer.**
- **This would be a financial hardship to Dr. Tierney if not granted**
- **Would not be a detriment and can be granted without detriment to the neighborhood affected**

Alex asks about a lighting plan. Attorney Schulz states that he believe that the lighting plan was looked at Site Plan Review.

Alex asks if there is anyone from the public who would like to speak. No one speaks.

Alex does not think this would be a detriment and that it would be an improvement over what currently exists.

Alex makes findings:

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:

- 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;
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
- 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:

All in favor

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

Variance Conditions

Should the Board find to grant the variance, it may wish to consider the following conditions:

1. Variance No. 2018-020 is granted from Section 240-35 to 120 Yarmouth Road LLC located at 100, 106 and 120 Yarmouth Road, Hyannis, to allow the proposed lot coverage of 63.33% as part of the redevelopment of the site.
2. The improvements shall be in substantial conformance with the site plans entitled “Site Plans for Tierney Medical Office Building located at 100, 106 and 120 Yarmouth Road” by Atlantic Design Engineers, Inc dated March 7, 2018.
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 the issuance of a building permit. The rights authorized by this variance must be exercised within one year, unless extended.

Attorney Schulz has read the conditions and accepts them.

Vote:

All in favor

GRANTED WITH CONDITIONS

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

April 11, 2018, April 25, 2018, May 9, 2018, May 23, 2018

Adjournment

Motion is made by David Hirsch and seconded by Paul Pinard to adjourn.

Vote:

All in favor