



Town of Barnstable Zoning Board of Appeals



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
Anna Brigham – Principal Planner – anna.brigham@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, October 30, 2019

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

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

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BARNSTABLE
TOWN CLERK

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

Since a quorum has been met, Alex opens the hearing at 7:03 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.

Alex reads the following into the record:

Old Business

7:00 PM

Appeal No. 2019-038

Shoestring Properties

Stuart Bornstein, Shoestring Properties, has appealed the Building Commissioner’s determination that vehicles parked on a vacant lot at 53 South Street are not an allowed use as a matter of right. The Appellant has also requested zoning relief. The subject property is located at 53 South Street, Hyannis, MA as shown on Assessor’s Map 326 as Parcel 125. It is located in the Harbor District (HD) Zoning District.

Continued from August 7, 2019 and September 11, 2019. Members assigned on 08-07-19: Alex Rodolakis, David Hirsch, Jake Dewey, Herb Bodensiek, Paul Pinard

Members assigned tonight: Alex Rodolakis, Jake Dewey, Herb Bodensiek, Bob Twiss, Mark Hansen

Jeffrey Johnson, Esq., recalls the August 7th hearing, has supplied a memo and a decision from Superior Court, and notes that the last time they were heard; they agreed to continue this matter in order for the board members to digest the memo and the Superior Court decisions. Attorney Johnson states that the School Street parking lot has been for overflow for the adjacent restaurant. He reviews the previous decision from the ZBA to Walter Hedlund and notes that the use had not been abandoned and that it is his client’s opinion that this should be as-of-right and is pre-existing and nonconforming. According to the earlier bylaw, overflow parking was permitted within 300 feet. Also, Stu

Bornstein, the appellant, has testified that since he has owned this property it has been used for overflow parking and fenced off in the winter months in order to prevent illegal parking for the Steamship Authority. He thinks that the Building Commissioner has seen this lot as being used for paid parking and hopes that the board can overturn the Building Commissioner's decision and is here to answer any questions.

Mark Hansen clarifies that there was a motel there previously. Attorney Johnson says that when the Dockside came up the hill that the motel was then knocked down. Mark asks for further clarification. Attorney Johnson states that there was parking associated with the motel and overflow parking from the old restaurant/inn that was there previously called AJ's. When they moved the Dockside, they knocked down the motel and the inn and what came up the hill was just the Dockside restaurant. Hansen asks if it was a permitted use. Johnson states that it was pre-existing to the zoning bylaw. He also states that he had worked there as a bus boy at AJ's and had parked across the street in the late 70's; and the town-wide parking zoning ordinance came into effect in 1985. It is their position that the property has been used as overflow parking before that bylaw went into effect. Attorney Johnson states that the overflow parking has always been continuous. Herb Bodensiek asks if the BC or the building inspector had any recommended relief. Johnson states that it was just a cease and desist order because the BC thought that they were using it for parking other than for overflow for the restaurant.

Stu Bornstein states that there have been uninvited guests parking and had neighbors calling and then fenced it off. Mr. Bornstein also states that within 30 days of the restaurant closing he will fence it off again in the off-season.

Mark Hansen asks how they would regulate during the day. Attorney Johnson says there are signs indicating that it is for Dockside parking only and all others will be towed.

Alex clarifies that there position has been for overflow parking prior to 1985. Attorney Johnson says yes and that it was also an accessory use presently but for now, it is for overflow parking for the Dockside restaurant. Alex asks what the enforcement mechanism is. Mr. Bornstein had recommended that anyone parked after 9:00 pm or when the restaurant closes, will be towed and will put that signage up in the spring.

Jake Dewey asks if the lease to the restaurant has parking identified as both lots together. Mr. Bornstein states that the last lease was for 2 years and that the lessee didn't want the parking. However, last June or July they told him it was a problem because of the lack of parking. Mr. Bornstein then took the fence down and was contacted by the Building Commissioner asking if for overflow parking lot was permitted. Mr. Bornstein explained to him that it had always been used as overflow parking for the last 20 or 30 years on that site. The BC then found out that they never had it permitted.

Mark Hansen asks if there is a reason that the people renting the restaurant aren't here to explain the problem with parking and how this is a hardship. Attorney Johnson states that their application for the number of seats represents a certain number of parking spaces. Attorney Johnson states that he has counted the number of spaces and on the property, according to the bylaw, they have to have a certain number of spaces and are about 15 spaces short for the license. He also explains that the people renting the restaurant could not testify back to 2001/1985 and Mr. Bornstein could.

They discuss the events leading up to the cease and desist issued by the Building Department.

Herb clarifies that they want to use the separate lot for overflow. Attorney Johnson says that they could condition it to be for overflow for the restaurant only. They talk about fencing.

Bob Twiss asks procedurally, do they have the ability to impose conditions. How do they insure that in the off-season that fences go up and that after the restaurant closes that there is some mechanism to preclude people from parking there.

Attorney Johnson isn't sure that the town has that enforcement capability in any parking lot and in this particular fact pattern they are asking the board to write a decision to overturn the building inspector and asking that they specify that it is based on certain representations and is not to be interpreted to be an overturning of his decision with regard to illegal parking and other things. In addition, they can craft the language of the decision to overturning so that it is clear, in the public record in the town, that they acknowledge and have represented that they will not do this; they represented that it is overflow; and they understand that there is not to be any charge. What he wants to avoid is getting into anything other than a decision as to whether overflow parking is a pre-existing nonconforming use or was permitted by the previous version of the bylaw. You can add all the language you want to the concerns you have and they welcome that.

Alex asks what the status of the parking lot is right now. Mr. Bornstein states that he has an arrangement with the BC that they can use it for overflow parking only for the restaurant currently.

Alex asks for public comment. No one speaks. Alex closes public comment.

The board discusses. Alex recommends having Attorney Johnson craft some conditions and is okay with some terms and conditions for the sole purpose of parking for the restaurant. Alex polls the members sitting on this.

Bob Twiss thinks that there are better efficient and effective uses of the property besides parking, has no problem with the restaurant using that overflow parking only if they could craft conditions that would ensure that it wouldn't become permanent parking. In addition, that they could draft conditions that avoided the dine and dash or people in large numbers simply parking their illegally. However, his concern is whether they can do that in the procedural context of how this matter is before them. He thinks there is a narrow scope of review in whether the BC was right or wrong and doesn't think it gives them the right to create conditions if they were to overturn the BC. He would be more comfortable returning this matter to the applicant to craft the conditions so that they could ratify a settlement. Procedurally, this should be in the form of a settlement.

Jake is struggling saying that the use was never abandoned; he knows that it was used as a storage yard in the past and hasn't looked like a parking lot for a long time. Herb agrees with Bob Twiss. Mark hates to see something not used, struggled with pre-existing nonconforming use and thinks it is hearsay but it is not an unreasonable request for overflow parking for the restaurant. Attorney Johnson asks if he should continue this in order to craft conditions. Alex recommends continuing this and perhaps also applying for either a special permit or a variance. Attorney Johnson thinks that if this is turned down they will appeal to Superior Court and will not be submitting a special permit application. Attorney Johnson also agrees to sign a time extension.

Motion to continue to December 11th at 7:00 PM is made by Mark Hansen and seconded by Herb Bodensiek

Vote:

All in favor

CONTINUED TO DECEMBER 11, 2019 AT 7:00 PM

New Business

Alex reads the following into the record:

7:00 PM

Appeal No. 2019-059

Chandler

Jeffrey P. Chandler has applied for a Special Permit pursuant to Section 240-47.1.B – Family Apartments. The Applicant is proposing to construct a three (3) bedroom dwelling with a detached garage on a lot where there presently exists a one (1) bedroom single-family dwelling with garage. The Applicant would then propose that the existing one (1) bedroom dwelling be permitted as a detached family apartment. The subject property is located at 56 Bone Hill Road, Barnstable, MA as shown on Assessor's Map 336 as Parcel 050-001. It is located in the Residence F-1 (RF-1) and Residence F-2 (RF-2) Zoning Districts.

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

Adam Hostetter as General Contractor is here representing the Chandlers. He gives summary of relief being sought. He notes that this is a lot with a cottage and that the proposal is to build a more substantial dwelling and use the cottage for use by family members and is therefore looking for relief for the detached family apartment (existing cottage).

Jake Dewey asks Mr. Hostetter if the applicants are aware of the regulations and restrictions for a family apartment. Mr. Hostetter says yes and understands that they are not allowed to rent it and thinks it is a perfect scenario for why the bylaw was created.

Todd Walantis asks if there is a full kitchen in the existing structure. Mr. Hostetter would like to keep the kitchen in the cottage structure and explains that the new structure will be a modest home. He also notes that, based on what was communicated to the town, there was an error in the legal notice. It is currently designed as a 4 bedroom, not a 3 bedroom and their plan would be to have this be labeled a 4 bedroom structure and understands that the legal ad has a discrepancy. Anna Brigham clarifies that the site plan submitted noted it was for a 3 bedroom.

Alex asks for public comment. 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 240-47.1. B. allows a Special Permit for a Family Apartment in a detached structure which is the case here.**
- 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. There are a few family members that will be occupying the family apartment.**

The Board is also asked to find that:

4. The proposed family apartment above the detached garage would not be substantially more detrimental to the neighborhood than the existing dwelling. It is currently in existence.
5. The single-family nature of the property and of the accessory nature of the detached structure are preserved.

Vote:

All in favor

Mark makes a motion to grant the proposed relief with the following conditions 1 through 6 as outlined on a revised Staff Report dated October 19, 2019.

Conditions

1. Special Permit No. 2019-059 is granted to Jeffrey P. Chandler to create a Family Apartment in a detached structure at 56 Bone Hill Road, Barnstable, MA, after the construction of a new principal dwelling.
2. The site development shall be constructed in substantial conformance with the plan entitled "Proposed House Location Plan #56 Bone Hill Road" by BSC Group dated September 13, 2019 and design plans by FINELINE Design September 16, 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.

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:01 PM

Appeal No. 2019-060

Stone

Cecilia Viera Stone has applied for a Special Permit pursuant to Section 240-91.H (3) – Developed Lot Protection – Demolition and Rebuilding on Nonconforming Lots. The Applicant is proposing to demolish an existing two-story two (2) bedroom, single-family dwelling and construct a two-story, five (5) bedroom, single-family dwelling which will not meet the required twenty (20) foot front yard setback requirement in the zoning district in which it is located. The subject property is located at 75 Harbor Bluffs Road, Hyannis, MA as shown on Assessor’s Map 325 as Parcel 124. It is located in the Residence B (RB) Zoning District.

Members Assigned: Alex Rodolakis, Jake Dewey, Herb Bodensiek, Todd Walantis, Bob Twiss

Representative: Sarah Turano Flores, Esq. Also with her tonight is Sean Riley – Project Engineer from Coastal Engineering, Lynn Hopkins – Architect, and Miss Stone, property owner, is also here. Attorney Turano Flores explains that they are seeking a special permit and gives an overview of the relief being sought. She states that they also have approval from the Conservation Commission (ConComm) and have filed an intent to demolish with the Barnstable Historical Commission. The proposed dwelling will greatly improve but not eliminate one of the encroachments. However, in all other respects the proposed dwelling will comport to the setbacks and complies with the requirements of 240-91.H(3) regarding floor area ratio (FAR) and lot coverage which will not exceed 20%. They are here seeking a determination that the proposed dwelling will not be a substantial deterrent to the neighborhood. She has addressed that criterion in her memo. This structure will not impact the existing long-term residential use, the use will remain unchanged and will continue to be a single-family structure. This dwelling however will be going from 3 bedrooms to 5 bedrooms. It is consistent with the architectural features of the neighborhood. They will do native plantings seaward of the house, which will envelope the building to make it appear as though it is property situated in that coastal area. They are removing 12,000 square feet of lawn. Fells it will not be more substantially detrimental to the neighborhood. The footprint is greatly constrained by the side yard setback and the distance from the wetlands but also from the limit of moderate wave action.

Mark Hansen asks if there were letters of support. Alex states that there is a letter from Margo Pisacano of 73 Harbor Bluff Road, a direct abutter, in support and reads it (Exhibit A). Attorney Turano Flores states that they also have letters of support from other abutters that were submitted at the ConComm hearing. She notes that there is a beach in common ownership and they had to get letters from abutters in support in order to do that.

Alex asks if there was support from the abutters across the street. Attorney Turano Flores states that those abutters were contacted and that Mr. Sexton did appear at the ConComm hearing, had concerns about the Wetlands Act but did not file an appeal.

Jake Dewey asks what the upland is currently. Attorney Turano Flores states that it is 19,699. Jake asks what the measurement to the top of the plate is. Attorney Turano Flores states that it is 39.83' and that average grade is at 9.83'.

Sean Riley explains that the average grade is 9.83' and the distance is 30'. Jake is also concerned about the parking. Lynn Hopkins, the architect, explains that there are two parking spaces in the garage and room for four cars in the driveway.

Alex asks what the roof peak distance is. Sean Riley states that it is four feet higher because of the flood zone. Lynn Hopkins explains that height of the standing seam from the metal roof is 39' from grade and the other thing that is important is that they can't put any mechanicals below the design flood elevation and will need to be put in the attic, which needs a steep pitch to the roof.

They discuss the height to plate.

Alex thinks this is a big structure on this lot and a big change in the neighborhood.

Anyone from public. No one speaks.

Todd thinks that the issue before this board is the front yard setback and thinks it is the nature of what they are going to see going forward.

Bob Twiss makes findings:

Proposal & Relief Requested

The Applicants are seeking a Special Permit in order to demolish an existing two-bedroom single-family dwelling and construct a 5,906 square foot, single-family dwelling with porch, deck and patio on a .46 acre lot.

The existing lot coverage is 11.2% and the proposed lot coverage is 20%, at the threshold of 20%. The existing FAR is .17 and the proposed FAR is .30 or 30%, at the 30% threshold allowed. The proposed dwelling will not comply with the front yard setback of 20 feet.

Section 240-91(H)(3) requires a special permit for all demolition and rebuilding projects if the proposed demolition and rebuilding cannot satisfy the criteria under Section 240-91(H)(1) "As of Right", but the following criteria must be met:

- Lot Coverage: 20% (20% maximum) – 3,938 square feet (3,938 square feet allowed)
- Floor-Area Ratio: 30% (30% maximum) – 5,906 square feet (5,906 square feet allowed)
- Building Height: 30 feet to top of plate (30 feet maximum)

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.

- **The application falls within a category specifically excepted in the ordinance for a grant of a special permit.** Section 240-91(H)(3) allows for the complete demolition and rebuilding of a residence on a nonconforming lot where the proposed setbacks are equal to or greater than the yard setbacks of the existing building.
- **Site Plan Review is not required for single-family residential dwellings.**
- **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.**

Further, Section 240-91(H)(3) requires the Board to find that if the proposed demolition and rebuilding cannot satisfy the criteria established in H(1) As-Of-Right, then the Board may allow the demolition and rebuilding by Special Permit provided the Board finds that:

- **The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building.** The proposed setbacks will be more conforming with the requirements of the Residence B Zoning District. *The setback will be more conforming with the requirements of the RB zoning district.*
- **The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater.** *The proposed lot coverage is 20%.*
- **The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished, whichever is greater.** *The proposed FAR is .30 or 30%.*
- **The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories.** *The proposed height is 30 feet to the top of the plate (30 feet maximum to the plate) and the proposed dwelling is 2 1/2 stories.*

The Board is also asked to find that:

- **The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.**

Vote:

AYE: Jake Dewey, Herb Bodensiek, Todd Walantis, Bob Twiss

NAY: Alex Rodolakis who notes that he thinks this would be a detriment to the neighborhood because of the size and height of the structure
Bob Twiss makes a motion to grant the relief being sought with the following condition 1 through 6 on Staff Report revised October 24, 2019. Bob Twiss asks Attorney Turano Flores if she has seen the conditions and if she is okay with them. She has seen the report and is agreeable to the conditions.

Conditions

1. Special Permit No. 2019-060 is granted to Cecilia Vieira Stone for the demolition of an existing dwelling and construction of a 5,906 gross floor area dwelling at 75 Harbor Bluffs Road, Hyannis, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Plan Showing Proposed Site Improvements" prepared by Coastal Engineering Co., dated July 10, 2019 with a last revision date of September 17, 2019 and design plans by Lynn Hopkins Architect dated September 18, 2019.
3. The total lot coverage of all structures on the lot shall not exceed 20% and the floor-area ratio shall not exceed 30%.
4. The proposed redevelopment 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.
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/Land Court and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of the building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Vote:

AYE: Jake Dewey, Herb Bodensiek, Todd Walantis, Bob Twiss

NAY: Alex Rodolakis who notes that he thinks this would be a detriment to the neighborhood because of the size and height of the structure

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:02 PM

Appeal No. 2019-061

Kerr Family Trust

Kerr Family Trust has applied for a Special Permit pursuant to Section 240-91.H (3) – Developed Lot Protection – Demolition and Rebuilding on Nonconforming Lots. The Applicant is proposing to demolish an existing two-story, 3-bedroom, single-family dwelling and construct a two-story, single-family dwelling which will not meet the required thirty (30) foot front yard setback nor the fifteen (15) side yard setback requirement in the zoning district in which it is located. The subject property is located at 25 Maywood Avenue, Hyannis (Hyannisport), MA as shown on Assessor's Map 287 as Parcel 156. It is located in the Residence F-1 (RF-1) Zoning District.

Alex states that Attorney Michael Schulz has submitted a request dated October 25, 2019 asking for a continuance to November 13, 2019 at 7:00 PM

Motion is made by Herb Bodensiek and seconded by Mark Hansen to continue to November 13, 2019 at 7:00 PM

Vote:

All in favor

CONTINUED TO NOVEMBER 13, 2019 AT 7:00 pm

Correspondence

- Notice from the Planning Board - Amendment of the Zoning Map to amend and expand the Ground-Mounted Solar Photovoltaic Overlay District to include parcels 013-004, 013-005 and 013-052
- Received 10-18-19 from Commonwealth of Massachusetts, Department of Public Utilities – Notice of Adjudication, Notice of Public Comment Hearing. A petition for approval to construct and operate a new, approximately 3.3 mile, 115 kilovolt (kV) overhead transmission line on an existing right-of-way between Shootflying Hill Road and the Barnstable Switching Station. The Department will review the Project

to determine whether the proposed new 115 kV overhead transmission line is necessary. Public comment hearing to take place at 7:00 pm, November 4, 2019 at Knight Hall in Barnstable High School, 744 West Main Street, Hyannis, MA.

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

November 13th, December 11, 2019

Adjournment

Motion to adjourn is made by Herb Bodensiek and seconded by Mark Hansen

Vote:

All in favor

Approved

