

Town of Barnstable
Zoning Board of Appeals
Agenda
May 6, 2009

Draft as of 04-29-09

7:00 PM Appeal No. 2009-033 - New Najarian
Modification of Special Permit 1985-54

Staff Report and Application Materials enclosed

Robert A. Najarian, Trustee of Najarian Nominee Trust has petitioned for a modification of Special Permit 1985-54. The petitioner seeks to modify that condition of the permit that restricted the use of a second floor apartment unit to that of the property owner only. The proposed modification requests that use of the apartment be allowed to a person who holds an ownership interest in the licensee of the restaurant located on the first floor of the building. The property is addressed as 167 Sea Street, Hyannis, MA and is shown on Assessor's Map 307 as parcel 046. It is in a Residence B Zoning District.

7:00 PM Appeal Nos. 2009-027 & 026 Rubin Hyannis LLC.

Opened April 15, continued to May 6, 2009

Continued for; additional information on parking ratios at other Bernie & Phyl's Furniture Stores, exploring options for employee parking both on- and off-site, and for draft findings and additional condition to assure quality furniture stores and excluding cash & carry outlets.

Members Assigned: William H. Newton, Michael P. Hersey, Craig G. Larson, George T. Zevitas, Laura F. Shufelt Associates Present: Alex M. Rodolakis, Brian Florence

Appeal No. 2009-027 - Continued Modification or New Conditional Use Permit

Rubin Hyannis LLC., has petitioned for a Modification of Conditional Use Special Permit No. 1994-082 issued to John F. Cabana or, in the alternative, a new Conditional Use Special Permit pursuant to Section 240-25.C to allow an expansion of a retail furniture gallery and store. The petitioner proposes to remodel the interior of the existing furniture gallery and convert approximately 6,900 square feet of gross floor area within the basement from storage to a showroom. The property is located at 20 Airport Road, Hyannis, MA and is presently occupied by a Bernie & Phyl's Furniture Store. It is shown on Assessor's Map 294 as Parcel 010. It is zoned BH - Highway Business, B - Business, and Ind - Industrial.

Appeal No. 2009-026 - Continued Modification or New Parking Special Permit

Rubin Hyannis LLC., has petitioned for a Modification of Special Permit No. 1994-081 issued to John F. Cabana or, in the alternative, a new Special Permit pursuant to Section 240-57 - Circumstances

Warranting Reduction of Parking Requirements. The petition seeks to maintain 37 on-site parking spaces for the remodeled and expanded furniture gallery retails sales and storage area that would under the zoning ordinance now require 103 on-site parking spaces. The property is located at 20 Airport Road, Hyannis, MA and is presently occupied by a Bernie & Phyl's Furniture Store. It is shown on Assessor's Map 294 as Parcel 010. It is zoned BH - Highway Business, B - Business, and Ind - Industrial.

7:15 PM Remand & New Applications Cotuit Oyster Co.

Staff Report and Application Materials enclosed

**7:15 PM Remand Appeal No. 2003-094 Cotuit Oyster Co.
Bulk and Parking Variances**

By a Stipulation for Remand and Stay, Barnstable Superior Court has remanded to the Zoning Board of Appeals for a new and full public hearing of Appeal No. 2003-094. In that appeal Cotuit Oyster Co., Inc., had applied for variances to Section 3-1.4(5) Bulk Regulations Minimum Setback Requirements (today's Section 240-14.E), and Section 4-2.9 Schedule of Off-Site Parking Requirements (today's Section 240-56). The relief is sought for construction of a pile supported one-story work building and a pier not in conformance to the 15-foot minimum side yard setback for the district, and for a reduction in the required on-site parking. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

**7:15 PM Remand Appeal No. 2003-110 Cotuit Oyster Co.
Exempt Use Modification Permit**

By a Stipulation for Remand and Stay, Barnstable Superior Court has remanded to the Zoning Board of Appeals for a new and full public hearing of Appeal No. 2003-110. In that appeal Cotuit Oyster Co., Inc., had applied for a Modification Permit in accordance with Section 2-4.3(B) Exempt Uses (today' Section 240-8.A(3)). The modification permit is sought to allow for the construction of a building and a pier not in conformance to the minimum yard setbacks and for a reduction in required on-site parking. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

**7:15 PM Remand Appeal No. 2003-137 Cotuit Oyster Co.
Variance to Exempt Use Provisions**

By a Stipulation for Remand and Stay, Barnstable Superior Court has remanded to the Zoning Board of Appeals for a new and full public hearing of Appeal No. 2003-137. In that appeal, Cotuit Oyster Co., Inc. had applied for variances to provision (B) and the last paragraph of Section 2-4.4, Exempt Uses (today's Section 240-8.A(4)(b) and 240-8.B). Those variances are to allow for an aquaculture use to employ up to 5 persons and to construct a building and pier within the required 25-foot yard setback imposed by the exempt use section of the Ordinance. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

**7:15 PM Remand Appeal No. 2004-075 Cotuit Oyster Co.
Special Permits for Nonconformities**

By a Stipulation for Remand and Stay, Barnstable Superior Court has remanded to the Zoning Board of Appeals for a new and full public hearing of Appeal No. 2004-075. In that appeal, Cotuit Oyster Company, Inc., had applied for Special Permits in accordance with Section 4-4.4(2) Expansion of a Pre-existing Nonconforming Building or Structure Not Used as Single or Two-Family Dwelling (today's Section 240-93.B), Section 4-4.5(2) Expansion of a Pre-Existing Nonconforming Use (today's Section 240-94.B), and Section 4-4.6(1) Re-Establishment of Damaged or Destroyed Nonconforming Use or Building or Structure (today's Section 240-95). The applicant seeks to locate, expand and alter the shellfish harvesting business including the construction of a pile-supported work building and a pier not in conformity to the districts required setbacks. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

**7:15 PM Appeal No. 2009-031 - New Cotuit Oyster Co., Inc.
Special Permit Reduction in Parking**

Cotuit Oyster Company, Inc., had applied for a Special Permit pursuant to Section 240-57 Circumstances Warranting Reduction of [Parking] Requirements. The applicant seeks a reduction in the required on-site parking due to factors that reduce the need for that parking. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

**7:15 PM Appeal No. 2009-032 - New Cotuit Oyster Co., Inc.
Use Variance**

Cotuit Oyster Company, Inc., had applied for a Variance to Section 240-14.A, Principal Permitted Uses in the Residence F Zoning District. In this appeal, the applicant seeks authorization to use the property for a commercial shellfish business, the Cotuit Oyster Company. This use variance application is made in the alternative to that part of the Remand of Appeal No. 2004-075 that seeks an Expansion of a Pre-Existing Nonconforming Use. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

**Open Variance No. 2008-026 Guarino/Trustees for JGMG Realty Trust
Request for 6-Month Extension of Variances**

Staff report, request letter, and copy of previous variance enclosed.

Extension of a variance is provided for in MGL Chapter 40A, Section 10. That section authorizes the Zoning Board of Appeals to grant one extension of a variance for up to 6 months without public notice or a public hearing.

By letter received April 23, 2009, Joseph J. and Claire L. Guarino/Trustees for JGMG Realty Trust have requested a 6-month extension of Variance No. 2008-026 issued to them for property addressed as 31 and 30 Holiday Lane, West Hyannis Port, MA. The subject lot is shown on Assessor's Map 267 as parcel 185 and 186. The variance was issued to permit the development of un-buildable adjoining lots that

had merged due to common ownership. The development of the resulting undersized lot was granted to permit the building of a single-family dwelling in accordance with the Residence B Zoning District regulations.

**Open Comprehensive Permit No. 2005-013 Mill Pond Estates - Starboard, LLC
Request for Minor Modifications**

Request materials enclosed. A Staff Report will be transmitted via e-mail at a future date.

By letter submitted April 29, 2009, from Attorney Michael F. Schulz, Mill Pond Osterville Associates LLC, are seeking to modify Comprehensive Permit No. 2005-013 "Mill Pond Estates" issued to Starboard, LLC for the division of 2.81 acres into a 13 lot subdivision for the development of 11 single-family dwellings at 459 and 449 Old Mill Road, Osterville, MA. Three of the 11 dwellings are to be committed to affordable housing pursuant to MGL Chapter 40B, Section 20-23. The applicant seeks;

- the transfer of the permit to "Mill Pond Osterville Associates LLC",
- amend Condition No. 21(b) to allow the Department of Housing and Community Development (DHCD) to be the Monitoring Agent,
- remove Condition No. 21(c) that requires an escrow account to be created and funded prior to the accounting certification for the development,
- amend Condition No. 40 that requires DHCD approval prior to the issuance of any building permit to provide only for necessary approval from DHCD,
- modify Conditions Nos. 23, 30 and 32 to allow for the building of one 'model home' for the purposes of marketing the development,
- waive Condition No. 31 that requires posting of securities for the completion of the subdivision until a second building permit is sought, and
- modify Conditions Nos. 5 and 6 to permit a change in the three approved home designs.

Open Chairman's Discussion
