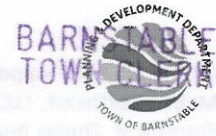




Town of Barnstable Zoning Board of Appeals



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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, January 9, 2019

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	Absent
Mark Hansen – Associate Member	Present

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

As a quorum has been met, Alex Rodolakis opens the hearing at 7:10 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

August 22, 2018

Motion to approve the minutes as submitted is made by David Hirsch and seconded by Paul Pinard

Seconded by Pinard

Vote:

All in favor

Old 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).

Original Hearing Date: September 26, 2018. Continued to November 7, 2018; Continued to January 9, 2019

Members assigned 09-26-18 and 11-07-18: Alex Rodolakis, David Hirsch, Herb Bodensiek, Paul Pinard, Todd Walantis

Elizabeth Jenkins – Director of Planning & Development states that they are waiting for a peer review and at this point they have facilitated that request. The peer review report should be done within 7-10 days and she expects to see it within the next week or two.

Alex also notes that T-Mobile has made application for a regulatory agreement with the Planning Board and will probably be heard late January or early February.

Alex Rodolakis makes a motion to continue this to February 27th at 7:01 PM. Seconded by David Hirsch.

Vote:

All in favor

CONTINUED TO FEBRUARY 27, 2019 AT 7:01 PM

New Business

7:01 PM

Appeal No. 2019-002

Abbott & Blakeley, Trustees

David H. Abbott and Amanda Blakeley as Trustees of Cedarchip Realty Trust, have petitioned for a variance from Sections 240-13 RC, RD, RF-1 and RG Residential Districts; Section 240-36 Resource Protection Overlay District minimum lot area. The Petitioners are requesting a variance to allow a portion of 148 Windswept Way that includes the apron and end of 186 Windswept Way swimming pool to be exchanged for equal lot area elsewhere on 186 Windswept Way. The subject properties are located at 148 Windswept Way, Osterville, MA as shown on Assessor's Map 052 as Parcel 003 and 186 Windswept Way, Osterville, MA as shown on Assessor's Map 052 as Parcel 002. Both parcels are located in the Residence F-1 (RF-1) Zoning District and the Resource Protection Overlay District (RPOD).

By email received 01-09-19 from William Abbott, Esq., a request to continue to February 27, 2019

Motion to continue to February 27, 2019 at 7:01 PM is made by Alex Rodolakis and seconded by Herb Bodensiek

Vote:

All in favor

CONTINUED TO FEBRUARY 27, 2019 AT 7:01PM

Alex reads the following into the record:

7:00 PM

Appeal No. 2019-001

Starr

Donna Starr has petitioned for a variance from Section 240 Section 13 - RC, RD, RF-1 and RG Residential Districts, A-E. The Petitioner is seeking a variance to allow the rental of up to three rooms in the RC District which is currently not permitted. The property is located at 31 Babbling Brook Road, Centerville, MA as shown on Assessor's Map 188 as parcel 152. It is located in the Residence C (RC) Zoning District.

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

Representative: Attorney Richmond Edes from Falmouth on behalf of Donna Starr. Also with him tonight is his son, William who is also an attorney. Attorney Richmond Edes states that in most of the districts in Barnstable, the principal uses are single-family and the ability to rent rooms for not more than three non-family members except for the RC district. He talks about a bill recently signed by the Governor regarding short term rentals. He goes over the requirements for a use variance and is asking to grant the use variance to allow Ms. Starr to rent up to three non-family members for short term rentals. Ms. Starr received a cease and desist notice in October of 2018 from the Building Department. Until that time Ms. Starr thought she had complied in order to rent those rooms. She has multiple bedrooms: a room over the garage and rooms in front of the house. The rooms in the front consist of two bedrooms which are connected with a bathroom which she rents out as a single unit. In 2017, Ms. Starr was living in California and wanted to return to Massachusetts and determined that she would

reside in Barnstable. Attorney Edes asks if Ms. Starr can speak to the board about how she searched for a house. Alex doesn't think it is relative; however, he allows her to speak but asks that she keep it succinct. Ms. Starr states that her decision to move from California took a lot of serious thought and much effort in researching a home in which she could do AIRBNB. She was looking to buy a place that would make money. The woman they bought the house from was a broker and verified to her that they could do AIRBNB. She found people in the area who also rented rooms, etc., and came up with about 150 people. Before buying the house she verified again and was told that she could rent it. She went to the Health Department and paid a registration fee and now finds out that she is in violation.

Attorney Edes speaks again and states that the zoning bylaw doesn't mention soil/shape or topography and that the criteria must be state law. He states that Babbling Brook Road is a cul-de-sac with two houses on each side of it and that the two houses that abut Bumps River Road are in a different zoning district. He thinks that the proximity to the other zoning district which allows renting of rooms is a topographical feature. As for hardship, Ms. Starr would not have entered into a Purchase and Sales agreement had she not relied on others on the fact that she would be able to do short term rentals. As for detriment to the public good, whether granting a use variance would be a detriment to the public good, Barnstable will go through a process to quantify the short term rentals and AIRBNB and in order to comply with that, such changes may allow a use like Ms. Starr's.

Alex asks for public comment.

Attorney John Kenney from Centerville is here representing 3 neighbors: Richard and Barbara Dooley of 41 Babbling Brook Road, Elizabeth Leonard of 47 Babbling Brook Road, and Robert and Elizabeth George of 36 Babbling Brook Road. He states that the neighbors immediately noticed that Ms. Starr was renting out the premises and informed her that it was not permitted. Ms. Starr replied stating that she would continue to do so until she was told not to by the Town. He doesn't see how they have met the 3 statutory criteria in 40A Section 10 nor the Town of Barnstable's local zoning ordinance 240-125. As for literal enforcement, in the application she states that she needs to rent rooms to afford this property but in the correspondence to the neighbors, which is in his memo as Exhibit 3 (Exhibit A), that she indicates that herself and Rick were going to try this out and if it didn't work out they would just stop doing it. To him, this doesn't seem like a financial hardship. He doesn't believe that Ms. Starr had asked the right question when pursuing this. In his opinion, this is a self-created hardship in spite of her efforts to do the research. As for the third criteria for granting a variance, the neighbors noticed the increase in traffic immediately. He refers to his memo, Exhibit 4 (Exhibit A) whereas the Virtual Rentals by Owners (VRBO) website listing states that parties and events are allowed and appears to be available for rental year round. As for the septic, this is in the Saltwater Estuary Overlay District, is listed as a three bedroom in the Assessor's record and if there are four bedrooms there, does the septic system meet the requirements. If granted, it would be a detriment to the neighborhood and if granted would nullify and derogate from the purposes and intent of the zoning ordinance and his clients are opposed to the granting of this use variance.

Paula Raczkowski lives at 46 Babbling Brook Road, lives there year round and finds no problem with this being an AIRBNB. Some of the neighbors don't live there year round and doesn't see any detriment to the neighborhood.

Joan McLachlan, full time resident, lives at 19 Babbling Brook Road. She wasn't aware that Ms. Starr was renting rooms and rarely hears anything from the renters. She is in support.

Alex reads and Email from Robert and Elizabeth George who are concerned about the rental of rooms.

Attorney Edes understands that variances are rare but are for things that cannot conform to zoning. Members of the ZBA can allow something to occur that isn't allowed in the district.

The board deliberates.

Paul Pinard doesn't think that it should matter that some of the residents are not year round.

Alex thinks that prior to the purchase this issue could've been identified which did not happen for whatever reason. He has difficulty issuing variances in areas which the town did not zone for this reason. David Hirsch doesn't think that they have met all 3 points of the tests for the granting of a variance. Also, the neighbors were not aware that this property would be rented out.

Alex advises the applicant that the board is leaning towards a negative vote and gives them an option to withdraw.

Alex asks for a two minute recess.
Hearing reconvenes at 8:10 pm

Attorney Edes asks to withdraw.

Motion is made by Jake Dewey and seconded by Herb Bodensiek to withdraw.

Vote:
All in favor

WITHDRAWN

Correspondence

Received 12-27-18 from Cape Cod Commission – Hearing Notice for Draft Technical Bulletins to the 2018/2019 Draft Regional Policy Plan. Hearing will take place on January 10, 2019, Harborview Conference Room, Barnstable County Complex, 3195 Main Street (Route 6A), Barnstable MA at 3:00 PM. Cape Cod Commission will take testimony and consider public comments received during the public comment period.

Matters Not Reasonably Anticipated by the Chair

Kyle Evancoe announces that he will be resigning from the board due to work constraints. Alex thanks Kyle for his service.

Adjournment

Motion is made by Herb Bodensiek and seconded by David Hirsch to adjourn.

Vote:

All in favor

Please Note: The list of matters are those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Board may go into executive session. The Board may also act on items in an order other than they appear on this agenda.

* Public files are available for viewing during normal business hours at the Zoning Board of Appeals office located at 200 Main Street, Hyannis, MA