



Town of Barnstable

Zoning Board of Appeals



Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek - Clerk
Jacob Dewey – Regular Member Paul Pinard – Associate Member Kyle Evancoe – Associate Member
Todd Walantis – Associate Member Mark Hansen – Associate Member
James Hinder – 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

18 001 26 12:00

Minutes

Wednesday, July 11, 2018

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

Alex Rodolakis - Chair	Arrives at 7:06
David Hirsch – Vice Chair	Present
Herbert Bodensiek - Clerk	Present
Jacob Dewey – Regular Member	Absent
Regular Member	Vacant
Paul Pinard – Associate Member	Present
Kyle Evancoe – Associate Member	Present
Todd Walantis – Associate Member	Present
Mark Hansen – Associate Member	Present

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

As a quorum has been met and awaiting the arrival of Alex Rodolakis, David Hirsch takes over as Chair and opens the hearing at 7:05

Call to Order

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

David Hirsch reads the following with no response:

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Minutes

March 28, 2018

Motion is made by Paul Pinard and seconded by Todd Walantis to approve the minutes as submitted.

Vote:

All in favor

New Business

David Hirsch reads the following into the record:

7:00 PM

Appeal No. 2018-037

Lopes

Elio and Brittany Lopes have applied for a Special Permit pursuant to Section 240-47.1 B. Family Apartments. The Applicants are seeking permission to construct a 28' X 30' detached garage with a family apartment above. The subject property is located at 77 Bridle Path, Marstons Mills, MA as shown on Assessor's Map 149 Parcel 147. It is located in the Residence F (RF) Zoning District.

Members assigned tonight: David Hirsch, Herb Bodensiek, Kyle Evancoe, Todd Walantis, Paul Pinard.

Representative: Brittany Lopes is here and explains that this is her childhood home and her mother has owned it since 1997 and just in the past few years she and her husband have taken over. She states that the local Building Inspector, Ed Bowers, inspected the property and found it a neat looking home with no indication of business activity and a landscape trailer hidden behind a fence. She states that they do have a home occupation permit in place. The family apartment will be for her mother to live in. Below the apartment will be room for her vehicle to be parked on one side and the other side will be for storage of tools.

David Hirsch asks if she is aware that in constructing a family apartment, that only a family member can live there. Mrs. Lopes states that the mother is a realtor and will have her name on the permits. Hirsch reiterates that if it is vacated by a family member that the kitchen will have to be removed with a permit. Mrs. Lopes is aware and states that her mother will be living there.

Mark Hansen likes the design and asks how many bedrooms exist currently in the principal dwelling. Ms. Lopes states that there are currently three (3) bedrooms in the main dwelling but they will be removing a wall between two original bedrooms so that there can be one bedroom in the apartment above. Paul Pinard comments that this is well screened from the neighbors with vegetation and a fence.

Anyone from the public:

Matt Quitmeyer is here with his wife Robin and states that his family lives next door at 91 Bridle Path and has lived there for 20 years. They have chosen this neighborhood because it is residential. His house sits kitty-corner on the lot their back yard abuts the applicant's side yard. In 2006, an addition was built on the (subject) house for Brittany's mother. Several years ago, Brittany's husband, Elio, started taking down trees and his wife came home to find Elio on their property measuring from their foundation to the lot line without their permission. Also, without a discussion from him or his wife, Elio removed a bulk of the trees despite their and other neighbor's, concerns. From there, a blue stone driveway was installed and two work trucks have since moved in along the property line. When Elio and Brittany were approached and asked about a fence, Brittany said they would install just a 6 foot fence. However, at his own expense, he has installed an eight (8) foot fence with a permit to afford them privacy that they have lost with the removal of the trees. His primary concern is that there is a business being run out of this site. He states that there are two, commercial one ton trucks and a trailer which he understands is non-compliant. He is also worried about property values and is fearful that they will be looking at a large structure on a small lot. They didn't buy their house to live next to a commercial property. Kyle asks him to point out where he lives in relationship to the applicant.

Mike Lynch is here to read a statement from his father, John Lynch, who lives at 65 Bridle Path and is with him tonight. The father has known Elio for 20 years. When Elio moved in they became friends. When he got the notice he asked Elio if he would be willing to put a flat roof on the garage to which he said no. They had a second meeting which got more emotional. This proposed structure would impact him and take the location terms away, has caused him much anxiety and asks the board to weigh options.

Brittany Lopes rebuts. They are allowed to remove trees on their property. They have maintained their property and the project is in keeping with the zoning and they will have no employees or their vehicles on site. Her husband is a small business owner and will not become a large company overnight and wouldn't want that for the neighborhood. They offered to contribute to have land survey done and for the fencing and have remained amicable.

Todd Walantis asks if there are any commercial trucks at the property at any time. Ms. Lopes states that there is one truck and one trailer which they are allowed to have.

John Lynch rebuts and states that if Elio insists upon the living quarters why is it so important; the garage should be what he needs for his equipment. They already have an in-law apartment 15 years ago on the other side of the house and it doesn't make sense.

Brittany Lopes states that the in-law that they are claiming has 0 kitchen amenities and was in an enlarged room with a bed. It is now a playroom and they have kept the bathroom which is permitted.

Mark Hansen asks where on the lot are the mature trees. Ms. Lopes points them out. Alex comments that the only thing that they are here for is the family apartment element. David Hirsch asks if the applicant and the Lynch's would like time to confer. No one wants to.

Paul Pinard makes findings:

Elio and Brittany Lopes are seeking permission to construct a 28 foot by 30 foot detached garage with a family apartment above. The habitable area will be 775 square feet.

Section 240-47.1 B. By special permit. The Zoning Board of Appeals may allow by special permit if:

- (1) A family apartment unit greater than 50% of the square footage of the dwelling.
- (2) A family apartment unit with more than two bedrooms.
- (3) Occupancy of a family apartment unit by greater than two adult family members.
- (4) A family apartment unit within a detached structure, with a finding that the single-family nature of the property and of the accessory nature of the detached structure are preserved.

Section 240-47.1 C. Conditions and procedural requirements. Prior to the creation of a family apartment, the owner of the property shall make application for a building permit with the Building Commissioner providing any and all information deemed necessary to assure compliance with this section, including, but not limited to, scaled plans of any proposed remodeling or addition to accommodate the apartment, signed and recorded affidavits reciting the names and family relationship among the parties, and a signed family apartment accessory use restriction document.

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 in a detached structure.**
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 garage with a family apartment would not be substantially more detrimental to the neighborhood than the existing dwelling.**
5. **The single-family nature of the property and of the accessory nature of the detached structure are preserved.**

Vote:

AYE: David Hirsch, Todd Walantis, Paul Pinard, Kyle Evancoe
NAY: Herbert Bodensiek

Paul Pinard makes motion to grant with the following conditions: from staff report dated June 14, 2018 which contains 6 conditions be adopted:

Conditions

1. Special Permit No. 2018-037 is granted to Elio and Brittany Lopes to construct a detached structure for a garage below and family apartment above at 77 Bridle Path, Marstons Mills, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "As-Built Plot Plan Showing dwelling with proposed garage at 77 Bridle Path, Marstons Mills, MA" prepared for Elio Lopes and Brittany Lopes, drawn by J.M. O'Reilly & Associates dated January 25, 2018 and the architectural drawings by Thomas A. Moore Design Co.
3. The proposed development 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 (see above).
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.

Vote:

AYE: David Hirsch, Todd Walantis, Paul Pinard, Kyle Evancoe
NAY: Herbert Bodensiek

GRANTED WITH CONDITIONS

Alex Rodolakis takes over as Chair and reads the following into the record:

7:01 PM Appeal No. 2018-038 Kay

Sheree P. Kay has petitioned for a Variance pursuant to Section 240-14.E – Bulk Regulations in the Residence C-1 Zoning District. The petitioner is requesting relief from the required thirty (30) foot front yard setback in order to construct a 32' X 28' two-car garage approximately 19.9' from the front yard setback. The property is located at 109 Castlewood Circle, Hyannis, MA as shown on Assessor's Map 273 as Parcel 052. It is located in the Residence C-1 Zoning District.

Members assigned tonight: Alex Rodolakis, David Hirsch, Herb Bodensiek, Mark Hansen, Kyle Evancoe

Representative: David Lawler, Esq. Attorney Lawler states that this is a request for a variance. They have a structure that is approximately 22 feet from the front yard setback which is pre-existing nonconforming. They were willing to move the garage which would provide some relief but the septic system is problematic. The garage will line up and be symmetrical with the house. He states that he hasn't heard from any neighbors in opposition. He believes that the shape of the lot and issues with the septic system speak to the topographical/shape element of the 3-prong test along with it being a financial hardship should they have to move the septic system.

Kyle asks about the two sheds and a container on-site. Attorney Lawler consults with is client and then states that the container is temporary but that the sheds will be staying. David Hirsch asks why so big. Attorney Lawler states that it will be to house several vehicles and a boat.

David Hirsch asks if they could make it 26' from the front yard setback instead of 22'. Attorney Lawler says the 22' setback will match symmetrically and explains the storage of the boat. Mark Hansen clarifies that the doors will be accessed from the street. Alex asks about landscaping. Alex would like the height comparison and this structure will be higher than the home. Attorney Lawler confers with client who says that the garage is as large as others in the neighborhood. He thinks the massing is appropriate and states that perhaps it would be conditioned with staff's approval. Alex would like to see how, with this being detached, it compares by size, height relative to home. Alex still wants landscape plan and the structure relative to the neighborhood. Mark Hansen clarifies that it was always meant to be detached.

Attorney Lawler asks for a continuance to the next hearing in order to obtain a landscaping plan which his client is willing to do.

Herb Bodensiek asks for neighbors comments. Attorney Lawler will pursue getting some letters for next meeting.

Motion is made by Herb Bodensiek and seconded by Mark Hansen to continue to August 8, 2018 at 7:00 PM.

Vote:

All in favor

CONTINUED TO AUGUST 8, 2018 at 7:00 PM

Recess for two minutes:

Back in session at 8:13

Alex reads the following into the record:

7:02 PM

Appeal No. 2018-039

Blauvelt

G. Christopher and Barri M. Blauvelt have petitioned for a Variance pursuant to Section 240-37.1 Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District. The petitioners are requesting relief in order to construct a 12' X 4' boardwalk, a 28' X 4' pier, an 8' X 4' ramp, and an 8' X 16' float in a zoning district that prohibits docks and piers in mapped portions of the coastal waters of Cotuit Bay, North Bay, West Bay, Lewis Bay and Barnstable Harbor designated as a Recreational Shellfish Area and Shellfish Relay Area. The property is located at 571 Old Post Road, Cotuit, MA as shown on Assessors Map 054 as Parcel 018. It is located in the Residence F (RF) Zoning District and the Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District.

Members assigned tonight: Alex Rodolakis, David Hirsch, Herb Bodensiek, Todd Walantis, Paul Pinard

Representative: David Lawler, Esq.

Attorney Lawler introduces G. Christopher. Barri was not able to be here tonight. Attorney Lawler gives summary of relief being sought and thinks that in this case common sense should prevail. In this area the real issue is a cove. He points it out on the overhead and explains that almost every property here has a dock. He explains that Mrs. Blauvelt has health issues that prevents her from accessing her boat on this property. The blanket restriction here is the cove/bump out. He points out the lot in question and points out the properties that have docks along with other photos (Exhibit A). They would be okay that there be no motor boats, will be for a rowboat to have the ability to access their boat. He thinks it is in keeping except with the particular neighborhood and thinks that this violates the Crown's Ordinance of 1647 regarding low water/high water mark which is not a purview of this board. He refers to the photos in Exhibit A. He states that what is unique is that his client is the only one in the cove that doesn't have a dock. He also notes that there are other avenues of approval that they need which one of them would be to go before the Conservation Commission. He stresses that the dock will be temporary, put in the spring and taken out in the fall.

Alex Rodolakis thinks that perhaps they should go to the Conservation Commission (ConComm) which would satisfy those issues. Attorney Lawler doesn't think that they would have standing before that board first and thinks that this is the appropriate board to come to first and then if they obtain approval from this board then they would go to ConComm.

Attorney Lawler confers with client then states that his client would like to still go forward first with the Zoning Board of Appeals.

Todd Walantis knows this area, thinks that this should be allowed under zoning, there are plenty of powerboats in the area and doesn't see why this is restricted and wouldn't even restrict it to rowboats and is strongly in favor of this.

Alex Rodolakis asks for public comment

Patricia Farinha, member the Town of Barnstable's Shellfish Committee and Barnstable Association of Recreational Shellfishing (BARS) member states that one of the reasons why this district exists is because of all the piers and what they do to the environment and to the shellfishing area. We need to pull back regarding the effect to the environment. She states that if this board considers this variance and if it goes forward, they are taking a step back in time. She points out the relay area was established in order to clean the shellfish. All of these areas are not large. They are vital to clean water and shellfishing and vital to our health and the health of this area.

Stuart Rapp is here as resident but is also the Chair of the Shellfish Committee. He states that this overlay was a result of a long fought battle in the Town of Barnstable and on 3 occasions there was a large audience to discuss this and they did so to protect shellfish in this area. The ordinance does not allow the construction of a pier in this area in order to stop the degradation of the habitat of the shellfish. He is surprised that not a lot of people are here, is flying under the radar, and thinks that if this is approved that would open the flood gates. Also, the fact that there are existing piers has generated the overlay district. He asks them to look at their charge and the specific criteria for a variance which this does not have. He explains that the applicants have access by walking down the stairs, over the coastal dune, down the stairs into the embayment. He can get into the water. He has a permitted outhaul that has a boat attached to it that he can pull into the shore, hop on it and row out to his bigger boat. He explains that there is a mooring list that people have been on, some for twenty years or more. ConComm has purview over a structure in the wetland and once they approve or disapprove it has to go to Department of Environmental Protection (DEP) and then Army Corp of Engineers. He also explains that the Conservation Commission looks at piers on a rating system by a committee that rates it on a scale of 1-10. This particular area is a relay area, the Town of Barnstable uses it to put the contaminated shells in and this area is rated as #10, the highest habitat area in the Town of Barnstable. The Town of Barnstable chose to protect this area. He would caution the board against approving this.

Attorney Lawler rebuts: states this area is already filled with piers, they are not asking to put in a motorboat. They have a mooring but with it is property rights. The uniqueness is that he doesn't have a dock and the hardship is that Mrs. Blauvelt has difficulty getting to her boat because of her age and medical issues.

David Hirsch believes that when they bought this property this right was there and the town took that away and supports this application.

Alex thinks that they are here to stand behind the ordinance and thinks that they would be going beyond the scope of the board's power that the town has given them and notes that a lot of towns don't provide for variances.

Todd Walantis says that they already have access, stairs to tidal water and a post, thinks this supersedes the ordinance. Paul Pinard thinks it also comes down to #3 of the 3-prong test.

Attorney Lawler thinks that this should be a common sense approach and doesn't think this is detrimental because of all the other piers in the area.

Alex makes findings:

G. Christopher and Barri M. Blauvelt have petitioned for a Variance pursuant to Section 240-37.1 Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District. The petitioners are requesting relief in order to construct a 12 foot by 4 foot boardwalk, a 28 foot by 4 foot pier, an 8 foot by 4 foot ramp, and an 8 foot by 16 foot float in a zoning district that prohibits docks and piers in mapped portions of the coastal waters of Cotuit Bay, North Bay, West Bay, Lewis Bay and Barnstable Harbor designated as a Recreational Shellfish Area and Shellfish Relay Area. In Section 240-37.1 Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District, docks and piers are prohibited.

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; - Alex finds that he would not find in favor and does not think there are special circumstances and does not feel this has been met
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and - Alex does find that this has been met
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. Alex finds that the applicant has not satisfied that requirement because the relief request

Vote:

AYE: *Herbert Bodensiek, Paul Pinard, Alex Rodolakis*

NAY: *Todd Walantis, David Hirsch*

Based on negative findings, Alex makes a motion to deny the relief being sought.

VOTE:

NAY: *Todd Walantis, David Hirsch*

AYE: *Alex Rodolakis, Paul Pinard, Herb Bodensiek*

DENIED

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

July 25, 2018, August 8 & 22, 2018

Adjournment

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

Vote:

All in favor

