



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, November 13, 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
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

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

7:02 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 Rodolakis and Jake Dewey recuse themselves and leave the hearing room.

Members assigned: David Hirsch, Herb Bodensiek, Paul Pinard, Bob Twiss, Mark Hansen

Michael Schulz, Esq., gives summary of relief being requested and explains that this lot is improved with a single-family dwelling, since the time of construction has not changed and maintains 20'+ frontage from Maywood and Newton Avenues. He has submitted a memo which the board has. He notes that there is a GIS map showing the consistency with the rest of neighborhood. The proposal is to demolish the

existing dwelling and replace it with a new 3000+ square foot home. Sullivan Engineering is here if they need to go over any calculations. Attorney Schulz also notes that they have been before the Conservation Commission and have received an Order of Conditions. He also states that an abutter, Wendy Garthwaite of 11 Maywood Avenue has appealed to the Department of Environmental Protection (DEP) on two occasions, one is pending.

Attorney Schulz then gives lot coverage from what is presently existing, notes that they meet lot coverage and that the structure will not be more than 2.5 stories. The vertical distance to the highest peak is 26.11' which is below the 30' minimum threshold. He states that this will not be detrimental to the neighborhood, is almost identical to the existing footprint and that the three dimensional renderings are tasteful and would suggest that it is an improvement to the neighborhood. With the exception of Wendy Garthwaite, other abutters are on board and supportive.

Attorney Bill Riley from Chatham who represents Wendy Garthwaite wants to correct, for the record, that a comment was made by Attorney Michael Schulz saying that Wendy Garthwaite has said that she would appeal any permit that was issued. Attorney Riley states that the comment is not an accurate statement. He states that he had a conversation with Attorney Michael Schulz who had reported to him that someone, that was friendly with Wendy Garthwaite, said something like that but that Wendy Garthwaite has never said that and does not operate like that as a person. He has also reviewed the plans and notes that the existing house is modest but the real question is how is the proposed versus the existing house is in regards to its impact on the neighborhood. From Ms. Garthwaite's position, whose property is immediately to the west, the new structure is taller and has more mass. He states that Ms. Garthwaite has renovated her house but did not enlarge or do a tear-down. He explains that Ms. Garthwaite thinks that this project is a massive structure in size and mass, thinks it is more detrimental to the neighborhood and asks/suggests a redesign.

Paul Pinard thinks Ms. Garthwaite's house appears to be the largest in the neighborhood. Attorney Riley says that the level of change is in trying to determine if this proposal is detrimental to the neighborhood and not in comparison to what the size of Ms. Garthwaite's house is.

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

The board clarifies the existing and proposed dimensions.

Paul Pinard 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.

- **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. Both the existing and proposed front setbacks are 20.7 feet (Maywood) and 20.4 (Newton).
- **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 are equal to or greater than the existing yard setbacks of the existing building
- **The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater.** The existing lot coverage is 25.5% and the proposed lot coverage is 25.4%, less than existing and meets that criteria.
- **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% and meets the criteria.
- **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 26.11 feet to the top of the plate (30 feet maximum to the plate), and the proposed dwelling is 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:

All in favor

Paul Pinard makes a motion to grant relief being requested with the following conditions 1 – 6 and asks Attorney Schultz if he has seen the staff report dated October 21, 2019 and is okay with the conditions. Attorney Schulz replies that he has seen the staff report and is agreeable to the conditions:

Conditions

1. Special Permit No. 2019-061 is granted to Kerr Family Trust for the demolition of an existing dwelling and construction of a 3,712 gross floor area dwelling at 25 Maywood Avenue, Hyannis (Hyannisport) MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan Proposed Improvements at 25 Maywood Avenue Barnstable (Hyannisport) Mass" prepared by Sullivan Engineering & Consulting, Inc., dated October 4, 2019, and design plans by Archi-Tech Associates.
3. The total lot coverage of all structures on the lot shall not exceed 25.4% and the floor-area ratio shall not exceed 30%.
4. The proposed redevelopment, which includes the approved pier by the Conservation Commission (SE3-5655), 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:

All in favor

GRANTED WITH CONDITIONS

Alex and Jake come back to the dais.

Alex reads the following into the record:

New Business

7:00 PM

Appeal No. 2019-063

Bradley

Vincent G. and Linda Bradley have applied for a Modification of Appeal No. 2016-032, Condition No. 6 pertaining to lot coverage and Appeal No. 2016-020 Condition No.4 pertaining to the garage. The Applicants are proposing to demolish an existing garage and construct a one-story cottage, without kitchen facilities, and possible deck which will increase the existing lot coverage. The subject property is located at 48 Magnolia Avenue, West Hyannis Port, MA as shown on Assessor's Map 225 as Parcel 011. It is located in the Residence D-1.

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

Albert Schulz is representing the applicant.

Herb discloses that Attorney Albert Schulz has represented him in private matters and can be objective. He asks if there are any objections to him sitting on this. No one has problems with Herb sitting on this.

Attorney Schulz gives summary of previous relief. They are now requesting to demolish the garage and to construct a cottage in its place without kitchen facilities but with a possible deck. He filed a memo and attached with some elevations showing N, W, S AND E. He shows a picture to the board (Exhibit A).

Attorney Schulz states that there are very minor changes to lot coverage and floor area ratio. He did make a mistake on the application for 240-91 and should be 240-93 and he suggests 240-93 or that this could include both. There is a letter from an abutter who had concerns which he addresses. No change in the use as the abutter eludes to. The lot coverage increases slightly, as for the nonconforming setback, he believes that if there weren't conditions imposed on the previous relief granted, they could've built this as-of-right. There will be no increase in noise or traffic in front of the house and parking will be near the residence. There are no plans to have this a rental property. There is no condensing units and the AC unit is a mini split attached to the side of the residence. Attorney Schulz thinks this is straight forward, has reviewed the proposed conditions and only has a comment on Condition #2 which he asks that the applicant would like leeway to relocate windows and door and is fine with everything else. However if they feel the mini-split AC should be screened, she will do that. John O'Day from Sullivan Engineering and the architect are here to answer any questions the board members may have.

Bob Twiss asks if this will increase the number of bedrooms to nine (9). Attorney Schulz explains that it should be a five (5) bedroom dwelling as the Assessor's record is incorrect. Bob Twiss asks what they can do to prevent it from rented out to nonfamily members. Attorney Schulz says that they wouldn't be able just to rent the cottage that they would need to rent the whole parcel and not individual buildings. He states that the applicants also aren't intending to install any cooking facilities in the cottage.

Alex thinks the driveway is tight and asks why not move the proposed structure further from that road. Attorney Schulz explains that they didn't want to impact the sports court site and believes that the road is at least 20 feet wide and will not be encroaching.

Alex Rodolakis asks for public comment.

Craig Falkenham of 30 Magnolia is surprised that what is being proposed is a different use than what exists. It could add noise if people are utilizing the cottage. He suggests a buffer and would like an explanation as to what the difference is in the use.

Attorney Schulz states that this is a residential accessory structure. A garage with vehicles would be more detrimental with cars parking at another end and that this would have no more noise than in a residential area.

John O'Day from Sullivan Engineering explains that the site slopes up. However, they can keep it at the same elevation at this site but if moved they would have to elevate the structure which isn't the feel they are looking for.

Jake asks about parking or issues with access. Attorney Schulz explains that there will be no additional parking, the parking will remain up at the main house.

Jake Dewey 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.

- 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. The existing front setback of the garage is 1 foot, the proposed front setback of the cottage is 3 feet.*
- 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 D-1 Zoning District.*
- The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 16%.*
- 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 .134 or 13.4%.*
- 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 9 feet 4 inches and 13 feet to the top of the plate (30 feet maximum to the plate) and the proposed cottage is 1 story.*

The Board is also asked to find that:

- The proposed new building (cottage) would not be substantially more detrimental to the neighborhood than the existing dwelling (garage).*

Attorney Schulz notes that the appropriate section should be 240-91.

Vote:

All in favor

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

Conditions

- 1. Special Permit No. 2019-062 is granted to Vincent G. and Linda Bradley for the demolition of an existing garage and the construction of a cottage without kitchen facilities at 48 Magnolia Avenue, West Hyannisport (Centerville), MA.*
- 2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan Proposed Improvements at 48 Magnolia Avenue Barnstable (Centerville) Mass" prepared by Sullivan Engineering and CapeSurv, dated October 4, 2019, and design plans by Progressive Designs dated August 1, 2019. Attorney Schulz would like leeway to rearrange windows and/or doors.*
- 3. The total lot coverage of all structures on the lot shall not exceed 16% and the floor-area ratio shall not exceed 13.4%.*
- 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. There shall be no permanent provisions for cooking within the proposed cottage.
7. 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.

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:01 PM

Appeal No. 2019-064

Klaman or Nominee

Mark Klaman or Nominee as prospective owner, has petitioned for a Variance pursuant to Section 240-35 Groundwater Protection Overlay Districts, A and B. The Petitioner seeks to remove an underground storage tank but under DEP requirements, the site must be cleaned up to strict drinking water standards. The relief being sought is a determination by the Zoning Board of Appeals that since the subject property sits atop brackish water that it has no impact on the aquifer and as such is not aquifer protected. The subject property is located at 3224 Main Street (Route 6A) Barnstable as shown on Assessor's Map 299 as Parcel 029. It is located in the Residence F-2 and Village Business A (VBA).

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

Attorney David Lawler is here representing the applicant. His client, Mark Klaman, is looking to purchase the property which is currently the Post Office and a diner. Years ago there was a gas station at this site and an underground tank. The current owner found that removing that tank would cost approximately \$200,000 and assuming that nothing else is present. The reason he is here is because of the Groundwater Districts. Attorney Lawler explains that the groundwater district was created under 240-35 and explains the AP/GP/WP designations. He goes over the DEP standards for drinking water. What they want this board to say is that this is not a groundwater recharge area.

They have met with staff and originally planned to draft a letter to the Building Commissioner (BC) but found out through the Town Attorney's office that it is not the BC's position to issue opinions. What this is, is a mechanism to allow this property to be cleaned up. He is seeking to have this board make affirmative findings that this property is not groundwater protected but brackish water protected.

The board discusses whether they have jurisdiction on this application. Alex Rodolakis is struggling with what authority they have. He is not a fan of variances and what are being asked to do is to vary from an entire area how the town established this area. This is in reference to health and safety issues. Attorney Lawler states that he thinks this board has the right to give relief from Section A of the bylaw. This would not be compatible land use in the groundwater recharge area and would not apply because this is not a groundwater recharge area but a brackish part of the marsh which was built on years ago. The variance requirements would be that there would be a tremendous economic hardship, the unique topography issues and have all the requirements needed to grant this variance. They discuss the test data and jurisdiction. This would let them go forward with DEP, not be required to do the monitoring and clean up the property. Attorney Lawler states that DEP is relying on this groundwater label and it is within this board's jurisdiction to relabel it. Bob Twiss, from his understanding, thinks that the request is a variance on any requirements associated with the groundwater protection for this particular site. Attorney Lawler states that the AP district is only subject to those restrictions already contained within the bylaw meaning there is no additional restrictions on the AP district. It created a district that did nothing but that act has caused DEP to try to apply a standard that should never apply to it. Bob Twiss comments that he is asking for an exemption for any obligation for the landowner to address any subsequent impact on groundwater, which might come from this underground tank and is a big, big, big, deal. Attorney Lawler says that is not what he is asking for and is why this is the whole problem with the name Aquifer Protection, it doesn't provide it. They discuss.

Alex asks for public comment.

Mark Klaman introduces himself and states that he has been purchasing retail properties for about 40 years with a partner. His LSP is John Adams from Tetra Tech whom he has used for 30 years. They wrestled with this and he had directed him after conversations with DEP to come back to this board because the DEP has stated that they want this board to clarify everything that Attorney Lawler has said. They will remove the tank and all the soils will be pure. The issue is about a solvent in the salt water and the way the town wrote the overlay does not clarify that is not drinking water. He doesn't think this is a big deal and they just want to clean up the language and this is not drinking water.

James Conners speaks representing the Dolphin, an abutter, is a restaurant and is not opposed to the applicant's request but the concern is about environmental issues and that the tank be removed. They are not here to weigh in on jurisdictional issues. The Dolphin's concern is that they are north of the parcel and the waterflow is across their property and want it cleaned up.

The board deliberates. Alex is not comfortable with variances and especially when talking about environmental issues. He thinks this is something they need to go to the town about regardless of what the standard is.

Attorney Lawler rebuts. He talks about the word harm and one of the purposes is to make sure that harm does not occur. In this instance, if not granted there is a possibility that the harm will continue. He thinks this board has the authority and ability to grant this relief. Mr. Klamon states that he will remove the tanks and all contaminated soils.

Jake Dewey asks if they have gone before the water board or water departments. Attorney Lawler states that some departments were present when they attended Site Plan Review. He reads a letter from Site Plan Review (Exhibit A).

Bob Kelley from the Dolphin restaurant speaks. He thinks that this area is about five feet above sea level; the water table is so low that when there is a good rain it flows to the marsh and comes in through some basements. He believes they are sitting on a tidal water level. He feels that it would be better to take the tank out, improve the property, and go from there.

Alex closes public comment.

Alex polls the board: Paul Pinard would be in favor, Jake Dewey feels that this would set a precedent and is not comfortable, Alex has concerns and is not comfortable, David Hirsch would be in favor, Herb Bodensiek doesn't feel that this board has jurisdiction.

Attorney Lawler ask for a motion to continue to December 11, 2019 at 7:00 PM.

Motion is made by Paul Pinard and seconded by Mark Hansen to continue to December 11, 2019 at 7:00 PM

Vote:

All in favor

CONTINUED TO DECEMBER 11, 2019 AT 7:00 pm

Alex reads the following into the record:

7:02 PM Appeal No. 2019-065

King

Paula King 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 one-and-a half story, 1,800 square foot, four-bedroom single-family dwelling and construct a two-story, 2,139 square foot, single-family dwelling which will not meet the required fifty (50) foot setback requirement from a Great Pond in the zoning district in which it is located. The subject property is located at 156 Point of Pines Avenue, Centerville, MA as shown on Assessor's Map 230 as Parcel 067. It is located in the Residence D-1 (RD-1) Zoning District and Resource Protection Overlay District (RPOD).

MEMBERS ASSIGNED: *Alex Rodolakis, David Hirsch, Jake Dewey, Herb Bodensiek, Paul Pinard*

Representative: *Sarah Turano Flores, Esq. Also with her tonight is Sean Riley from Coastal Engineering and Chris Mena from Dreamline Homes, contractor for the home.*

Sarah Turano Flores, Esq., gives a summary of the conditions of the property and what is proposed on the undersized lot. They have been before the Conservation Commission (ConComm) who has approved this. The intrusion will exist from the great pond which requires 50 feet from a Great Pond under 247-G. However, the existing dwelling is pre-existing nonconforming in relation to that setback and is currently 14.3 feet. When they rebuild, it will be 16.3 feet from Lake Wequaquet, which is an improvement. Attorney Turano Flores goes over the special permit required findings in relationship to this proposal. Both the floor area ratio (FAR) and gross floor area (GFA) will be increased slightly but will be under the requirement and that the proposed structure will be under the maximum buildout allowed for this property. She believes that this will not be more detrimental to the neighborhood and thinks this is an improvement. She notes that on the staff report, that one of the conditions states that this would be at the maximum buildout allowed and would like that corrected should this be approved. She included a photo from the lake showing vegetation, which will blend in with the existing surroundings. This will be an improvement, and will be in keeping with the neighborhood.

Jake clarifies that the deck overhangs the water. Attorney Turano Flores states that the setback is calculated from the dwelling only and that the deck is remaining untouched and only the house will be shifting back two feet.

Alex asks for public comment. No one speaks. Alex asks if there were any neighborhood comments. None were submitted.

Alex makes findings:

Based on evidence and testimony tonight:

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. The proposed dwelling will not comply with the 50 foot setback from a Great Pond required in 240-7.G.(2)). **Will be less intrusive than the existing structure.**

- 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 existing setback from a Great Pond (Lake Wequaquet) is 14.3 feet and the proposed setback from a Great Pond is 16.3 feet which will be more conforming with the requirements of the Residence D-1 Zoning District of 50 feet.
- The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 9.1%.
- 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 7.1%.
- 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 22.17 feet to the top of the plate (30 feet maximum to the plate) and the proposed dwelling is 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:

All in favor

Suggested Conditions

Should the Board find to grant Special Permit No. 2019-065, it may wish to consider the following conditions:

1. Special Permit No. 2019-065 is granted to Paula King for the demolition of an existing dwelling and construction of a 2,139 gross floor area dwelling at 156 Point of Pines Avenue, Centerville, 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 October 18, 2019 and design plans by Excel Homes dated October 17, 2019.
3. The total lot coverage of all structures on the lot shall not exceed 9.1% and the floor-area ratio shall not exceed 7.1%.
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.

Attorney Turano Flores wants to change #4 by deleting the first sentence. Alex agrees.

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:03 PM Appeal No. 2019-066

Sands

Charlton and Christine Sands have 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, 2,355 square foot, three (3) bedroom, single-family dwelling and construct a two-story, 2,872 square foot, single-family dwelling which will not meet the required twenty (20) foot front yard setback, from the Town Way, requirement in the zoning district in which it is located. The subject property is located at 4 Bay Shore Road, Hyannis, MA as shown on Assessor's Map 326 as Parcel 082. It is located in the Residence B (RB) Zoning District.

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

Sarah Turano Flores, Esq., is representing the applicants. Also with her tonight is Kevin Werner – Project Architect and Sean Riley from Coastal Engineering. Attorney Turano Flores gives summary of what currently exists and what is proposed. She notes that there is a town way to water on the northerly side of the property, which will not meet the 20-foot setback if this board considers it both the front yard setback. ConComm approved this back in May, 2019. It is under 10,000 sf and therefore they need a special permit. She briefly reviews how this meets the special permit requirements. They are increasing the lot coverage by 425 square feet, which meets the second prong of the standards for

the granting of a special permit. As for floor area ratio (FAR), they are proposing to increase that by 517 square feet, which will be under 30% of the lot area and will meet the second prong. As for height, it will meet that standard in the ordinance. This will not be more detrimental to the neighborhood and is an improvement to the neighborhood, be in the same footprint, have no intensity of use, will be of traditional architecture and is compatible with surrounding homes in the area. This will be compliant with flood protection provisions and they are proposing plantings right along the wetlands increasing the native plan diversity through their root systems which will improve the soils and provide wildlife habitat for the area. Will serve to better frame the house from the water and behind it better.

Jake Dewey asks what the height to peak is. Mr. Riley states it will be 25 feet. Jake asks if the grade will be the same on the town way to the water side. Mr. Riley states that there will be no grading changes on that side of the house. There will be vinyl fencing proposed on that side also and a row of arborvitaes on the inboard locus side and a 4 foot chain link fence because of the dog.

Alex asks where the mechanicals will be placed. Mr. Riley states that they are proposed on the same side as the town way and only elevated six feet off the ground. The arborvitaes will be further away from the town way than what currently exists.

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

Herb Bodensiek makes findings:

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. The existing front setback is 14 feet and the proposed front setback is 14.2 feet which is an improvement but still does not comply with the front setback requirement of 20 feet.
- **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 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 20.6 feet to the top of the plate (30 feet maximum to the plate).

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:

All in favor

Herbert Bodensiek makes a motion to grant relief being sought with the following conditions:

Conditions

1. Special Permit No. 2019-066 is granted to Carlton and Christine Sands for the demolition of an existing dwelling and construction of a 2,872 gross floor area dwelling at 4 Bay Shore 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 October 21, 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:
All in favor

GRANTED WITH CONDITIONS

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

December 11, 2019, January 8, 2020, January 22, 2020

Adjournment

Motion to adjourn is made by Paul Pinard and seconded by Jake Dewey

Vote:
All in favor

Approved