



Town of Barnstable Zoning Board of Appeals



19 JAN 28 A11:40

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, September 26, 2018

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

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

Also present were Elizabeth Jenkins – Director of Planning & Development; Anna Brigham – Principal Planner and Carol Puckett – Administrative Assistant

As a quorum has been met, Alex Rodolakis calls the hearing to order at 7:00 PM

Call to Order

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

Alex reads the following into the record with no response:

Notice of Recording

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

Minutes

May 9, 2018

Motion is made by Paul Pinard and seconded by Mark Hansen to approve the minutes as submitted

Vote: All in favor

Alex reads the following into the record:

Old 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).

Continued from July 25, 2018. Members assigned: Alex Rodolakis, Jake Dewey, Herb Bodensiek, Kyle Evancoe, Todd Walantis

Mr. Powers asks to continue this to October 10, 2018 at 7:00 pm

Motion is made by Paul Pinard and seconded by David Hirsch to continue to October 10, 2018 at 7:00 PM

Vote:

All in favor

CONTINUED TO OCTOBER 10, 2018 AT 7:00 PM

7:03 PM Appeal No. 2018-048

Shneur and Gluskina, Trustees

Felix Shneur and Irina Gluskina, Trustees of the Felirsa Realty Trust have applied for a Special Permit pursuant to Section 240-92 Nonconforming Buildings or Structures used as Single and Two family residences. The Applicants are proposing to construct a two car garage, deck and an addition and balcony to the existing dwelling that does not meet the required front yard setback. The property is located at 187 Bay Lane, Centerville, MA as shown on Assessor's Map 186 as Parcel 011. It is located in the Residence D-1 (RD-1) Zoning District.

Alex Rodolakis states that a letter dated September 24, 2018 has been received from John Kenney, Esq., asking that this be continued to October 10, 2018 or another date in October.

Motion is made by David Hirsch and seconded by Mark Hansen to continue this to October 24, 2018 at 7:00 PM.

Vote: All in favor

CONTINUED TO OCTOBER 24, 2018 AT 7:00 PM

At 7:05 PM, Alex reads the following into the record:

New Business

7:01 PM Appeal No. 2018-044

T-Mobile Northeast, LLC.

T-Mobile Northeast, LLC., as lessee, has applied for a Special Permit pursuant to Article XIV, Section 240-130.4.B (2) of the District of Critical Planning Concern Regulations: Continuation, Changes in Use, Damaged Structures. The applicant is proposing to install six (6) wireless communications antennas, together with Remote Radio Heads (RRH), within the existing steeple of the South Congregational Church at a centerline height of sixty (60) feet. Further, appurtenant base transceiver equipment consisting of equipment cabinets and ancillary equipment will be installed in the basement of the Church. The subject property is located at 565 Main Street, Centerville, MA as shown on Assessor's Map 207 as Parcel 053. It is located in the Centerville Village District (CVD).

7:02 PM Appeal No. 2018-047

T-Mobile Northeast, LLC.

T-Mobile Northeast, LLC., as lessee, has petitioned for a Use Variance pursuant to Article XII Section 240-125.B(1)(e) - Administration and Enforcement, Zoning Board of Appeals. The Petitioner is proposing to install six (6) wireless communications antennas, together with Remote Radio Heads (RRH), within the existing steeple of the South Congregational Church at a centerline height of sixty (60) feet. Further, appurtenant base transceiver equipment consisting of equipment cabinets and ancillary equipment will be installed in the basement of the Church. The subject property is located at 565 Main Street, Centerville, MA as shown on Assessor's Map 207 as Parcel 053. It is located in the Centerville Village District (CVD).

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

Ricardo Souza Esq., is representing the applicant, T-Mobile. He states that either they want a special permit under DCPC regulations or a use variance. They obtained a building permit to install the antennae within the steeple and that it cannot be seen. After starting the installation and close to be complete, Town Council's office was informed that the property on which the antennae was/is to be located is in the DCPC (District of Critical Planning). He feels that this board has jurisdiction to either one of the reliefs, either to grant relief under DCPC or a use variance under the Telecommunication Act of 1996 and Federal case law that follows the Telecommunications Act of 1996.

Alex Rodolakis states that the staff memo went out yesterday afternoon and obviously jurisdiction is the main problem. The package was large in terms of information. He received his package only yesterday and if the jurisdictional issue is determined that the board does not have jurisdiction for one reason or another, it negates the rest of the issues for him, at least right now. He asks if he wants to brief this jurisdictional issue in which case, his own thought would be to pick another date on which to address it. If he agreeable to continue this, he would not like to open this up for public comment yet. He refers to Attorney Paul Revere's memo/input.

Attorney Souza was informed that this could be continued and is amenable to picking a date and providing any other information they may need in particular to any jurisdictional question. In particular, guidance relative to the town's obligation under Federal case law and the Telecommunication Act of 1996 which is the piece that he found missing in the town's report. Federal Law does have some supremacy over local law and understanding the Federal Communications Act also allows municipalities to pass reasonable regulations relative to telecommunication installations which this town has done. However, this DCPC is a block and is preventing them from filling a significant gap in coverage. He also suggests a peer review and would be a good time for the town to consider a peer consultant and to vote to do so. They want to flush out this issue and fill their gap in coverage.

Alex asks if the peer review looks at other alternative site. Attorney Souza says it depends on how the analysis is done.

Alex asks Ruth Weil – Town Attorney to speak. Ruth Weil states that in terms of continuance there is a shock clock provision and she would request that the applicant agree to a tolling agreement in order to extend time limits.

Attorney Souza is amenable to the shock clock/tolling agreement. They suggest November 7th for a stand alone hearing.

Alex asks who would pay for the peer review. Attorney Souza states that typically, the carrier would pay for it and then the planning department would reach out to the consultant. The carrier would then pay the consultant.

Alex asks if November 7th is sufficient time. They could take it one step at a time. The board feels that the jurisdictional issue needs to be addressed before anything else.

Ruth Weil reiterates the timing issue and that this board would have to vote to grant a peer review and maybe it makes sense to initiate that process now.

Attorney Souza would like to get past the jurisdictional issue as well.

Alex doesn't want to get into public testimony yet because of the jurisdictional issues. However, Alex asks if Attorney Revere wants to address the narrow scope of jurisdiction, he would be willing to hear it. Attorney Souza thinks that it would be appropriate to address the jurisdictional issue at the same time

Attorney Paul Revere is representing the Centerville Concerned Citizens group and will respond to Attorney Souza's forthcoming memo regarding jurisdictional issue at the next hearing.

Alex asks the public that if they have an argument for the jurisdiction issue he will hear for that and if not they will continue this to a date in November.

Alex and Attorney Souza discuss deadline dates for submitted a brief. They agree that October 12th is reasonable date for a deadline and if he

Jessica Powell Esq., from Nutter McClennan and Fish is representing the land owner of the church and states that the landowner is amenable to continuing this to November 7, 2018.

Anthony Ambrogio of 580 Lumbert Mill Road, Centerville asks how jurisdiction is determined and what the process will be.

Alex thinks that it is not only that the town has an issue because of some unique circumstances, but that the town will need more detail in order to research to get jurisdiction.

Mike Curley from Centerville asks why were they issued a building permit for this, knows how strict the building codes are and thinks that the building permit process needs to be reviewed.

Leann Nichol is a new homeowner in Centerville and all she wanted to do is to live in a small historic village and asks who will be making the decision on jurisdiction. Alex explains.

Motion to continue this to November 7, 2018 at 7:00 pm and the applicant will submit a memo on the jurisdiction by October 12th

Ruth Weil – Town Attorney also wants the motion to include that this will also be subject to a tolling agreement with the town.

Motion is made by Alex Rodolakis and seconded by Todd Walantis to continue this to November 7, 2019 at 7:00 PM in order to submit a memo on the jurisdiction by October 12, 2018 and subject to agreeing to execute a tolling agreement with the town.

Vote:
All in favor

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

October 10, 2018, October 24, 2018, November 14, 2018, December 12, 2018

Adjournment

Motion is made by Paul Pinard and seconded by Todd Walantis to adjourn

Vote:

All in favor

Approved