



Town of Barnstable
Zoning Board of Appeals
Minutes
April 15, 2009

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday April 15, 2009 at 7:00 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. A quorum was met. Also present were Art Traczyk – Principal Planner and Carol Puckett – Administrative Assistant.

Laura Shufelt	Present
James McGillen	Absent
Michael Hersey	Present
Craig Larson	Present
William Newton	Present
Alex Rodolakis	Present
Nikolas Atsalis	Absent
Brian Florence	Present
George Zevitas	Present

Laura Shufelt opens the hearing at 7:02 PM. She introduces the board and indicates that there are 3 appeals and one extension request. She reads a summary of the appeals being heard tonight. She then calls the Berry appeal and reads it into the record.

Appeal No. 2007-107 - Continued

**Berry
Request for a One-Year Extension**

This was continued to allow for legislative action to consider amending of the Zoning Ordinance to clarify the Board's authority to extend special permits. A proposed amendment to Section 240-125.C, that would provide for extensions of special permits, has been drafted. It is scheduled for a joint Town Council and Planning Board public hearing on May 7, 2009.

By letter dated December 19, 2008 from Attorney Eliza Cox, John P. Berry and Margaret D. Berry have requested a one-year extension of Special Permit No. 2007-107 issued January 23, 2008 for the demolition of an existing nonconforming dwelling and rebuilding of a new dwelling maintaining the nonconforming front yard setback. The request is being made pursuant to MGL Chapter 40A, Section 9. The subject lot is addressed 111 Ocean Drive, West Hyannisport, MA and is shown on Assessor's Map 266 as parcel 005. It is in a Residence B Zoning District.

Members assigned: Alex Rodolakis, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

Attorney Eliza Cox is representing the applicant and indicates that she had submitted a letter dated April 13, 2009 requesting an additional extension of this request. She indicates that she has been working with the Town Attorney on a draft zoning amendment to extend special permits and a retroactive provision that would pertain to this particular case. It was opened by Town Council on March 19th and will be heard on May 7th. She indicates that assuming it gets approved that night, it will be effective 30 days after that and is asking for a second extension which at that time may be able to withdraw this request.

Motion to continue this to June 17, 2009 at 7:00 PM

Seconded.

Vote:

AYE: Alex Rodolakis, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

NAY: None

CONTINUED TO JUNE 17, 2009 AT 7:00 PM

Laura Shufelt then calls the JDJ Housing Development. She reads it into the record.

Comp. Permit No. 2003-090

**JDJ Housing Development – Village Green
6-Month Extension Request**

A letter from Attorney Eliza Cox, JDJ Housing Development LLC, has requested an additional 6-month extension of time for implementing Comprehensive Permit No. 2003-090 issued for the development of the "Village Green".

760 CMR 56.07 (12) provides for a comprehensive permit to be administratively extended without the need for a public hearing.

Comprehensive Permit No. 2003-90, was issued July 9, 2004. Prior to the expiration of the permit the Board granted a one-year extension of the permit to July 9, 2008, a second extension of 6-months to January 9, 2009, and third extension to July 9, 2009.

Comprehensive Permit No. 2003-090 as modified authorized development of 148 rental apartment units in five (5) three-story buildings on 14.32 acres. Forty (40) units are to be affordable rental and eleven (11) units committed to "workforce housing". The Comprehensive Permit was issued to JDJ Housing Development, LLC for property addressed as 770 Independence Drive, Barnstable, MA as shown on Assessor's Map 332, as Parcel 010-1. It is zoned Industrial and is in a Wellhead and Groundwater Protection Overlay Districts.

Laura Shufelt indicates that it has been brought to her attention that opponents of this project believe that she has a conflict of interest sitting on this. As she stated, the last time this came up for an extension she did seek an opinion from the State Ethics Commission and according to them she does not have a conflict of interest. Therefore, she will not be recusing herself from this and will be sitting on this.

Laura Shufelt asks Attorney Cox if she had anything else to add to her letter.

Attorney Cox indicates that she knows that they typically do this administratively but has submitted a request dated April 1, 2009 for a 6 month extension of this comprehensive permit. She supplemented that correspondence with a letter dated today and faxed it to Mr. Traczyk. She indicates that the 760 CMR 56.00 are the regulations that govern the issuance of comprehensive permits, specifically 5.12.(c) thereof relates to how these permits can be extended for good cause and that such extensions shall not be unreasonably denied. The regulations also make clear that these requests for extensions are not substantial changes and are to be handled administratively by the Board without a public hearing. She indicates that because of the economic crisis, which in particular is felt within the affordable housing market, is making it impossible to obtain financing for these projects. The applicant had previously made arrangements with the lender for the project but that lender is not currently lending in this market. The applicant is continuing to work with the Town Attorney and the Town Manager on this project. She indicates that the inability to move forward is good cause to grant this 6 month extension for a project of this size which has already been permitted and start the compliance required under the comprehensive permit and asks that the Board grants this request.

Laura Shufelt indicates that at this time she would like Art Traczyk to go over his email, for the record, he gave to the Board regarding the 40B regulations as it relates to extensions.

Art Traczyk reads 760 CMR 56.05 12(C). He also indicates that the letter that the Board has references financing and indicates that it is up to the subsidizing agency. He suggests that this be handled purely administratively by the Board for the extension.

Laura Shufelt indicates that the initial letter did not have a reason for an extension and will only allow public comment relating to the topic of cause.

Attorney Joseph Berlandi introduces himself and indicates that he is here representing the Cummaquid Heights Association in this area with over 200 homeowners who are in opposition to this extension. He does not believe that this applicant shows good cause and that the law indicates that they must show good cause. He indicates that it goes beyond what Mr. Traczyk had said,

includes financial feasibility, and since day one that project has not been and that the law clearly states that the developer must have good cause which must include financial feasibility.

Laura Shufelt indicates to Attorney Berlandi that she will not allow him to discuss financial feasibility as that is not the issue before the Board.

Attorney Berlandi indicates that he is requesting that the Board deny this request for an extension until the developer submits supporting documentation and evidence for delay.

Bud Bergstrom of 73 Indian Hill Road speaks and indicates that he has been involved with an organization that has opposed this from the beginning. He wants to refer to the statute that Mr. Traczyk read but indicates that there were some parts that he did not read and wants to read it. He reads it and asks what is "good cause" and "or approval required for the project". He comments that if the attorney indicates that they are awaiting approval results of an appeal, then according to the statute, it would then be good cause. He doesn't see anything here in the statute indicating that they can wait until the finances get better. Also, this project was approved 5 years ago and the developer said that it was financially right on the precipice. He indicates that it doesn't seem good cause according to the statute.

Michael Hersey asks Attorney Cox why it has taken 5 years to secure financing.

Attorney Cox indicates that her applicant has been pursuing various financing mechanisms, had a commitment from a bank previously, and that the bank is not presently lending at this moment. Also, he pursued some grant monies from the Town and that didn't follow through either. There is also a series of permits that were required and easements for the sewer construction, those are now in place.

Michael Hersey attempts to ask more about finances.

Laura Shufelt indicates that the Board can't ask questions about finances.

Michael Hersey indicates that Attorney Cox is asking for, and her good cause, is finances.

Attorney Cox indicates that it is not the finances of the project, it is their inability to get construction financing at the moment.

Michael Hersey asks if there is a period they should add on for the tolling of the statute while they are awaiting some type of permit.

Attorney Cox indicates that she believes that the tolling period has passed and is typical in permits. Also, the tolling language refers to the 3 year initial grant. It doesn't refer to the Board's ability to grant a further extension of the permit.

William Newton asks what is going to happen 6 months from now or 6 months from the end of this current extension.

Attorney Cox indicates that hopefully they will start construction within that time period. There are some grants and tax credits that might be forthcoming that might help and move this project and that the applicant has spent a lot of time and money, has commenced with starting the compliance project with several of the conditions of the permit and wants to move forward. Also, the land on which the project is proposed on is owned by the Cobb Trust and the proceeds of that trust will benefit the children of the Town of Barnstable.

Art Traczyk indicates that the land has already been transferred into the name of JDJ Development Corporation as the lease has been filed.

Michael Hersey asks Art Traczyk that if they were not to grant the extension, what would the recourse be, could they re-file?

Art Traczyk comments that he would suspect that they would go to the State and give them the extension and that the State would overrule the Board.

Craig Larson asks if the Board is more or less tied to this.

Laura Shufelt indicates that the regulation is clear that an extension may not be unreasonably denied and if they came back for a modification they would have to look at whether it would be a substantial or insubstantial modification.

**Craig Larson so moves.
Seconded.**

Laura Shufelt indicates that they hadn't assigned anyone yet and then asks for a vote.

Vote:

**AYE: Alex Rodolakis, Brian Florence, Craig Larson, Laura Shufelt, William Newton
NAY: George Zevitas, Michael Hersey,**

Motion passes.

6 MONTH EXTENSION GRANTED

Laura Shufelt calls a ten minute recess.

Back in session at 7:30. Laura Shufelt calls the Seltzer appeal. She reads it into the record.

Appeal No. 2009-028

**Seltzer
Alteration/Expansion Nonconforming**

Building

Mark W. Seltzer & Barbara Bengen-Seltzer have petitioned for a Special Permit pursuant to Section 240-92B - Alteration or Expansion of a Nonconforming buildings or structures used as single- and two-family residences. The petitioners are seeking the permit to allow for an addition that encroaches into the 100-foot setback requirement off Route 28. The property is located at 1 Vermeer Court, Osterville, MA. It is shown on Assessor's Map 145 as Parcel 082. It is in a Residence C Zoning District.

Members assigned: Craig Larson, Michael Hersey, William Newton, Alex Rodolakis, Laura Shufelt

Barbara Bengen-Seltzer is here representing herself and her husband and is accompanied by the builders, Robert Gremo and Chuck Sorrento. She indicates that when they purchased the house the boundary was 20 feet and that it is now 100 feet. She indicates that they have a fence and that they are asking permission to go into the 100 feet setback in order to build their addition. She indicates that there is a fence and they wouldn't be touching the fence and it will be well within the fence.

William Newton clarifies that the fence is intact and asks if there is room, if need be, for fire personnel to access the lot between the fence and where the addition would be.

Robert Gremo, the builder, indicates that it won't be a problem and that the deck will have stairs coming down to that section of lawn which will be from the right side of the addition to the fence.

William Newton asks if there is anything in their proposal about expanding the deck.

Mr. Gremo indicates that the deck currently is about 8 feet to the right of the house and they will take another 10 feet to cover the whole back of the family room width.

William Newton asks if it would be any closer to Route 28 than the extension itself. Mr. Gremo answers no.

William Newton then asks what is going to be the use of the second floor addition.

Mr. Gremo indicates that it will be for walk-in storage area and some unfinished area and that there will be a bank of closets only accessible by that bedroom.

Michael Hersey clarifies that Mr. Gremo and Mr. Sorrento are the contractors. Michael Hersey indicates that there is a lot of study and bedrooms and wants to know how they will convince him that this will stay a 3 bedroom dwelling.

The contractors explain the setup of the rooms. Mr. Gremo has interior views and that they are taking the whole wall and that the room cannot be a bedroom.

Michael Hersey asks if the TV room could be a bedroom. Mrs. Seltzer replies that, in theory, it could. Mr. Hersey comments that he is concerned that this could potentially become a 4 or 5 bedroom house with very little effort.

Alex Rodolakis comments that he is concerned about the setbacks and that this would be within 20 feet of the road and thinks they are allowing overbuilding on the road and would not be in favor of granting this permit.

Mr. Gremo comments that if you look at the site plan, that the original plans for the house had placement to accommodate a garage, which they don't have any use for but that it makes the 20 foot setback which was, at the time of construction, legal.

George Zevitas comments that it was difficult to get around that dead end area as there were lots of cars and if the house was expanded then there would be more cars which could create a problem.

Mrs. Seltzer indicates that they haven't had a problem with parking and has just 2 cars and has no plans for anymore cars

Laura Shufelt asks if there is anyone here from the public who would like to speak either in favor or in opposition. No one speaks.

William Newton asks for clarification of what the placement of the addition is and asks how high above Route 28 it sits.

Mr. Gremo indicates approximately 10 feet.

They discuss how high the lot sits in reference to Route 28.

Mrs. Seltzer indicates that the reason they are building the addition is to have more public space as they have no place to entertain, they need to enlarge the kitchen and dining room area and a small portion of that to be a TV room which will be open, and that they are not looking for more bedrooms.

William Newton wants to provide positive findings:

On Appeal 2009-028 - Mark W. Seltzer & Barbara Bengen-Seltzer for a Special Permit under Section 240-92.B, Alteration/Expansion of a Nonconforming Single-family Dwelling to allow for an addition to encroach into the 100-foot setback requirement off Route 28.

1. The applicant

- 2. s are proposing an 18 by 22 foot, 1.5-story addition to the south of the dwelling located at 1 Vermeer Court, Osterville. This request is consistent with the provisions of Section 240-92 (B).**
- 3. The addition, estimated at approximately 600 sq.ft., is to be used as a 396 sq.ft. family room opened to the existing kitchen and dining area on the first floor. The second floor of the addition is connected to an existing bedroom and is to be used for storage.**
- 4. The existing building is situated 38.3-feet off Route 28. The proposed addition is to be located 20.4-feet off Route 28 right-of-way, 46 feet from its paved surface, and 20 feet above the road. Some of the planned expansion will cause the dwelling to intrude an additional 18 feet closer to Route 28.**
- 5. Board of Health in its interim regulations with respect to nitrogen loading and is presently limited by that interim regulation to a maximum of 3 bedrooms and there is one bedroom, even if there was an additional 2, you would still be within the 3.**
- 6. The proposed alteration or expansion will not be substantially more detrimental to the neighborhood than the existing building or structure.**
- 7. The application is consistent with zoning provisions for the alteration and expansion of a nonconforming dwelling**
- 8. The proposal fulfills the spirit and intent of the Town's zoning and would not represent a detriment to the public good or the neighborhood.**

No discussion

Vote:

AYE: Craig Larson, Michael Hersey, William Newton, Laura Shufelt

NAY: Alex Rodolakis

William Newton makes a motion to grant the special permit subject to the following conditions:

He would direct the Board's attention to pages 4 and 5 of the Staff Report. William Newton reads them as follows:

- 1. Redevelopment of the property shall be as proposed in plans submitted to the Board. The proposed engineered site plan is entitled: "Proposed Plot Plan Barnstable, Mass # 1 Vermeer Court, Osterville" as drawn by Sweetser Engineering, dated 10/22/08. The addition shall be built as per building layout and elevation plans submitted to the file, entitled "Vermeer Court, Osterville", as drawn by R.P. Gremo and consisting of 5 sheets (A1 through A5).**
- 2. The addition to the dwelling is limited to that 18 by 22 foot, 1.5-story addition shown on the plans.**
- 3. The existing fence will be maintained in its current location with sufficient space provided for the movement around the side of the structure by fire personnel.**

4. ***The total number of bedrooms shall not exceed three (3)***
5. ***The use of the property shall be that of one single-family dwelling in full conformance to the uses permitted in the Residence C Zoning District.***
6. ***Construction shall comply with all applicable building and fire codes.***
7. ***Development shall comply with any order of conditions issued by the Conservation Commission and with any requirements of the Board of Health.***
8. ***This decision must be recorded at the Barnstable Registry of Deeds and a copy of that recorded document must be submitted to the Zoning Board of Appeals Office and to the Building Division before any building permit is issued for the addition. The relief authorized must be executed as authorized in Section 240-125.C(3) of the ordinance.***

Seconded.

Laura Shufelt asks the Board if they have any additions or amendments.

No additions or amendments.

Vote:

AYE: Craig Larson, Michael Hersey, William Newton, Laura Shufelt

NAY: Alex Rodolakis

GRANTED WITH CONDITIONS

At 7:51, Laura Shufelt calls the Rubin Hyannis, LLC appeal.

She reads it into the record.

Appeal No. 2009-027

**Rubin Hyannis LLC.
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

**Rubin Hyannis LLC.
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

Members assigned: George Zevitas, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

Attorney Eliza Cox is representing the applicant. Also with her is John Wyatt, Director of facilities for Bernie & Phyl's. Attorney Cox gives a PowerPoint presentation. She indicates that there is one curb cut and some gravel parking spaces and that there are 37 parking spaces on the site. She gives a history of the prior ZBA relief. She explains the relief being requested and indicates that they are looking to convert 6900 square feet of storage in the lower level to a furniture showroom. They will be building a new stairwell in an expanded lobby area on the main level providing customer access to the lower level. She indicates that the applicant is willing to replace the gravel parking with pervious pavers and that no other changes are proposed for the exterior of the building. She indicates that in addition to meeting the Architectural Board Access regulations, an Elevette® chairlift is also proposed providing access to the proposed showroom on the lower level.

William Newton indicates that he has no concern about issuing a special permit for an expansion of the furniture gallery but has an issue with parking. He doesn't know if he can take a survey seriously done in October of 2008, with the slump in retail sales and can't believe the numbers or the onsite observation of it. Also, he comments that the applicant still maintains that 37 spaces are more than adequate as the parking had been reduced previously. He suggests that in looking at the site plan, they could, with some redesign, provide additional parking. He is assuming that maybe there would be a spillover in the Kmart Plaza. Also, he asks what is the ratio to parking spaces for their other stores.

John Wyatt indicates it varies from town to town. In their Saugus store, the town requires one parking space per 1000 square feet of space. Nashua, New Hampshire requires one parking space per 1000 square feet of retail space. Nashua, New Hampshire is a 3 story building with about 87,000 square feet of retail. Westborough has 55,000 square feet of retail space and they require 3 parking spots per 1000 square feet of retail space. He indicates that in order to satisfy the Westborough requirements, their back lot was needed but is overgrown with weeds and never used. He indicates that in Hyannis they could expand the parking by converting the turnaround they have for trailer trucks which they don't utilize. He indicates that they can increase the amount of parking or do another study.

Attorney Cox indicates that they can get the other ratios from other Bernie & Phyl's stores.

William Newton asks if they have arranged anything with the shopping plaza across the street for overflow.

John Wyatt indicates that they are willing to have the employee's park off-site which would free up more space for the public. He indicates that also, they do not deliver from the Hyannis store as their furniture is delivered from their Norton warehouse.

Alex Rodolakis asks about the restriction regarding a condition about if the building is sold, or leased and thinks it needs to be tightened.

Craig Larson comments that maybe they can define gallery showroom as long as it is not a cash-and-carry or discount store.

Laura Shufelt comments that the existing special permit is for 38 spaces and cannot find 38 spaces on the site.

Attorney Cox indicates that they could squeeze one more parking space but could modify this for 37 spaces.

Art Traczyk thinks they should be new permits.

Laura Shufelt asks if there is anyone from the public who would like to speak either in favor or in opposition. No one speaks.

William Newton comments that he is prepared to vote on the showroom but not on the parking and would like to see figures of other stores and their parking figures.

Attorney Cox indicates that she would be happy to do surveys regarding their other stores. She comments that she is not sure about the overflow to the other shopping plaza as there is another furniture store in the plaza and thinks that the employees could park in the truck trailer turnaround.

William Newton asks if they would be opposed to coming back with the figures from the parking and whether the shopping plaza across the road would be willing to do anything.

Art Traczyk suggests continuing to May 6th at 7:00 PM.

They discuss if they want to vote tonight or wait.

They decide to continue it to May 6, 2009 at 7:00 PM.

***Motion to continue
Seconded***

Vote

AYE: George Zevitas, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

NAY: None

CONTINUED TO MAY 5, 2009 AT 7:00 PM

Laura Shufelt indicates that there are zoning amendments going before the council on May 7th. One is for the special permit extension. Also there are two ordinances regarding signs. Art Traczyk indicates that this Board will meet again on May 6th which is before the council meets to vote and asks the members to vote to either support these ordinances or not. He will then write a quick letter for input to the council.

They discuss doing findings.

Laura Shufelt indicates that they are trying to get a workshop on 40B's and a workshop on ethics scheduled for the members to attend.

Motion to adjourn

Seconded

All in favor.

Meeting is adjourned at 8:45 PM.