



Town of Barnstable

Zoning Board of Appeals



www.town.barnstable.ma.us/ZoningBoard

Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek - Clerk
Jacob Dewey – Regular Member Paul Pinard – Regular 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, July 25, 2018

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

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

18 DEC 14 PM 2:05

BARNSTABLE
TOWN CLERK

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

As a quorum is present, Alex Rodolakis calls the hearing to order.

Call to Order

Introduction of Board Members – All members present introduce themselves.

Alex reads the following with no response:

Notice of Recording

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

Old Business - None

New Business

7:00 PM Appeal No. 2018-036

Powers

Robert J. and Veronica A. Powers have petitioned for a Variance pursuant to Section 240-36 Resource Protection Overlay District (RPOD) and Section 240-14 Residence F (RF) Zoning District. The petitioners are seeking relief from the minimum lot size requirement to divide their lot into Lot 1 and Lot 2. The proposed Lot 1 will have approximately 45,230 square feet of upland and the proposed Lot 2 will have approximately 43,600 square feet of upland where 2 acres is required. The subject property is located at 760 Popponessett Road, Cotuit, MA as shown on Assessor's Map 006 Parcel 046. It is located in the Residence F (RF) Zoning District and the Resource Protection Overlay District (RPOD).

Members assigned tonight: Alex Rodolakis, Herb Bodensiek, Jake Dewey, Todd Walantis, Mark Hansen

Representative: Robert Powers, owner of 760 Popponessett Road. Mr. Powers submits a letter in support (Exhibit A)

Also with him tonight is Arlene Wilson from Wilson and Associates and Richard L'Heureux – Land Surveyor from CapeSurv. Mr. Powers gives a summary of existing conditions and a plan and 2001 letter from Planning Board. He explains documents in this package (Exhibit B) and that they are here to try to reconfigure their 2.9 acre lot into two buildable lots. He explains that in 2000, they applied for a building permit to them for Lot #49 to build their present home. Also in 2000, the Town changed the minimum lot acreage in this area to two acres. They contracted with a civil engineering company to meet the new code for buildable lots. The civil engineering company divided in 2 lots preliminary plan dated 1999 and filed prior to the planning board before the acreage increase. The Planning Board approved the preliminary plan for two buildable lots with a definitive plan to be filed with the Planning Board by June 9, 2001 in order to preserve that protection afforded that preliminary plan. Unfortunately, on July 12, 2001, engineering company failed to file the definitive plan. He refers to Document #6 which is a letter of denial from the Planning Board.

Their present home does not accommodate their present physical needs and therefore they would need to sell their home in order to get a house that would accommodate their needs. However, under 40A, if the ZBA approves this they could continue to live on this property in a new smaller home on the proposed first lot and sell the current home on the proposed second lot. As for the three prong test, it would be a financial hardship if they cannot sell their house in order to build themselves a new home with first floor living. There are wetlands that divide the lot and are unique and meets the criteria. A land variance would not be in detriment, the new home would be similar to neighbors in size and acreage, be a cottage-like structure, approximately 1500 sf. Document #9 is a town map showing the adjacent abutters. He explains the abutters and their approximate acreage and does not think that this would be a detriment to the neighborhood because the average living space in the area is 1800 sf and they would be building a house with less square footage than that. He notes that the staff report states that the applicants have met all the requirements but does not confer any right to a variance and the ZBA has that discretion. Hardship would be the loss of lot 1 as a buildable lot and present home does not meet current physical needs.

Questions from board

Herb asks Mr. Powers for clarification of what would occupy each lot and if a new house were to be built on the proposed lot, where on that lot would it be located. Richard L'Heureux hands in a plan (Exhibit C).

Mark Hansen asks for clarification on the elapsed time period and why it was delayed. Mr. Powers states that while they were building their house they were notified that the town was in the process of changing the acreage from one to two acres. After the statutory time limit, their attorney notified them that the civil engineering company failed to file the appropriate paper work before the deadline. Mark Hansen asks if they approached the Planning Board at that time. Mr. Powers states that his attorney told them that the engineering company's attorney was going to approach the PB. He was told that after 3 months that the PB wasn't going to change their mind because there were too many people that would be affected. Mr. Powers states that they called the engineering company the day it was due and found out that they filed it 7 months after the due date. Mark Hansen asks if they are in a water recharge area. Arlene Wilson explains that it is in the resource protection overlay district and that the Board of Health (BOH) has regulations to insure that the nitrogen loading from development does not trigger adverse impacts and their regulation allows 1 bedroom per 10,000 sf. They count wetlands the same as uplands, therefore if the Powers were to sell this lot without it being divided, someone could purchase it, knock the house down and possibly build a twelve bedroom house on the one lot.

Jake Dewey asks Mr. Powers if his attorney, at the time, gave them options to appeal. Mr. Powers states that the attorney said it was the responsibility of the engineering company and nothing happened. He was told to file a claim. He called a land attorney in Boston who filed a claim which went to federal court. A settlement was proposed which they rejected.

Alex asks for public comment but first refers to three letters from: Timothy Doyle in support, Margaret Barnard in opposition, Herbert Sandberg and Harriet Sandberg in opposition and an email from Joe Sullivan in opposition (Exhibit D).

Alex asks for public comment. David P. Sullivan is here representing his father, Mr. Sullivan, who is in opposition.

Mr. Powers thinks that the Sullivan's have a legitimate concern about traffic during construction and states that he would establish a plan to reroute traffic to avoid Mr. Sullivan's house and eliminate contractors going past the Sullivan's home. They also agree with Barnard on the privacy issue and feels that privacy is a legitimate concern. The buildable envelope will insure privacy for the neighbors as well as them.

Alex Rodolakis thinks a variance is extreme relief and would feel better if the abutters were okay with it. He also struggles with the passage of time from their first attempt at dividing the lots.

Mr. Powers reiterates that the Planning Board had approved it originally but it was a failure of the engineering company to file timely and that not using this land is a financial hardship. Alex polls the members. Mark Hansen asks what they hope to accomplish. Mr. Powers would like to meet with the abutters. The board discusses. Alex also states that even if there was potential to grant this there would be more restrictions on both lots on the size of the homes which could be a detriment and asks to keep that in mind. He would like to preserve the neighborhood.

Jake Dewey is still struggling with the fact that they were offered a grievance for that. Mr. Powers states that after three years they were offered a settlement which was less than the market value of the lot which it could've been sold for. Mr. Dewey still says that they were compensated. Mr. Powers states that the offer was for \$33,000 but settled for just a little more than that.

Mr. Powers asks for a continuance. Alex states that Mr. Powers will need to agree to sign a time extension with staff. Mr. Powers agrees.

Motion to continue is made by Herbert Bodensiek and seconded by Todd Walantis to September 26, 2018 at 7:00 PM

Vote:

All in favor

CONTINUED TO SEPTEMBER 26, 2018 AT 7:00 PM

Correspondence - None

Matters Not Reasonably Anticipated by the Chair - None

Upcoming Meetings

August 8, 2018 and August 22, 2018

Adjournment

Motion is made by Jake Dewey and seconded by Mark Hansen to adjourn

Vote:

All in favor

