

Town of Barnstable
Zoning Board of Appeals
Minutes
August 5, 2009

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday August 5, 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 – Regulatory Review Design Planner and Carol Puckett – Administrative Assistant.

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

Laura Shufelt opens the hearing at 7:02 PM. She reads a summary of the appeals to be heard tonight. She indicates that several of the appeals are either being continued or withdrawn and will call one appeal out of order. She then calls the Mill Pond Estates appeal.

**Comprehensive Permit No. 2005-013 – Continued Mill Pond Estates
Modify House Designs & Allow Model Unit**

Opened June 10, 2009, continued June 17, 2009, July 22, 2009, and to August 5, 2009

Mill Pond Osterville Associates LLC, has requested a modification of Comprehensive Permit No. 2005-013 issued pursuant to MGL Chapter 40B for the development of 11 single-family dwellings. The modifications seek to change the design of the homes authorized for the development and permission to build one model home for the purposes of marketing the development. The property is addressed as 459 and 449 Old Mill Road, Osterville, MA and is shown on Assessor's Map 166 as parcel 001 and on Assessor's Map 143 as parcel 040. It is in a Residence C Zoning District.

Members assigned: Craig Larson, James McGillen, William Newton, Nik Atsalis, Laura Shufelt

Attorney Michael Schulz is representing the applicants. He indicates that Mr. Caggiano is unable to make this but had submitted a request to change the style of the homes and the ability to construct a model home. He indicates that they would like to withdraw their request

to build a model home as they have pre-sold one unit under agreement that can be used as the model home for the development.

Laura Shufelt indicates that they can now take a motion to withdraw the request for the construction of the model home.

James McGillen makes a motion to withdraw the request for the model home.

Seconded.

Vote:

All in favor.

Attorney Schulz then presents his request for the modification of the permit to change the styles of the homes as outlined in the staff report. As shown on the revised site plans the affordable units will remain on lots 2, 7 and 11 as in the original comprehensive permit and that they will be indistinguishable from the market rate homes. He indicates that the reason for the change of style is because it will be more cost effective as the homes will now be smaller in size and the prices are more in-line with the financial times of today. They are priced anywhere from \$399,000 to \$450,000 rather than \$695,000 to \$740,000. All contain 3 bedrooms instead of 4 bedrooms which will be easier for owners to heat which will also make it more environmentally sound. The applicant appeared before the Housing Committee on June 16, 2009 and there is a letter appended to the staff report as to them receiving approval. He asks that the Board grant the modification to accept the new house styles.

Laura Shufelt comments that, in the site plan, there seems to her that there are no additional waivers being sought than the original permit.

Attorney Schulz answers that it correct.

Laura Shufelt indicates that based on the current regulations of 40B, the plans would need to be signed by an architect. She asks if the Board could live with the condition that prior to a building permit they would be submitting plans that would be signed by an architect. She explains for single family homes the Town doesn't usually require plans signed by an architect but for 40B's if it 5 units or more, even though they are single family homes.

James McGillen makes a motion that this is an insignificant modification of a 40B permit.

Seconded.

Vote:

All in favor

The Board discusses adding the condition regarding the stamped architectural plans be submitted to the Board prior to the issuance of a building permit.

James McGillen moves that the petitioners request for permission to change the styles of the dwellings including the reduction of the previous 4 bedroom units to 3 bedroom dwellings be approved subject to the conditions as stated.

Seconded.

Vote:

AYE: Craig Larson, James McGillen, William Newton, Nik Atsalis, Laura Shufelt

NAY: None

Laura Shufelt informs Attorney Schulz that it was voted an insubstantial modification is in effect immediately and does not require an appeal period.

GRANTED WITH CONDITIONS

Laura Shufelt then calls the EAC appeal.

Appeal No. 2009-025 - Continued

EAC Disposal, Inc.

Modification of Variance No. 1996-14

Opened April 1, 2009, continued, May 20, 2009 and to August 5, 2009.

This Appeal was continued at the request of the applicant to allow for further plan review and update, as well as additional information. Staff anticipates that no action will be taken on this application other than a continuation of it to the hearing of September 23, 2009.

Members Assigned: William H. Newton, Michael T. Hersey, Alex Rodolakis, Brian Florence, Laura F. Shufelt - Associates
Members Present: Nikolas J. Atsalis, George T. Zevitas

EAC Disposal, Inc., d/b/a Cape Resources Company has applied for a Modification of Variance No. 1996-14. The modification is sought to allow for revisions to the site that include a new wood processor and staging area, alteration to interior site circulation, and additions and alterations to screening berms and landscape. The property is addressed 280 Old Falmouth Road, Marstons Mills, MA as shown on Assessor's Map 100 as parcel 008. The lot is in a Residence F Zoning District.

She indicates that it was opened and is going to be continued to September 23, 2009 at 7:00 PM.

Motion to continue to September 23, 2009 at 7:00 PM

Vote:

All in favor

CONTINUED TO SEPTEMBER 23, 2009 AT 7:00 PM

Laura Shufelt then calls the Waldron/Northeast Marketing Group appeals and reads it into the record.

Appeal No. 2009-041 - New

**Waldron/Northeast Marketing Group
Appeal of the Building Commissioner**

Timothy J. Waldron, Trustee of Northeast Marketing Group Realty Trust has appealed the May 19, 2009 decision of the Building Commissioner that the subject property, 1330 Phinney's Lane, Hyannis, MA, does not have the zoning benefits of the Medical Services Overlay District (MSOD) as it is zoned Residence F-1. The appellant had requested the Board confirm that its property is included within the Medical Services Overlay District and that it is located within its boundaries and subject to, and benefited by, the provisions of that overlay district. The property is addressed as 1330 Phinney's Lane, Hyannis, MA. It is shown on Assessor's Map 274 as parcel 016/X02. It is in a Residence F-1 Zoning District.

Appeal No. 2009-045 - New

**Waldron/Northeast Marketing Group
Modification of Use Variance No. 1995-109**

Timothy J. Waldron, Trustee of Northeast Marketing Group Realty Trust has petitioned for a modification of Condition No. 2 of Use Variance No. 1995-109. The petitioner is requesting that Condition No. 2 be changed to include the use of the building for medical offices (including, without limitation, offices for physical therapy and chiropractic services) and/or dental offices as allowed for in Medical Services Overlay District (MSOD). The property is addressed as 1330 Phinney's Lane, Hyannis, MA. It is shown on Assessor's Map 274 as parcel 016/X02. It is in a Residence F-1 Zoning District.

Laura Shufelt indicates that Attorney Eliza Cox has submitted a letter today, August 5, 2009, asking for a continuance to September 16, 2009

Motion to continue September 16

Seconded

Vote:

All in favor

CONTINUED TO SEPTEMBER 16, 2009 AT 7:00 PM

Laura Shufelt then calls the Stuborn Limited Partnership appeal and reads it into the record.

Appeal No. 2009-043 - New

**Stuborn Limited Partnership
Appeal of the Building Commissioner**

An August 4, 2009 Agreement for "Stipulation of Voluntary Withdrawal of [this] Appeal without Prejudice", signed by Stuart Bornstein on behalf of Stuborn Limited Partnership, the Appellant, and Thomas Perry, Barnstable's Building Commissioner has been entered into the file. Based upon that agreement, this Appeal will be administratively withdrawn without prejudice as requested.

Stuborn Limited Partnership has appealed the May 28, 2009 decision of the Building Commissioner pursuant to Section 240-125(B)(1)(a), Appeals from Administrative Official. The appellant is appealing that decision from the Building Commissioner that stated the residential use of the property could not be reestablished as-of-right as that residential use has been discontinued for more that three years. The appellant is appealing that decision on the basis that the Commissioner had no authority to issue the decision and if the Commissioner had the authority that the Board overrule the decision and reverse it. The property is addressed 153 Freezer Road, Barnstable, MA. It is shown on Assessor's Map 301 as parcel 006. It is in a Marine Business-B Zoning District.

Members assigned: Craig Larson, James McGillen, William Newton, George Zevitas, Laura Shufelt

Laura Shufelt indicates that there is an agreement/ stipulation of voluntary withdrawal without prejudice which was submitted and signed by Mr. Bornstein, the Assistant Town Attorney and Tom Perry – Building Commissioner. She reads the letter into the record.

Motion to withdraw without prejudice.

Seconded

***Vote:
All in favor***

Laura Shufelt asks if they want to approve the minutes from May 6, 2009, May 20, 2009 & June 10, 2009

Motion is made to approve the minutes.

Seconded

***Vote:
All in favor***

Laura Shufelt then talks about the schedule and that the next hearing is August 19th..

Art Traczyk indicates that it will only be an administrative process and that he needs only one person to be here. He anticipates that there will not be a regular hearing.

James McGillen indicates that he will be here and nobody else has to be.

Laura then indicates that we are canceling September 2nd and would like to add a special meeting for August 26th for training on Chapter 40B. She indicates that Attorney Ruth Weil will be giving that training and that this, if the room is available, will be held in the Selectman's Conference Room. Then in September there will be a meeting on the 16th and 23rd.

They discuss the times for August 26th. They agree to 6:00 PM.

Motion to adjourn

Seconded

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

Meeting adjourned at 7:22 PM