



Town of Barnstable

Zoning Board of Appeals

BARNSTABLE
TOWN OF BARNSTABLE



19 FEB 20 12:40

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 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, November 14, 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	Present
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 Anna Brigham – Principal Planner and Carol Puckett – Administrative Assistant

Since a quorum has been met, Alex Rodolakis opens the hearing at 7:02 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 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

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, September 26, 2018, and October 10, 2018. Members assigned July 25, 2018 and October 10th: Alex Rodolakis, Herb Bodensiek, Jake Dewey, Todd Walantis, Mark Hansen

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

Alex asks for further public comment since the public record was not closed at the last hearing.

Attorney David Reed represents the Sullivan family at 760 Popponesset Road. He would like to address a couple of points that were left in error or misunderstood by the Powers. He viewed the videos and that some misunderstandings might have been presented to the board. He thinks it is complicated and that the Powers have done a good job documenting but that it might not be accurate.

Attorney Reid refers to a staff memorandum that was relating to that ANR. There was no approval in 1999. Secondly, after purchase they applied for a building permit and built their house and you will note that it is not issued for the original but instead for the entire parcel being considered then by the building department to have merged. The foundation plan shows that the foundation is on a single lot = entire parcel. The lot continues to be assessed for one lot. The plan originally proposed was for three lots but now they have one conforming lot and now want two nonconforming lots. There was some discussion by the applicants that lot 50 is encumbered by a drainage easement. That easement goes back (if you look at their deed) to 1946 to drain bog into the marsh. He has examined the plans and there is no indication that the drain was or ever will be constructed on this property. The marsh is now a conservation area. Lastly, the applicant contacted all the neighbors for their comments. Last time he said that of 22 abutters that only 2 were opposed. However, there are only 3 abutters on the street (the Sullivan's, the Sandburg's and the Doyle's) who are all opposed. As for the variance criteria, 40A, Section 10 raises the bar for the granting of a variance and that a variance should be granted sparingly. The first hardship is a result of soil, shape or topography. The ordinance for which they seek relief is for the size requirement under the Resource Protection Overlay District. Size of the lot is not shape, and not basis for a dimensional variance. As for hardship, they profess that it would be their inability to build a house in their retirement but there is nothing in this ordinance or in this whole matter that prevents them to build a house of their dreams. The only thing that prevents them is the fact that they can't build a second house on this property. In 2000, it failed for relief as well as when the Powers bought the land. They attempted to appeal the Planning Board without success; they sued the surveyor and were compensated. This is not a case where a variance is justified. He would suggest that it does not permit them to grant a variance and the ordinance was designed to avoid excess development and diminish in this area and to disregard this mandate is in direct derogation of the bylaw. It does not meet any of the requirements and asks the board to deny their request.

Arlene Wilson from A.M. Wilson and Associates speaks. She was retained by the Powers because she is a wetland specialist and does environmental work. What they are seeking is relief from an environmental ordinance even though it's part of the zoning. The intent of the ordinance was to control the pollutant load that comes with on-site septic systems where there is too much flow per land area. This is an unusual lot and the tests for a variance have been met: the lot is roughly rectangular in shape and has wetlands and almost meets the road which creates a problem with siting on the lot. The conditions affecting this property relate to the draining easement and states that is a question about how many lots and talks about a subdivision from the 1920's. As for the drainage easement although it was never built, they can't get rid of it unless they go to Land Court. There is no room left on the lot they have to make improvements to the existing dwelling. If they were to take the current house and rebuild, they could possibly build a 12 bedroom house and rent out to lodgers or if the board grants a variance they can have two lots with a single family structure on each lot. She would suggest that the hardship is the Resource Protection Overlay District bylaw and the neighborhood and that they have the ability to reduce the potential impact to the neighborhood.

Pam Howell of 30 Fullers Marsh Road is not a direct abutter, lives in the general area, but is concerned about the neighborhood and retaining its nature. If there is a medical problem, there are ways to mitigate that condition. By changing the topography of that lot, it could affect the wind, sun, etc., to the neighborhood.

Alex states that a letter from Mr. Timothy Doyle is in objection (Exhibit B) but the proposal for the new house would impact them as it would be directly viewed from their house. Alex also reads another letter from the Sandburg's in opposition (Exhibit C).

Jake asks if, at the last hearing, the Powers were going to bring some building plans. Mr. Powers states that he was not going to go forward with that until the variance was approved. The board discusses. Alex thinks they can grant a variance and satisfy the conditions here and is willing to make findings. He thinks that there is an economic hardship, the intersecting of the bog makes this unique and gets down to two structures that are smaller.

Alex makes findings:

Proposal & Relief Requested

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. Both proposed lots will have frontage on Popponessett Road. The lot is located within the Resource Protection Overlay District and there is a minimum lot size of 2 acres of upland.

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; this is a large lot intersected by bogs and unusual

circumstances – Alex adds: in particular this is rather a large lot that is bisected in parts by some bogs and other structures that make the shape of it unusual and constitute an unusual circumstance and is generally not true in the zoning district

- 2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; Alex adds: and he would find that the hardship is both financial and this lot if subdivided is extremely valuable and so he would find that it is a hardship
- 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 adds: The conditions that are to be granted for the vacant lot and the current lot would result in a restriction on what would otherwise be constructed on this lot both in terms in overall size of the structure, number of bedrooms, number of bathrooms and would result, in his view, make it comply effectively with the intent of the zoning bylaw to reduce among other things impacts from septic systems, fertilizers and runoffs

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:

AYE: Jake Dewey, Todd Walantis, Mark Hansen, Alex Rodolakis

NAY: Herb Bodensiek

Motion is made by Alex Rodolakis to grant relief being sought with the following conditions:

Suggested Variance Conditions

Lot 1 (vacant lot)

- 1. Minimum northerly side yard setback shall be 50 feet and will be planted and maintained with native vegetation.
- 2. No more than two bedroom dwelling shall be constructed.
- 3. Maximum height of the dwelling shall be 1 ½ stories.
- 4. Vegetated area shall be free of fertilizer, herbicides, and pesticides.
- 5. The garage shall be no larger than to accommodate 2 cars.
- 6. The maximum building footprint shall be 2,500 square feet including the garage.
- 7. There shall be no exterior construction before 8:00 a.m. or after 5:00 p.m. except in case of an emergency. There shall be no construction on Sunday or holidays except for emergencies.
- 8. There shall be no short term rentals of less than six months.

Lot 2 (house lot)

- 9. The current development on this lot shall represent full buildout. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.

General

- 10. Variance No. 2018-036 is granted to Robert J. and Veronica A. Powers, to allow the division of one parcel into two separate nonconforming parcels at 760 Poponessett Road, Cotuit MA.
- 11. The division of land shall be in substantial conformance with the plan entitled “Plan of Land at 760 Poponessett Road, Barnstable (Cotuit), Mass” prepared for Robert J. & Veronica Powers dated May 29, 2018 drawn by CapeSurv.
- 12. No further division of land shall be permitted without approval from the Board.
- 13. 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.

Jakes Dewey suggests adding a condition about maximum height. Alex states that there is a height to plate (29’) which doesn’t take into account the peak of the roof. They agree that the maximum height on Lot 2 shall not exceed the maximum height on Lot 1 without prior approval from this board.

Vote:

AYE: Jake Dewey, Todd Walantis, Mark Hansen, Alex Rodolakis

NAY: Herb Bodensiek

GRANTED WITH CONDITIONS

New Business

7:00 PM

Appeal No. 2018-061

Connor

Peter and Ann Connor have applied for a Modification of Special Permit 2014-014, Condition No. 9 in order to change the hours of operation at Barnstable Brewing. Currently, the hours of operation are from 10:00 AM through 6:00 PM. The applicants would like to change the hours to 10:00 AM to 8:00 PM for normal business operations and to add the hours of 10:00 AM to 10:00 PM for special events. The property is located at 485 West Main Street, Hyannis, MA as shown on Assessor's Map 269 as Parcel 223. It is located in the Highway Business (HB) and Residential B (RB) Zoning Districts.

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

Representative: Peter Connor, Ann Connor, and Mark Connor are here representing themselves. Peter Connor speaks and states that when they were previously granted a special permit, it was restricted. They were opposed as a general rule but recommended that they could come back, they waited a year and are now here to change the hours.

Jake Dewey asks how many special events they are proposing to have. Ann Connor responds and says special events would probably be in the off season. Ann says perhaps a dozen or fifteen which would include birthday parties or wedding showers. Peter states that they wanted to get this approval instead of always getting a one day permit for each special event. Jake asks if there have been noise complaints or police reports. Peter states that they have not gotten any noise complaints that he is aware of.

Mark asks about the establishment adjacent to their business and parking. Peter says that they have had concerns about everything. Alex states that there is a letter from Steve and Sue's Ice Cream that he will address during public comment. Alex asks if the license and if the match the hours. Peter says yes and then will get the license to match new hours if approved. Alex wants more specifics of what a special event would be. Peter Connor says the reason for 10:00 pm is so that they wouldn't have to keep getting a license for each special event. Alex asks if they restrict to special events perhaps once a week. Peter says during Christmas they could have perhaps two a week but generally they don't see having special events once a week. They don't think they will have special events so much in the summer and envision special events would probably be during the off season.

Todd Walantis has concerns about outdoor lighting. Peter says they will be putting in more lighting. Paul Pinard asks Alex if they can condition it for one year and have them coming back.

Alex asks for public comment. No one speaks.

Herb Bodensiek asks about foot traffic, etc. Peter Connors states that they manufacture beer on premise, have a tasting room and consume on-site and would have to go to the Licensing Board and have the ability for people to take packaged beer to go. They also distribute to restaurants and liquor stores.

Jake asks how many parking spaces there are currently. Peter Connor states that there are 31 parking space, the special permit has capacity as 48 seats, is working with the Building Commissioner to get their seating capacity but currently have 26 seats and 4 employees. He also states that there is a patio out back with potential capacity.

Alex would still like to limit special events during the year. Peter says that it is disruptive for them to come back here and that the last time the abutter challenged their special permit. He doesn't believe that they are doing anything until 10:00 pm that is disruptive. Peter thinks it should say private events and not special events. They discuss how many events.

Alex reads the comments from Flaherty and the letter from Attorney Lawler (Exhibits A and B).

Paul Pinard does findings:

Proposal & Relief Requested

Peter and Ann Connor have applied for a Modification of Special Permit 2014-014, Condition No. 9 in order to change the hours of operation at Barnstable Brewing. Currently, the hours of operation are from 10:00 AM through 6:00 PM. The applicants would like to change the hours to 10:00 AM to 8:00 PM for normal business operations and to add the hours of 10:00 AM to 10:00 PM for special events. The property is located at 485 West Main Street, Hyannis, MA.

In Special Permit No. 2014-014, Condition No. 9 reads:

"The brewery shall only be open to the public between 10 a.m. and 6 p.m. The Petitioners are permitted to appear before the Board once the operation is established to modify this condition".

Staff Comments

At the hearings on April 23, 2014 and March 26, 2014, the Board discussed the hours of operation with the applicant and the concerned abutters. Condition No. 9 was a compromise between parties to allow the business to begin operation and give time to observe any possible conflicts between surrounding uses.

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.
2. The Site Plan Review Committee reviewed and approved the site changes on March 18, 2014.
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.

Vote:

All in favor

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

Conditions

1. Special Permit No. 2018-061 is granted to Peter and Ann Connor to extend the business hours for the business (Barnstable Brewery) located at 485 West Main Street, Hyannis, MA.
2. All conditions from Special Permit No. 2014-014 remain in full force and effect with the exception of Condition No. 9 which will now read: The brewery shall only be open to the public between 10 a.m. and 8 p.m. Special events hours of operation shall be 10 a.m. to 10:00 p.m.
3. 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.
4. The maximum number of special events shall be limited to twenty-five (25) per year past 8:00 pm until 10:00 pm.

Vote:

All in favor

GRANTED WITH CONDITIONS

7:01 PM

Appeal No. 2018-064

Chef Sigmund's Chowder Co., Inc.

Chef Sigmund's Chowder Co., Inc., as lessee, has applied for a Conditional Use Special Permit pursuant to Section 240-28 in order to operate a retail business for the sale and delivery of clam chowder and similar products. The property is located at 40 Industry Road – Unit 5, Marstons Mills, MA as shown on Assessor's Map 058 as Parcel 028-00E. It is located in the Service and Distribution (SD) and the Service and Distribution 1 (SD-1) Zoning Districts.

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

Representative: Mark Boudreau, Esq. Also with him tonight is the owner of Chef Sigmund, Mr. Karolczak. Attorney Boudreau gives summary of relief being sought. Operation will not be a restaurant, no seating or hot food, only the selling of cold quarts of chowder/soup to be taken away and consumed off the premises. Only employee and max is two people on site.

Jake asks about the hours of operation. Attorney Boudreau states that the hours will be 10 am to 6:00 pm. Attorney Boudreau states that Dominoes' was there previously and had 6 people on-site and the hours of operation were later than what is currently proposed. As for the trip generation requirements, this business is unusual and refers more to the big box stores. This will be a small operation and the peak traffic hours will be around the lunch and dinner times.

Alex asks for any public comment. No one speaks.

Jake Dewey makes findings:

Chef Sigmund's Chowder Co., Inc., as lessee, has applied for a Conditional Use Special Permit pursuant to Section 240-28 in order to operate a retail business for the preparation and retail sale and delivery of clam chowder and similar products. There will be no seating and none of the food will be sold hot or ready to be immediately consumed. The chowder is intended to be brought off site, heated, and then consumed. The applicant will remodel the interior of the unit to suit his business.

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 240-28 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. (See letter dated October 5, 2018).
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:

All in favor

Jake Dewey makes a motion to grant the relief being requested with the following conditions:

Conditions

1. Special Permit No. 2018-064 is granted to Chef Sigmund, as lessee, for a Conditional Use Special Permit for the retail sale and delivery of clam chowder and similar products at Unit 5, 40 Industry Road, Marstons Mills, MA.
2. The retail business for the preparation and retail sale and delivery of clam chowder and similar products. There will be no seating and none of the food will be sold hot or ready to be immediately consumed. The chowder and similar items are intended to be brought off site, heated, and then consumed.
3. The Applicant must attain all required permits, approvals, and licenses for the proposed new use.
4. This permit is limited to the applicant, Chef Sigmund's Chowder Co., Inc. and is not transferable.
1. Site Plan Review conditions of approval are hereby incorporated into this Decision.
2. 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 building permit. The rights authorized by this Special Permit must be exercised within two years, unless extended.

They also talk about hours of operation

Vote:

All in favor

GRANTED WITH CONDITIONS

7:02 PM

Appeal No. 2018-065

Hyannisport Club, Inc.

Hyannisport Club, Inc., has applied for a Special Permit pursuant to Section 240-93 in order to construct a second floor employee lounge and additional office space as an expansion to the existing clubhouse structure. The property is located at 2 Irving Avenue, Hyannis Port, MA as shown on Assessor's Map as 266 Parcel 031. It is located in the Residence B (RB) and Residence F-1 (RF-1) Zoning Districts.

Alex Rodolakis and Jake Dewey recuse themselves.

Members assigned tonight: David Hirsch, Herb Bodensiek, Mark Hansen, Paul Pinard, Todd Walantis

Representative: Mark Boudreau gives summary of relief being sought. They are talking about expanding the clubhouse half of which is for an employee lounge and the other part is for offices. It has the benefit of a previous Special Permit, has gone through Site Plan Review (SPR) and the impact was found de minimis. One abutter is the church who he believes does not have an issue. In 2001, they received a special permit which limited the dining room to 275 people who could use the dining room. Over the decades and since has increased and would like to ask that the capacity be changed to 288.

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

David also notes that the parking requirement will not increase.

Mark Hansen makes findings:

Proposal & Relief Requested

Hyannisport Club, Inc., has applied for a Special Permit pursuant to Section 240-93 in order to construct a second floor employee lounge and additional office space as an expansion/alteration to the existing nonconforming clubhouse structure. The existing structure already encroaches into the side yard setback and the proposal will be expanding upwards and will not be more nonconforming than what exists today.

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 existing use is pre-existing nonconforming and any expansion/alteration is allowed 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 which was already determined*
- 3. A Site Plan has been reviewed and found approvable with conditions (See letter dated October 31, 2018 signed November 7, 2018). Further, Section 240-93 B. requires the Board to find that:*
- 4. The proposed repairs, alterations and/or expansion are not substantially more detrimental to the surrounding neighborhood which they are not*

Vote:

All in favor

Mark makes a motion to grant with the following conditions:

Conditions

- 1. Special Permit No. 2018-065 is granted to the Hyannisport Club, Inc. for an 800 square foot addition/expansion for a second floor lounge and office space to the existing Clubhouse. The property is located at 2 Irving Avenue, Hyannisport (Hyannis) MA.*
- 2. The improvements shall be in substantial conformance with the plan entitled "Hyannisport Club, 2 Irving Avenue Hyannisport, MA by Paul F. Weber Architect dated August 17, 2018.*
- 3. The Applicant is required to attain all required permits, approvals, and licenses for the proposed new expansion/alteration.*
- 4. Site Plan Review conditions of approval are hereby incorporated into this Decision.*
- 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.*
- 6. The occupancy figure in the dining area is increased to 288 to match the permit from the Licensing Board.*

Vote:

All in favor

GRANTED WITH CONDITIONS

Correspondence

Matters Not Reasonably Anticipated by the Chair

- Discussion of Board Member vacancy. Possible vote to nominate an Associate Member to Regular Member status.*
- Approval of meeting date schedule for 2019*

Upcoming Meetings

December 12, 2018

Adjournment

Motion is made by Mark Hansen and seconded by Paul Pinard to adjourn

Vote:

All in favor