



# Town of Barnstable

## Zoning Board of Appeals



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BARNSTABLE  
TOWN CLERK

**Board Members:**

Alex Rodolakis – Chair    David Hirsch – Vice Chair    Herbert Bodensiek - Clerk  
 Jacob Dewey – Regular Member    Paul Pinard – Regular Member  
 Todd Walantis – Associate Member    Mark Hansen – Associate Member    Robert Twiss – Associate Member  
 James Tinsley – Town Council Liaison

**Staff Support**

Elizabeth Jenkins – Director - [elizabeth.jenkins@town.barnstable.ma.us](mailto:elizabeth.jenkins@town.barnstable.ma.us)  
 Anna Brigham – Principal Planner – [anna.brigham@town.barnstable.ma.us](mailto:anna.brigham@town.barnstable.ma.us)  
 Carol Puckett – Administrative Assistant – [carol.puckett@town.barnstable.ma.us](mailto:carol.puckett@town.barnstable.ma.us)

### Minutes

**Wednesday, October 16, 2019**

Hearing Room – 2<sup>nd</sup> Floor – 367 Main Street, Hyannis, MA

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

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

*Since a quorum has been met, David Hirsch opens the hearing at 7:02 pm*

**Call to Order**

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

*David Hirsch reads the following into the record:*

**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.

*David reads 2019-042 and 2019-043 into the record:*

**Old Business**

7:00 PM

**Appeal No. 2019-042**

**Fernandes, Trustee**

Hernique A. Fernandes, Trustee, has petitioned for a Variance pursuant to Chapter 240.11 – Principal Permitted Uses. The Petitioner is proposing to construct a one-story 1,440 square foot duplex structure in a zoning district which does not allow for them as-of-right nor as a conditional use. The subject property is located at 50 Fresh Holes Road, Hyannis, MA as shown on Assessor’s Map 292 as Parcel 175. It is located in the Residence B Zoning District.

Continued from August 21, 2019 – No members assigned – No testimony taken. Continued from September 11, 2019 – No members assigned, no testimony taken. Hearing Due Date: 09-18-19. Decision Due: 10-03-19. New Time Extension signed – new Decision Due: 11-22-19

**Members assigned tonight: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard, Bob Twiss**

**Attorney Boudreau introduces himself and the applicant who is with him tonight. Attorney Boudreau explains that the property was previously owned by an elderly woman who sold it to his client. The proposal is to build on the same footprint. He notes that the septic system has passed as well as the slab which received certification by an engineer. He points out that there are all duplexes in this neighborhood. The request before the board tonight is for two variances: first is the construction of a multifamily unit in a single family zoning district. If granted, he will not build anything bigger than what was already there. As for the second variance regarding the setback**

requirements, he explains that the building has nine sides and suggests to the board and the 3 foot setback request is de minimis and if made to move it would be a financial hardship as he would have to relocate the foundation.

David Hirsch reads the 2019-042 also. Same members are assigned.

Herb Bodensiek asks Attorney Boudreau if his client knew about the nonconformities before he purchased it. Attorney Boudreau states that his client went to the Board of Health about the septic system and was informed that it needed to come up and also went to the Building Department who told him that he needed to have an engineer certify the foundation. He then applied for a building permit which was denied. Attorney Boudreau states that the property is currently vacant.

Bob Twiss clarifies that the house burned down in 2013 and the required time to rebuild had passed by the time his client purchased the home. Now, the zoning is one residence per acre. There are currently 4 existing duplexes on that part of the road and asks why should they grant a variance to exacerbate the nonconforming use? Attorney Boudreau states that they are putting back exactly what was there previously in an area of working class people which works. It is one of the lots that abuts D'Angelos's parking lot and the flow of traffic works fine. There are multiple duplexes in that area and they have a compliant septic system under Title V.

David Hirsch asks if there is any public comment. No one speaks.

David Hirsch likes the idea for the need that the town has for housing, it will not affect the area, Attorney Boudreau explained the reason for the denial of the building permit and thinks that it meets the 3 prong test for a variance. Jake Dewey asks David Hirsch to clarify his opinion regarding the three-prong test, especially for the use. David Hirsch says it is the same use as was there before, rental apartments. Jake Dewey asks about the soil/land/structure/topographical test. Hirsch thinks the size of the lot, the lot was in existence, there was a duplex previously there and would meet the other two prongs of the three prong test. Jake Dewey has a problem with #2 because they could have built a single family and when purchased it was deemed unbuildable, what is the hardship. Boudreau says the number of bedrooms will not be more than 4 and would not have increased density. Hansen asks if this will be rentals. Attorney Boudreau thinks he would use it as a rental currently. Hansen asks if he has talked with the Town's Housing Committee. Attorney Boudreau states he has not but could be. Excusable neglect, and the thought of going down to town hall to do due diligence and thinks he has a hardship in his opinion in hiring an engineer for the foundation certification, etc. Jake Dewey concludes that it would be cost effective. Jake Dewey makes findings: Use Variance:

#### 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; - **thinks it is determined because of the shape and the existing slab that could be utilized**
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and - **if forced to create single family it would not be cost effective to build**
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. - **thinks it is in line with the neighborhood and no abutter objections**

**Vote:**  
**All in favor**

#### Variance Conditions

1. Appeal No. 2019-042 for a Variance to Section 240.11 – Principal Permitted Uses in the RB district is issued to Henrique A. Fernandes, Trustee in order to allow for the reconstruction of a two-family dwelling within the footprint of the prior dwelling.
2. The reconstruction shall be constructed in substantial conformance with the plan entitled "50 Fresh Holes Rd., Barnstable, MA" consisting of 7 pages: A10, A20, A21 (dated April 6, 2019) A30, A40, A50 (dated March 10, 2019, and A70 (dated April 6, 2019).
3. The reconstruction shall be in conformance with any applicable Board of Health and Title V requirements.
4. The above-described construction shall represent full build-out of the lot. No further additions or accessory structures shall be permitted without approval from the Board.
5. 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.

**Vote:**  
**All in favor**

**GRANTED WITH CONDITIONS**

7:01 PM

Appeal No. 2019-043 - Amended

Fernandes

Hernique A. Fernandes, Trustee, has petitioned for a Variance pursuant to Chapter 240.11.E – Bulk Regulations. The Petitioner is proposing to construct a one-story 1,440 square foot duplex structure approximately seven (7) feet from the side yard setback where ten (10) feet is required in the zoning district in which it is located. The Petitioner is also asking for relief from the minimum 43,560 square foot lot size requirement. The subject property is located at 50 Fresh Holes Road, Hyannis, MA as shown on Assessor's Map 292 as Parcel 175. It is located in the Residence B Zoning District.

Continued from September 11, 2019. No members assigned, no testimony taken.

Hearing Due Date: 10-23-19. Decision Due: 11-27-19.

**Members assigned tonight: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard, Bob Twiss**

**Jake Dewey makes findings:**

**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; = **the shape and topo and the existing slab**
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and – **moving the slab would be financial burden**
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.

**Vote:**

**All in favor**

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

**Variance Conditions**

1. Appeal No. 2019-043, for a Variance to Section 240.11 – Bulk Regulations in the RB District, specifically one-acre minimum lot area requirement and 10 (ten) foot side yard setback requirement, is issued to Henrique A. Fernandes, Trustee in order to construct a one-story, 1,440 square foot, two-family structure on a lot consisting of approximately .03 acres with a seven (7) foot side yard setback.
2. The site development shall be constructed in substantial conformance with the plan entitled "Certified Plot Plan in Hyannis, MA (Barnstable), MA – 50-52 Fresh Holes Road prepared for Henrique Fernandes by Baxter Nye Engineering & Surveying, stamped and dated July 12, 2019.
3. The reconstruction shall be in conformance with any applicable Board of Health and Title V requirements.
4. The above-described construction shall represent full build-out of the lot. No further additions or accessory structures shall be permitted without approval from the Board.
5. 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.

**Vote:**

**All in favor**

## **GRANTED WITH CONDITIONS**

**David reads the following into the record:**

**New Business**

7:00 PM Appeal No. 2019-054

Gallagher/Potteiger

Jason Priest Potteiger et al, Faith Priest Potteiger Trust, and Ann Marie Gallagher are petitioning for a Variance pursuant to Section 240-13.E – Bulk Regulations in the Residence C (RC) Zoning District and Section 240-36.D – Resource Protection Overlay District – Minimum Lot Area Requirement. The Petitioners are proposing to reconfigure the lot lines and allocate a portion of 0 Tower Hill Road to 240 Tower Hill Road; allocate a portion of 240 Tower Hill Road to 256 Tower Hill Road in order to provide 256 Tower Hill Road greater access than the present ten foot easement, and better parking space and access of emergency vehicles. The subject properties are located at 0 Tower Hill Road, 240 Tower Hill Road, and 256 Tower Hill Road, Osterville, MA as shown on Assessor's Map 142 as Parcels 161, 044-002, and 047 respectively. They are located in the Residence C (RC) and the Resource Protection Overlay District (RPOD).

**Members assigned: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard, Mark Hansen**

**Representative: Edward Gaulin representing the applicants but only Marie Gallagher is here tonight.**

*Mr. Gaulin explains that this is a transfer of land. He explains that there is a right of way 10 feet from Tower Hill Road which is the only access the applicants have. If there is more than one vehicle parked it creates a problem as they have to back out in order to get out. This relief would allow them to have 65 feet of frontage on the right of way. In order to do that Ann Marie Gallagher would have to convey a portion of her lot which would reduce her lot. However, the Pottegiers would be conveying square footage so that, in effect, each lot would be increased in area.*

*Paul Pinard asks for clarification of what parts of the lots will be conveyed. Edward Gaulin explains. Jake Dewey asks why they didn't approach this by doing an easement. Mr. Gaulin states that the applicants wanted to purchase and get the conveyance. The board looks over the plan.*

*David Hirsch asks if there is anyone from the public who would like to speak either in favor or in opposition.*

*David Fitzsimmons who is another party on that easement which is a deeded right of way with the transfer, he wants to make sure that it will not change. David Hirsch explains that the right of way is in his deed and that the right of way transfers with the deed.*

*Jake Dewey asks if the road will change. Mr. Gaulin explains that this proposal gives the land owned by Pottegier an additional right of way increased to 65 feet instead of 10 feet.*

*The board discusses the requirements for a 3-prong test. David Hirsch isn't sure how they can justify the 3-prong test. Mr. Gaulin explains that this won't affect the town or ordinance in any way and that the topography makes it difficult to maneuver vehicles.*

*Marie Gallagher states that they have a 10 foot right-of-way and when they drive in, they drive into a 10 foot strip of land which is on her property for which she has to always give them permission to do. However, she wanted to work something out currently so that this would not be an issue for a new home owner should she sell her property. She also didn't want to reduce the size of her property.*

*Board discusses and agrees to what would constitute each of the 3-prong test.*

**Paul Pinard does findings:**

#### **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; - ***the requirement for safely getting emergency vehicles out of the Priestly Pottteiger Trust meets the requirement here***
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and - ***if part c is used by lot a, part c pays for taxes and is a hardship for one of the petitioners***
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. ***it affects only the 3 properties that are involved here and not the general public***

**Vote:**

**All in favor**

#### **Variance Conditions**

1. Variance No. 2019-054 is issued to Jason Priest Pottteiger et al, Faith Priest Pottteiger Trust, and Ann Marie Gallagher in order to reconfigure the lot lines and allocate a portion of 0 Tower Hill Road to 240 Tower Hill Road; allocate a portion of 240 Tower Hill Road to 256 Tower Hill Road in order to provide 256 Tower Hill Road greater access than the present ten foot easement, and better parking space and access of emergency vehicles.
2. The lots shall be reconfigured in substantial conformance with the plan entitled "Plan of Land of #240 & # 256 Tower Hill Road Osterville MA" prepared for Edward Gaulin by Down Cape Engineering dated July 11, 2019.
3. 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.

***Jake Dewey suggests adding another condition that if the lots are merged so that it will be taxed as one lot. Mr. Gaulin explains that this will be conveyed. No need for condition #4.***

**Vote:**

**All in favor**

**David reads the following into the record:**

**7:01 PM Appeal No. 2019-055**

**Still, et al**

John D. Still, Sr., as part owner of James S. Still et al, has applied for a Special Permit in accordance with Section 240-92.B – Nonconforming Buildings or Structures Used as a Single and Two-Family Residences. The Applicant is proposing to convert the existing patio area into a 24 X 12 square foot addition for a kitchen. The addition will be constructed 10.6 feet from the rear yard setback where a 15 foot setback is required. The Applicant is also requesting relief from the bulk regulations in order to add an 8 X 12.7 square foot, three-season room to the westerly side of the existing structure 11.4 feet from the side yard setback where a 15 foot side yard setback is required. The subject property is located at 104 Harvey Avenue, Barnstable, MA as shown on Assessor's Map 319 as Parcel 104. It is located in the Residence F-1 (RF-1) Zoning District.

**Members assigned: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard, Bob Twiss**

**Attorney Paul Tardif for the petitioners. Attorney Tardif gives summary of what is exists currently on the lot. He notes that the existing structure encroaches into the rear yard setbacks and the structure is not located in the flood zone. He shows a picture of the patio. He states that the applicants want to remove the 12' X 16' patio and construct a 12' X 24' addition in that area for the kitchen. The applicants also want to construct a 3 season room to the north into the side yard setback. Lot coverage will increase but will be below the maximum of 20%. He states that this will not be substantially more detrimental to the neighborhood and that the house is positioned so as not to create more noise, light or encroachment. As for the northerly side, that is in order to take advantage of the views of the bay. An abutter, Mr. Fred Hilton of 114 Harvey Avenue (Exhibit A) had submitted a letter to Attorney Tardif in support. Doesn't think it will be a detriment, will be a nice addition and the side addition will be visible to get views of the harbor. It will be fitting with the neighborhood. He hands in the letter of support from Mr. Hilton which David Hirsch reads into the record.**

**Jake Dewey asks when the patio was built. Attorney Tardif isn't sure when it was built. Mark Hansen thinks over 30 years.**

**David Hirsch asks for public comment. No one speaks. Board discusses briefly.**

**Bob Twiss makes findings:**

#### **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 240-92 (B) Nonconforming buildings or structures used as a single- and two- family residences allows for alterations.**
- 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 amount of coverage will 18.2% which is below the minimum allowed, the conversion of the patio in the back substituting the kitchen will encroach three (3) inches which is de minimis and doesn't affect any public interest. The 3 season room on the north side of the property does affect the 15' setback which reduces it to 11.5' however, the property owner affected has filed with the board a letter and supports fully the changes**
- 4. Pursuant to Section 240-92 (B), the proposed alteration or expansion will not be substantially more detrimental to the neighborhood than the existing building or structure. – the conversion of the patio in back for a kitchen is an improvement to the area and the addition of the 3 season will not be more detrimental to the neighborhood than the existing building**

**Vote:**

**All in favor**

**Bob Twiss makes a motion to grant the relief being sought with conditions as outlined in Staff Report dated September 20, 2019.**

#### **Conditions**

- 1. Special Permit No. 2019-055 is granted to John D. Still, Sr., as part owner of James S. Still et al to convert the existing patio area into a 24 X 12 square foot addition for a kitchen. The addition will be constructed 10.6 feet from the rear yard property line where a 15 foot setback is required. The Applicant is also requesting relief from the bulk regulations in order to add an 8 X 12.7 square foot, three-season room to the westerly side of the existing structure 11.4 feet from the side yard property line where a 15 foot side yard setback is required at 104 Harvey Avenue, Barnstable, MA.**
- 2. The site development shall be constructed in substantial conformance with the plan entitled "Plan of Land showing proposed addition #104 Harvey Lane, Barnstable, MA" prepared by Outermost Land Survey, Inc. dated August 13, 2019 and design plans by Donald I. Meyer dated July 20, 2019.**

3. The proposed redevelopment shall represent full build-out of the lot. Further alteration or expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
4. All mechanical equipment associated with the dwellings (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
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.

**Vote:**  
**All in favor**

## GRANTED WITH CONDITIONS

**David Hirsch reads the following into the record:**

**7:02 PM Appeal No. 2019-056**

**Cellco Partnership d/b/a Verizon Wireless**

Cellco Partnership, d/b/a Verizon Wireless, is applying for a Special Permit in accordance with Section 240-108 – Antennas permitted by Special Permit in all Zoning Districts. The Applicant is proposing to install small wireless equipment on the replaced utility pole located within the layout of the State Highway on Route 6A. The utility pole is Pole #54S located in the layout of State Highway on Route 6A (adjacent to 2514 Main Street) Barnstable, MA.

**Members assigned: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard, Mark Hansen**

**Daniel Klasnick representing Verizon Wireless gives summary of relief being requested. What they are doing on the national basis is to upgrade creative solutions of using existing utility infrastructure to install these small cell unobtrusive units. There was an existing 23' high guy pole. However, as part of its licensing, it was replaced with a 38' guy pole. It in the state's road layout and in addition to permitting before the town they have also obtained the necessary access permit from MassDOT. In addition to coming before this board, they were also before Old King's Highway Historic District Committee (OKH) and Site Plan Review (SPR) where they received approvals. They will install a small cell canister shaped antennae, which is designed to look like a transformer, and necessary to attach remote radio heads and Eversource has required Verizon Wireless to establish electric service in order to record the electrical usage. This unit will be 8 feet above ground level. There will be no ground disturbance and will only be on utility pole itself. This will be done in order to off load some of the capacity requirements essential for using smart devices as they develop. Verizon Wireless has entered into a master agreement with Eversource and as part of the process will catalog utility poles and get a license. Verizon Wireless has obtained the license for this location. The overall height will be 42 feet.**

**Bob Twiss had thought when he read the application that there was an old pole but when he read the attachment, he now clarifies that it will be a new pole. Mr. Klasnick says the pole is being replaced to allow necessary height because it was undersized and two reasons they needed the additional. There was no existing antennae at this site.**

**Jake Dewey asks if it will impede anyone's sight of view. Mr. Klasnick says it is high enough that no one can see it.**

**Anyone from public. no one speaks.**

**Mark Hansen makes findings:**

### 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 240-108 allows for antennas with a Special Permit.
2. The application received Site Plan Review approval (see letter dated August 15, 2019).
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. **which they agreed as a board may not be the case**
4. The applicant has provided site plan review with evidence that they are a licensed carrier, authorized by the Federal Communications Commission (FCC) to construct and operate personal wireless services, and that the proposed transmitters are FCC regulated and approved. **this document has been supplied.**

5. The structure to which any mount or antenna is attached is a legally built structure under zoning, or a preexisting, legal nonconforming structure. ***the pole was replaced for structural concerns and meets all the zoning requirements***
6. If the location is within a designated historic district, the applicant shall secure a certificate of appropriateness, to the extent required. The Applicant has received approval from Old King Highway. – ***has received approval from OKH***
7. Structural components including guy wire anchors and equipment shelters shall comply with all required setbacks of the zoning district. – ***believes this has already been reviewed by building department – believes this has already been look at by the building department***
8. Any equipment or base receiver station, not located within an existing building or underground vault, shall be designed to fit in with traditional Cape Cod architecture styles and materials, or shall be screened from view. – ***believes that the canisters have been designed to look like standard transformers***
9. Pursuant to Section 240-108 for Special Permits in which the proposed antenna exceeds the height of the existing structure by more than 12 feet, the Board finds that the additional height is necessary to provide coverage, and the additional height will not be visually intrusive upon the surrounding area. – ***he assumes that the technically stats have been reviewed by the manufacturer and the town***

**Vote:**

**All in favor**

**Mark Hansen makes motion to grant with the following conditions, 1 through 15 from Staff Report updated October 15, 2019.**

**Conditions**

1. Special Permit No. 2019-056 is granted to Celco Partnership, d/b/a Verizon Wireless to install small wireless equipment on the replaced utility pole located within the layout of the State Highway on Route 6A. The utility pole is Pole #545 located adjacent to 2514 Main Street, Barnstable, MA.
2. The wireless facilities permitted under this Decision are limited to those specifically identified in the plans, drawings and specifications incorporated into this order. The Antenna shall be 38.7 inches by 12 inches; the diplexer shall be 7.6 inches by 7.3 inches by 3.2 inches. The equipment boxes shall be mounted so as not to cause physical or visual obstructions to pedestrians or vehicles or interfere with snow plowing or sidewalk clearing and the electric meter as the bottom piece of equipment shall not be mounted lower than 8 feet from the ground (subject to any modification required by an applicable safety code). The applicant shall provide one hard copy and one digital copy of the final site layout to the Barnstable Building Commissioner and the Site Plan Review Committee upon completion of the site survey and facility design for review and acceptance and to assure that there are no material deviations from the application.
3. Any increase in the number or height of the wireless facilities after their construction shall be subject to Town approval in accordance with applicable law. No further action by the Town is required for renewing, repairing or replacing the wireless facilities. In the event that after the issuance of this Decision and before commencement of construction the position of any wireless facilities component needs or is required to be moved, the applicant shall submit the revisions to the Building Commissioner who may authorize the change so long as the change does not reduce the ground clearance or increase the height of the wireless facilities. By acceptance of this Decision, the applicant has agreed and committed that for purposes of its use of the pole, the attachment of wireless facilities to the pole shall not change the primary purpose of the pole, which shall remain the purpose for which the pole owner placed a pole at this location.
4. The wireless facilities shall not include any lighting or blinking light unless required under applicable state or federal law.
5. To the maximum extent practicable and subject to such limitations imposed by serviceability or manufacturing specifications, the color of the wireless facilities shall be painted to blend with existing equipment on the pole or the color of the pole. The painting requirements provided for herein shall be a concealment element for purposes of any future modifications.
6. The total requested height of the pole with the antenna mounted on it is 42.3 feet above grade, as shown on a plan identified as "Barnstable MA SC11 2514 Main Street Barnstable MA 02668" prepared by EAG Advanced Engineering Group, P.C. sheets 1-6 dated November 9, 2018. (hereinafter the "Plan").
7. The wireless facilities shall not project over the public way or any sidewalk beyond the berm or curb in such a manner and at a height that will interfere with the public use of the public way or sidewalk.
8. The wireless facilities shall not interfere with the operation and maintenance of any wires, cables or equipment already attached to the pole as of the date of this Decision, including but not limited to streetlights and cable, electrical and telecommunications facilities. Signage attached to the pole as of the date of this Decision shall not be moved without the prior written consent of the Town department or official in control of the placement of signage.

9. Within 30 days after completion of construction of the wireless facilities, the applicant shall provide to the Building Commissioner and the Site Plan Review Committee as-built drawings of the wireless facilities in paper and electronic formats compatible with the Town's systems.
10. The wireless facilities shall at all times comply with applicable FCC radio frequency exposure regulations and Verizon Wireless shall upon request provide the Building Commissioner with an annual certification of compliance.
11. The wireless facilities shall be installed and maintained in accordance with the requirements and specifications of the National Electrical Code, the National Electrical Safety Code, the engineering and construction standards of the pole owner(s) and applicable law.
12. The wireless facilities shall be tagged or marked in accordance with the requirements of the pole owner and applicable law.
13. In the event that the pole is being removed and replaced by the pole owner, the applicant shall transfer its wireless facilities to the replacement pole in accordance with the terms of the pole attachment agreement between the owner and the applicant. In the event that the pole is being removed by the pole owner and not being replaced, the applicant shall remove its wireless facilities and the location and siting of the wireless communications facility and accessory structures allowed by this Decision shall terminate.
14. The proposed installation shall comply with the conditions of the Site Plan Review approval letter dated August 15, 2019, which shall be attached to and incorporated in the conditions of this decision.
15. 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.

**Vote:**  
**All in favor**

## **GRANTED WITH CONDITIONS**

**David Hirsch reads the following into the record:**  
**7:03 PM Appeal No. 2019-057**

**Harris**

Robert J. and Cindy Ann Louise Harris have applied for a Special Permit in accordance with Section 240-47.1.B – Family Apartments. The Applicants are proposing to construct a detached garage with a one-bedroom family apartment above. The subject property is located at 90 Nye Road, Centerville, MA as shown on Assessor's Map 170 as Parcel 001-003. It is located in the Residence C (RC) Zoning District.

**Members assigned: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard, Bob Twiss**

**Attorney David Lawler is here with one of the applicants, Mr. Harris. Attorney Lawler explains that the family apartment is for a family member. In addition, the builder had met with the Building Commissioner to discuss the appropriateness of the proposal since it is detached and was directed to apply for a special permit. Attorney Lawler states that this is a very large and secluded lot and that the proposal is for a modest garage with a family apartment above and will be in keeping with the neighborhood. He explains that the lot is of a pork chop shape with access leading into the residence and believes that this is in keeping with the requirements for a special permit.**

**Mark Hansen asks if there was a septic installed. Mr. Robert Harris says that there was a pool house that has an existing septic system, which this will tie into. Jake Dewey clarifies that there is no living space in the pool house.**

**David Hirsch asks for public comment. No one speaks.**

**Herb Bodensiek makes findings:**

### **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.
4. The proposed family apartment above the detached garage 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:**

**All in favor**

**Herb makes motion to grant with the following conditions from Staff report dated September 16, 2019, Conditions 1 through 6.**

**Conditions**

1. Special Permit No. 2019-057 is granted to Robert J. and Cindy Ann Louise Harris to create a Family Apartment in a detached structure at 90 Nye Road, Centerville, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Draft Plot Plan in Barnstable Centerville Mass" by CapeSurv dated March 20, 2019 and design plans by Cotuit Bay Design dated June 1, 2019.
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.

**David Hirsch confirms that David Lawler's client is aware of the yearly affidavit and other requirements of a family apartment.**

**Vote:**

**All in favor**

## **GRANTED WITH CONDITIONS**

### **Correspondence**

Received 09-23-19 from Cape Cod Commission – Acceptance of a referral for a Development of Regional Impact project from Barnstable Historical Commission for the demolition of the Marchant House located at 2 Irving Avenue (Hyannisport Club), Hyannis Port, MA

Received 09-24-19 from Cape Cod Commission – Acceptance of a referral for a Development of Regional Impact project for a new tower addition at the Cape Cod Hospital at 27 Park Street, Hyannis, MA

Received 10-08-19 from the Cape Cod Commission – DRI Public Hearing Notice for Tractor Supply for Wednesday October 23, 2019 at 5:30 PM in the East Wing Conference Room, Barnstable County Complex, 3195 Main Street, Barnstable, MA

### **Matters Not Reasonably Anticipated by the Chair**

### **Upcoming Meetings**

October 30<sup>th</sup>, November 13<sup>th</sup>, December 11, 2019

### **Adjournment**

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

**Vote:**

**All in favor**

