



Town of Barnstable
Zoning Board of Appeals
Minutes
February 11, 2009

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday February 11, 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	Present
Brian Florence	Absent
George Zevitas	Present

Laura Shufelt opens the hearing at 7:04 PM. She reads a summary of the appeals to be heard tonight. She indicates that there has been a letter

7:00 PM Appeal 2009-003 – Continued

**Hirsch
Expand/Alter a Nonconforming Dwelling**

Opened January 14, 2009, continued to February 11, 2009 at request of the applicant. The continuance is requested to allow for review of the plans for an as-of-right building permit. As of this date, no application has been made to the Building Division.

Steven Hirsch and Steven Hirsch as Trustee of the 131 Ocean View Realty Trust has petitioned for a Special Permit pursuant to Section 240-92 Nonconforming buildings or structures used as single- and two-family residences. The petitioner is seeking to modify a single family structure with a portion of its reconstruction encroaching into a 10 foot side yard setback though no closer than existing encroachment. The subject property is addressed as 131 Ocean View Avenue, Cotuit, MA and is shown on Assessor's Map 034 as Parcel 060. The subject property is located in a Residence F Zoning District.

Laura Shufelt reads the letter from Attorney Kirrane asking for a withdrawal.

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

Michael Hersey makes a motion to allow the applicant to withdraw.

Seconded

Vote:

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

NAY: None

WITHDRAWN

She then calls the Berry appeal and reads a letter from the Attorney Eliza Cox asking for a continuance until April 15, 2009.

Appeal 2007-107 - Continued

Berry Request for a One-Year Extension

Administrative Process discussed by the Board on January 14, 2009, continued to February 11, 2009, to allow for a review by the Town Attorney's Office

A January 16, 2009, letter requested Town Attorney Ruth J. Weil review and input on the issue of the Board's authority to grant extensions of special permits issued pursuant to Section 240-125.C(3) of the Zoning Ordinance. Attorney Weil review is attached.

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

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

Laura Shufelt makes a motion to continue this to April 15, 2009.

Seconded

Vote:

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

NAY: None

CONTINUED TO APRIL 15, 2009 at 7:00 PM

She then gives a summary of the rest of the appeals being heard tonight. She indicates that it is not quite 7:15 and will wait until then to call the Corey appeal.

Remand Appeal No. 2006-024

**Corey
Conditional Use Highway Business District**

By a Joint Motion to Remand, the petition of Donald J. Corey, Jr., that sought a Special Permit pursuant to Section 240-25 (C)(1) Conditional Use in a Highway Business District and Modification of Special Permit No. 1969-66 to redevelop property for the retail sales of liquor, has been remanded back to the Zoning Board for further proceedings to consider a withdrawal of the petition. The property is addressed 1030 Falmouth Road (Route 28), Centerville/Hyannis, MA, and is shown on Assessor's Map 250 as parcel 065. It is in a Highway Business and Residence D-1 Zoning District.

At 7:27 Laura Shufelt indicates that they will hold off on the Corey appeal until the end of the hearing.

At 7:30 Laura Shufelt calls the Cape Cod Five Cents Savings Bank appeal. She reads it into the record.

Appeal No. 2009-005 - New

**Cape Cod Five Cents Savings Bank
Conditional Use Drive-thru Banking**

Cape Cod Five Cents Savings Bank has petitioned for a Special Permit pursuant to Section 240-25.C(1) Conditional Use Special Permit in the Highway Business Zoning District. The petitioner is seeking to add a second drive-thru banking lane to the existing banking facility including the extension of the existing roof canopy and installation of an automatic teller machine (ATM). The property is located within the Centerville Shopping Center and is addressed 1620 Falmouth Road, Centerville, MA. It is shown on Assessor's Map 209 as parcel 013, and zoned HB - Highway Business.

Members assigned: Craig Larson, Michael Hersey, William Newton, Nik Atsalis, Laura Shufelt

Attorney Myer Singer from Dennisport is representing the applicant. Also with him are Peter Sullivan of Sullivan Engineering, the executive vice-president and treasurer of the Cape Cod Five Cents Savings Bank, Philip Wong, Don Lonergon, the architect.

Attorney Singer indicates that they are seeking a second drive-up window at the bank and gives a summary of the relief being requested. He gives a history of when the bank was built and hands in a picture of the locus to the Board members. He points out where the current drive-up window is located. He indicates that in 1974 the bank was built and that plan showed a drive-up lane which they had not exercised that plan. They are also asking for a conditional special permit for the existing drive-up window to clear up the record for that window. He cites the reasons according to the conditions of a special permit. The existing drive-up windows have existed since 1974 and there hasn't been any adverse effect. The number of transactions has been stable and this window is not to make it more successful but to serve customers who are waiting in line. There will be improved site circulation as the driveway goes from behind the building into the parking lot and sometimes the vehicles go the opposite way. Also, there will be additional signage, a fire lane with appropriate signage and a sign indicating that it is a one way – do not enter. He believes it will improve and ensure that the present safe conditions continue. All construction will comply with the dimensional requirements. Also, the additional roof area will be compatible with the present building. He points it out on the easel. He has seen the conditions on the staff report and has no problem with any of them except for condition #1, which they would like to mention that the new window will be used both for automatic drive up as well as pneumatic tube function. Also, condition #5 which refers back to #3, and believes #3 should be condition #4 which he believes is a typo. Art indicates that it should be #4.

William Newton asks how the deliveries functions

Attorney Singer indicates that trucks and cars can drive in and go left and go behind the Tedeski's building.

William Newton asks if all deliveries are just through the back of the buildings

Attorney Singer indicates that he believes they some deliveries are in the front as well as the back.

William Newton asks if Attorney Singer has an issue with the second point of the Site Plan Review.

Attorney Singer explains. Philip Wong indicates that most deliveries for the bank come through the front door.

Michael Hersey comments that the Site Plan letter says that the whole plaza will get deliveries from the west end of the building and asks if that is accurate.

Attorney Singer indicates yes and that they would have to come from the east end of the plaza.

Laura Shufelt asks about the traffic coming around the corner of the bank building.

Attorney Singer indicates that the steel bollards that are coming out.

Peter Sullivan points out the new traffic pattern around the building.

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 does positive findings.

With respect to appeal 2009-005, Cape Cod Five Cents Savings Bank requesting a Conditional Use Special Permit under

Section 240-25.C(1) Conditional Use for a Highway Business Drive-thru banking facility, the Board finds the following facts in place:

- 1. Section 250-25.C provides that any use permitted in the B District can be permitted as a conditional use within the Highway Business Zoning District. Banks with drive-through are permitted in the B District as-of-right. Therefore, the Board can authorized drive-through banks within the Highway Business Zone by special permit.**
- 2 A site plan process has been completed. They have, in their hands, the approval letter and the site Plan Review Committee what is taken place in the design of this new banking facility is approvable.**
- 3. The banking activity has been ongoing at this locus as a drive-up window since 1974. Over those 35 years the bank has served the community and the neighborhood. The addition of the second drive-thru ATM lane will not substantially add to the traffic nor will it adversely affect the health nor represent a safety issue. It is a full service bank and therefore it should add to the convenience of the community and the public who use the shopping center.**
- 4. No letters in opposition have been received and they have not heard from the general public any adverse comments on it.**
- 5. The location of the bank is within a designated Commercial Activity Center and the proposed addition of drive-thru lanes as accessory to a full service bank is consistent with the Comprehensive Plan's goals for the Centerville Route 28 Commercial Center and the Centerville Village Plan sections.**

Vote:

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

NAY: None

William Newton make a motion that the requested grant for a special permit be approved with the following suggested conditions that are on Page 4 that he believes council has already gone through and that there has been some small issues around two conditions. The six conditions on Page 4 are the conditions that will be added to this.

Seconded.

Craig Larson wants to add on Condition #1 that the last sentence "should that use be for walk-in banking cease, this permit shall be void. If they can strike the word "walk-in" as it is accessory to the bank. He wants it to read "should that use for banking cease, this permit shall be void".

Laura Shufelt suggests at the end of the sentence where it says "one drive-thru lane for window banking and the second for automatic banking transactions and wants to add "pneumatic tube transactions and would add that to Condition #1, also on Condition #5 should reference Condition #4 instead of Condition #3.

William Newton accepts the amendments.

Vote:

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

NAY: None

SPECIAL PERMIT GRANTED WITH CONDITIONS

At 7:57 Laura Shufelt calls the Fireman appeal and indicates that the attorney is asking for a continuance to March 25 at 7:15 PM

Laura Shufelt reads the appeal into the record

Appeal 2009-006 - New

**Fireman
Appeal of the Building Commissioner**

Paul and Phyllis Fireman have appealed the Building Commissioner's letter of November 19, 2008 pursuant to Section 240-125(B)(1)(a), Appeals from Administrative Official. The letter expresses the Commissioner's opinion that 92 South Bay Road, Osterville, Mass., constitutes a single lot and that the demolition of the dwelling on the property and construction of two new dwellings on that property is not allowed under the zoning ordinance. The appellant is requesting that the Zoning Board of Appeals overturn the Building Commissioner's November 19, 2008 letter and find that no zoning relief is required to allow for the construction of two dwelling on the 92 South Bay Road lot. The property is addressed as 92 South Bay Road, Osterville, MA and is shown on Assessor's Map 093 as parcel 042-001. It is in a Residential F-1 Zoning District and the Resource Protection Overlay District.

William Newton makes the motion to continue this appeal to March 25, 2009 at 7:15 PM.

Seconded.

Vote:

AYE: George Zevitas, Nik Atsalis, Alex Rodolakis, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

NAY: None

CONTINUED TO MARCH 15, 2009 AT 7:15 PM

Laura Shufelt then calls the Corey remand appeal. She reads it into the record.

By a Joint Motion to Remand, the petition of Donald J. Corey, Jr., that sought a Special Permit pursuant to Section 240-25 (C)(1) Conditional Use in a Highway Business District and Modification of Special Permit No. 1969-66 to redevelop property for the retail sales of liquor, has been remanded back to the Zoning Board for further proceedings to consider a withdrawal of the petition. The property is addressed 1030 Falmouth Road (Route 28), Centerville/Hyannis, MA, and is shown on Assessor's Map 250 as parcel 065. It is in a Highway Business and Residence D-1 Zoning District.

Members assigned: George Zevitas, Craig Larson, Michael Hersey, William Newton, Laura Shufelt
Attorney David Lawler is representing Donald Corey. He gives a brief history of how this appeal had transpired from relief that was being sought before the Zoning Board of Appeals, the appeal to the Superior Court by an abutter, and the referral to the Cape Cod Commission. He indicates that

his client has found another location for his business, Blanchard's Liquors, and due to these reasons and others he has requested that the Superior Court matter be remanded back to the Zoning Board of Appeals and is requesting to withdraw his application without prejudice.

Laura Shufelt comments to Town Attorney, Ruth Weil, that the staff report mentions withdrawal with prejudice.

Attorney Weil indicates that in this case that it doesn't make any difference and would agree with a withdrawal with prejudice as this is not a repetitive petition under MGL 40A section 16 where there is any prejudice as it was approved initially. She thinks that her recommendation is a reflection in the staff report and that the withdrawal be granted rendering the existing permit null and void. She thinks it resolves any issues along those lines.

Attorney Lawler comments that this would make any issues before the Cape Cod Commission moot.

William Newton makes a motion to the remand by Superior Court, that based upon the motion to remand filed with the Board and at the applicant's request to withdraw 2006-024, he moves to grant a withdrawal with prejudice and that the decision filed by the Board on April 30, 2008 that granted a permit be hereafter null and void.

Attorney Lawler indicates that the joint request is without prejudice and that the Town did not object.

William Newton indicates that he will amend it to be a withdrawal without prejudice.

Michael Hersey seconds.

Vote:

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

NAY: None

WITHDRAWN WITHOUT PREJUDICE

At 8:05 Laura Shufelt opens the Lemos/Prifti appeal and reads it into the record.

Appeal 2009-009 - New

Lemos/Prifti

Demo/Rebuild Nonconformity to Setbacks

John A. Lemos and Veni Prifti as Trustees of Lemos Prifti Realty Trust has petitioned for a Special Permit pursuant to Section 240-91.H(2) Nonconforming Lot - Developed Lot Protection. The petitioner is seeking the permit to allow for the demolition of the existing dwelling and rebuilding of a new single-family dwelling. The location of the proposed dwelling is based upon the location of the existing dwelling and not in conformity to the required 30-foot minimum front yard setback of the zoning district. The property is addressed 19 Bay Lane, Centerville, MA and is shown on Assessor's Map 186 as parcel 067. The property is in a Residence D-1 Zoning District.

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

Attorney Ford is representing the applicant. Also present is Michael Leddy, the builder. Attorney Ford indicates that this project is under construction and that a building permit was applied for. It was an existing single family home and was issued a demo/rebuild as-of-right. A foundation and

demo permit issued and it was thought it complied. It was only discovered after the foundation was put it that the setback did not comply. He indicates that t is an improvement by 4 feet but does not meet the current setback requirements of the district. He then indicates that Mr. Leddy was issued a stop work order because of it and consulted Michael Ford which in turn is why they are applying for a special permit. He indicates that all other requirements are met except for this one setback. He suggests that there is no more substantial detriment and that this will be in greater compliance. It has 2 bedrooms currently and they are not seeking more bedrooms.

Craig Larson asks if Attorney Ford or his client has a problem on condition #2 if they had to go to the Board of Health and Registry of Deeds to have this restricted.

Attorney Ford indicates that he doesn't believe this is a nexus, if they record this it will permit it will be on record.

Attorney Ford indicates that they don't have a problem with it being deed restricted.

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

Craig Larson makes findings.

John A. Lemos and Veni Prifti as Trustees of Lemos Prifti Realty Trust has petitioned for a Special Permit pursuant to Section 240-91.H(2) Nonconforming Lot - Developed Lot Protection. The petitioner is seeking a special permit to allow for the demolition of the existing dwelling and the rebuilding of a new single-family dwelling. The location of the proposed dwelling is based upon the location of the existing dwelling and not in conformance with to the required 30-foot minimum front yard setback of the zoning district. The property is addressed 19 Bay Lane, Centerville, MA and is shown on Assessor's Map 186 as Parcel 067. The property is in a Residence D-1 Zoning District.

The locus is a 0.43-acre lot. According to the Assessor's record it was originally developed in 1947 with a one-story, 1,239 sq.ft, two-bedroom single-family dwelling with a 308 sq.ft. attached garage.

In 2008, a building permit was sought to demolish the existing dwelling and reconstruct a new two-story, 3,119 sq.ft., two-bedroom single-family dwelling with an attached garage

Plans for the demolition and reconstruction were submitted to the Building Division and on December 11, 2008, Building Permit No. 200806635 was issued for the demolition of the existing dwelling and Building Permit No. 200806633 was issued for the construction of the new dwelling. The plans submitted with those applications conformed to the lot coverage and floor area ratio limitations

On January 21, 2009 the builder was notified of the error and instructed to halt construction on the garage area of the home and to seek relief from the Zoning Board.

Upon further review, it has been determined that the infringement is a 12 sq.ft. corner of the garage foundation which intrudes into the front yard setback area. The front yard setback of the foundation is 26.5 feet. An infringement of 3.5 feet.

The applicant is now before the Board seeking a Special Permit pursuant to Section 240-91.H(2), Nonconforming Lot - Developed Lot Protection by Special Permit, to allow for the rebuilding based

upon the pre-existing, legally created nonconformity in the front yard setback of the original structure

The application falls within a category specifically excepted in the ordinance for a grant of a special permit.

- Section 240-91.H of the Ordinance provides for the demolition and rebuilding of a new dwelling on pre-existing, legally-created nonconforming lot including the continuation of certain nonconformities in structure setback by special permit. Special permits under this section are to be issued in combination (demolition of the existing dwelling and rebuilding of a new dwelling). In this instance, a demolition and building permit had been issued prior to the need for this special permit being discovered. The discrepancy in the front yard setback was an honest oversight and sufficient information exists to evaluate the request.***
- After 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.***
- The need for this special permit is for only 12 sq.ft., of the building which infringes into the front yard setback. The rest of the structure conforms to all setback requirements. The 26.5 foot front yard setback is more conforming than the prior building that was located 22.7 feet off Bay Lane. Although the building is larger in gross area, the lot coverage is expanded by only 256 sq.ft. The dwelling is to remain a two bedroom dwelling and would therefore not represent an increase in nitrogen loading in this area of concern for protection of coastal embayments.***
- The demolition/rebuilding provision in the Ordinance is specifically designed so that the new dwelling can be located based upon the prior building. The proposal therefore fulfills the spirit and intent of the zoning ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.***

Vote:

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

NAY: None

Craig Larson makes a motion that the Board grant the relief for the demolition and reconstruction of a single-family dwelling on an undersized lot not in compliance with required front yard setbacks - it may wish that they will do the following conditions:

They will condition #1 through 5 with the amendment on #2 that they will supply a Board of Health deed restriction for a two bedroom house filed at the Registry of Deeds and prove to the Building Commissioner upon occupancy permit.

Seconded

Vote:

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

NAY: None

SPECIAL PERMIT GRANTED WITH CONDITIONS

Nik Atsalis leaves at 8:20 PM

Laura Shufelt calls the Pendergast/Cape Cod Package Store appeal at 8:21 PM. She reads the appeal into the record.

Appeal No. 2009-007 & 008 – Continued

Pendergast/Cape Cod Package Store

Opened January 28, 2009, continued to February 11, 2009.

Continued for additional review; including review by Attorney Ford of case laws that would allow for the Board to grant a special permit and variance to a required provision of the permit, possible improvements at Sachem, Phinney's and Old Post intersection, and draft findings and conditions.

Members Previously Assigned: William Newton, Craig Larson, Laura Shufelt, Brian Florence, George Zevitas
Associate Present: Alex M. Rodolakis

Appeal No. 2009-007

Alter/Expand Nonconforming Use

Pendergast Falmouth RD Realty Trust has petitioned for a Special Permit pursuant to Section 240-93.B, Alteration or Expansion of a Pre-existing Nonconforming Building or Structure not used as a Single- or Two-family Dwellings and Section 240-94.B, Expansion of a Pre-existing Nonconforming Use. The petitioner is seeking to expand and alter an existing nonconforming building housing a nonconforming use of a liquor store, the Cape Cod Package Store. The proposal is to expand the existing building with 696 square feet of retail and 428 square feet of office space. The location of the proposed expanded building area does not conform to the required setbacks for the district. The subject property is addressed 1495 Falmouth Road (Route 28), Centerville, MA and is shown on Assessor's Map 209 as parcel 081. It is in the HO, Highway Office Zoning District.

Appeal No. 2009-007

Variance to Special Permit Provision

Pendergast Falmouth RD Realty Trust has applied for a Variance to Section 240-94.B provision 1. That provision requires that "[a]ny proposed expansion of the [nonconforming] use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties." The locations of the proposed additions are within the district's required 45-foot front yard setback off Falmouth Road (Route 28) and Old Post Road. The subject property is addressed 1495 Falmouth Road (Route 28), Centerville, MA and is shown on Assessor's Map 209 as parcel 081. It is in the HO, Highway Office Zoning District.

Members assigned: William Newton, Craig Larson, Laura Shufelt, George Zevitas, Alex M. Rodolakis

Attorney Michael Ford is representing the applicant. Also here is Kurt E. Raber from Brown, Lindquist, Fenuccio & Raber Architects, Inc. He indicates that BSC is not here this evening. Attorney Ford comments that as indicated in tonight's agenda, there were several issues that were to be addressed. He discussed with the Town Attorney the ability of the Board to grant a variance who he believes concurs that any provision of the ordinance is able to be varied unless it is specifically prohibited that it be varied and this one is not therefore a variance can be granted. Secondly, they met on site with Dr. Skinner who represented the neighborhood association at Sachem Drive. They met as a group and told them that what they would to see them do in addition to signage, if possible, to have a mirror installed that they would be able to see when they came to the end of the road. The mirror would be installed within the layout of Phinney's and possibly a portion of Old Post as they intersect. After communicating and meeting with DPW officials, they were informed that the Town has a strict policy that no mirrors are allowed within Town layouts for a variety of reasons due to liability which Dr. Skinner understood. Approved signs were reviewed by Mr. Burgmann and he indicates that a sign might be able to put there but that the money for it is not in the DPW budget. Attorney Ford indicates that his client would expend the money for the sign which they would agree to as a condition of the granting of this relief. He then refers to a recent letter from Dr. Skinner which was submitted to the ZBA asking to withdraw their opposition. He also has seen proposed findings and conditions and comments that the conditions that tie their ability to get Mass Highway approvals of the closure of the curb cut and also the realignment of right-in and right-out as conditions precedent to an occupancy permit, they understand and have anticipated that those conditions. However, he would like to address condition #5 which his calculation for square footage differed from the staff report. He indicates that his calculation is 4038 square feet which includes the recycling section which was not counted which is associated with the retail sales. Also, the additional language in that sentence, they would suggest be stricken from:

"the back-of-the store office and storage, accessory to the retail sales shall not exceed 1,018 sq.ft., as shown on Sheet A1.1 Proposed First Floor Plan submitted to the file."

The reason is that the first floor office is a single person real estate office. The office for the store is upstairs and so that office is not accessory to the retail as this would restrict it. His suggestion is that you cross the rest of that out and simply say after the 4, 038, "all is shown on the plans referenced in Condition #2" as in Condition #2 Art has made the permit conditional upon the plans submitted and all the elevations including the floor plans and that they can't go beyond those. He would also suggest that the next 2 sentences stay:

"Retail sales are expressly prohibited for any other area of the building. The basements shall only be used for accessory storage and utilities.

However, on the third sentence: "The second floor shall only be used for accessory office and storage."

He would add "to the retail use". He would also suggest another sentence if they feel necessary, "the first floor office will not be used as accessory to the retail business but will be used as a separate real estate office" as he thought that might clarify it.

William Newton asks about site plan review and indicates there is no letter that anything has been approved and asks where they are in the process.

Attorney Ford indicates the letter from Site Plan Review is the approval letter and if they need anything more he is unaware of it. He indicates that the last he had heard from either from Growth Management or Site Plan is from Ms. Buntich indicating that she would speak to the Building

Commissioner, Mr. Perry about the Site Plan Review letter and he reads that letter dated December 30, 2008 as an approval letter with two conditions.

Art Traczyk indicates that he was under the impression that the Building Commissioner was leery about issuing the letter without those lease components relating to the state land and town property.

Attorney Ford indicates that it was never communicated to them and that they have been before them 4 times on this project.

JoAnne Miller-Buntich, Interim Director of Growth Management speaks and indicates that during the Site Plan Review process, both her and Steve Seymour have attended various sessions on this project. When this became an issue at the last ZBA hearing she discussed that issue with Attorney Ford, Growth Management staff and DPW staff and they wanted to work to address it. What they did was, the applicant had their traffic engineer from BSC group provide the Board with some information and a follow-up addendum on February 9th. Both engineers agreed that the reconfiguration, the closing of the curb cut on Route 28 and the proposed right-in and right-out only will make the impact on traffic neutral and make it better. Also, they are comfortable with the applicant's agreeing to permit being contingent upon approval by Mass Highway. Additionally, they offer to facilitate or participate in discussions with the applicant and Mass Highway so that everyone is on the same page. As to the Site Plan Review letter, she spoke to Tom Perry, the Building Commissioner, and indicated that Growth Management was withdrawing their concerns about traffic based on what she had just spoke of.

Craig Larson asks if they can condition the special permit on a satisfactory Site Plan Review letter to be submitted.

Art Traczyk indicates that you can request a satisfactory letter but essentially what Site Plan Review was concerned about is in the conditions.

Craig Larson asks about page 3, #6 "traffic information by applicant" and asks Art Traczyk to explain.

Art Traczyk indicates that it was from Attorney Ford's information from the first session of the hearing and is what the projection was for the peak hour.

Craig and Art discuss.

Laura Shufelt asks if there is anyone here from the public who would like to speak either in favor or in opposition.

Mr. Polia who lives at 118 Sachem Drive in Mattakeese Village talks about the people who had signed the petition which was submitted at the last hearing and indicates that most of them don't live in the Mattakeese Village and are not involved with the everyday traffic and wants to know what kind of signs will be there and sees people ignoring existing signs. He doesn't know how the signs will control the traffic and is concerned about the traffic especially in the summer.

Attorney Ford comments that they went to the Centerville Civic Association and the Centerville Beautification Association and the Mattakeese Village and as a whole are satisfied and is not sure they can resolve that site line vision problem that exists on that highway.

Laura Shufelt indicates she will do findings. She indicates that they have some new findings in the draft report dated February 4, 2009. She indicates that they are deleting condition #6 and condition #5 as amended by applicant. Craig Larson wants to add on #9 that the Mattakeese Village Association has submitted a letter in support.

Laura Shufelt does findings. She summarizes what is written on the latest staff report dated February 9, 2009:

Appeal No. 2009-007

Special Permit pursuant to Section 240-93.B, Alteration or Expansion of a Pre-existing Nonconforming Building and Section 240-94.B, Expansion of a Pre-existing Nonconforming Use

- 1. In Appeal No. 2009-007 Pendergast Falmouth RD Realty Trust is seeking to expand a nonconforming retail sales business, the Cape Cod Package Store, and to alter and expand a nonconforming building by special permit. The subject lot is approximately 36,000 sq.ft. (.85 acres) and is located at 1495 Falmouth Road (Route 28) and Old Post Road in the village of Centerville. The lot is within the Highway Office Zoning District. It is developed with a single story building which houses the package store including accessory office and storage space owned and operated by the Pendergast family. The building also contains a one-room real estate office which is a principal permitted use in the district.**
- 2. The alteration and expansion of a pre-existing, legally-created nonconforming use is permitted by special permit pursuant to Section 240-94.B of the zoning ordinance. Alteration and expansion of pre-existing, legally-created nonconforming buildings that do not increase the degree of nonconformity is allowed by special permit pursuant to Section 240-93.B. The applicant has requested the permits to allow for the expansion of the liquor store to provide 3,882 sq.ft. of retail sales area and 1,018 sq.ft. of accessory store offices and storage areas on the first floor. The existing 7,753 sq.ft. building is to be enlarged by 1,490 sq.ft. Areas of that expansion are proposed within the required front yard setbacks for the zoning district, however not increasing the degree of the infringement established by the existing building.**
- 3. In concert with the expanded building area and use, the applicant has proposed a series of site improvements that include increasing on-site parking, closure of the easterly curb-cut on Route 28 and relocation and reconfiguring of the westerly curb-cut to function as a right-in and right-out divided driveway only. The site improvement plans have been reviewed by the site plan review committee and submitted to the Board.**
- 4. Public testimony has been received.**
- 5. With respect to Section 240 94.B Expansion of a Pre-existing Nonconforming Use, the retail sale of liquor was legally-created in conformity to zoning. It became nonconforming on July 6, 1998 with the rezoning of this area to Highway Office (HO) by Town Council adoption of Order No. 98-133. The rezoning to Highway Office no longer permits retail sales. The use is not expanded beyond the zoning districts in existence on the date it became nonconforming.**

6. *Provided certain safeguards are imposed to assure safe ingress and egress to the site that restricts left turning movements from and out to Route 28, the proposed expansion of the retail sales will not be more detrimental to the neighborhood affected or the general public.*

Laura Shufelt asks if anyone has any amendments. George Zevitas comments that they were going to add that there was a letter from the association. Laura adds the following:

7. *A letter was received from the Centerville Civic Association in support of this relief.*

Vote:

AYE: *George Zevitas, Alex Rodolakis, Craig Larson, William Newton, Laura Shufelt*

NAY: *None*

Based on those findings, Laura Shufelt moves to they grant special permit 2009-007 with the conditions as written in the staff report with the exception to #5 that will read "upon completion of the improvements the retail sales area including the walk-in cooler and vestibule area shall not exceed 4038 square feet" deleting the rest of that sentence. Also, "retail sales are expressly prohibited by any other area of the building and the basements shall only be used for accessory storage and utilities. The second floor shall only be used for accessory office and storage to the retail use. The first floor office shall not be used as accessory to the retail use."

Attorney Ford wants to amend on the first sentence after the phrase 4038, "all is shown on the plans refereed to in Condition #2".

Laura Shufelt accepts the amendment.

Laura Shufelt then indicates that Condition #9, will read: "the applicant shall also be responsible to assure the additional signage is installed to alert motorist to turning traffic at the intersection at Phinney's Lane, Old Post Road, and Sachem Drive. The type and location of the signage shall be determined by the Department of Public Works and the cost of signs and installation shall be the responsibility of the applicant."

Craig Larson seconds.

Vote:

AYE: *George Zevitas, Alex Rodolakis, Craig Larson, William Newton, Laura Shufelt*

NAY: *None*

GRANTED WITH CONDITIONS

Alex Rodolakis then does the findings:

1. *In Appeal No. 2009-007 Pendergast Falmouth RD Realty Trust is seeking to expand a nonconforming retail sales business, the Cape Cod Package Store, and to alter and expand a nonconforming building by special permit. The subject lot is approximately 36,000 sq.ft. (.85 acres) and is located at 1495 Falmouth Road (Route 28) and Old Post Road in the village of Centerville. The lot is within the Highway Office Zoning District. It is developed with a single story building which houses the package store including accessory office and storage space owned and operated by the Pendergast family. The building also contains a one-room real estate office which is a principal permitted use in the district.*

2. ***The alteration and expansion of a pre-existing, legally-created nonconforming use is permitted by special permit pursuant to Section 240-94.B of the zoning ordinance. Alteration and expansion of pre-existing, legally-created nonconforming buildings that do not increase the degree of nonconformity are allowed by special permit. However, in this case the expanded areas of the building are situated in the 45 foot front yard setback. Provision 1 of the Zoning Ordinance specifies that any proposed expansion of use shall conform to the established setbacks for the zoning district in which it is located or such greater setbacks as the Zoning Board of Appeals may require due to the nature and use and its impact on the neighborhood and surrounding properties.***
3. ***The subject lot is triangular in shape and is located at the intersection of Route 28, Phinney's Lane and Old Post Road. The shape of the lot is unique to the zoning district in which it is located as two of its three sides require the 45-foot setback. As a direct result of the shape of the parcel, a literal enforcement of the ordinance creates a hardship as virtually no addition can be accommodated without infringing into this 45-foot setback.***
4. ***The proposed expansion is a modest expansion of the building and when compared to the overall proposed improvements to the site and building, it would not be detrimental to the public good, nor would it be in derogation of the spirit and intent of the ordinance as the expansion will not be located any closer than the closest portion of the existing building to Route 28 and Old Post Road. In addition, much of the existing front yard area abutting Route 28 is paved and devoted to traffic and parking. That area is to be restored to a landscaped front yard area more in keeping with the objectives for yard setbacks.***
5. ***There was opportunity for public comment on this variance and believes they did not receive any public comments.***

Vote:

AYE: George Zevitas, Alex Rodolakis, Michael Hersey, William Newton, Laura Shufelt

NAY: None

Alex Rodolakis makes a motion to grant the variance subject to the following conditions:

This variance is granted to a specific provision of 240-94B and is subject to all conditions of the special permit that was issued tonight by the Zoning Board of Appeals to the applicant for the expansion of the nonconforming use and building. This variance may only be used in concert with that special permit. Shall that special permit expire, this variance shall also expire

Seconded.

Vote:

AYE: George Zevitas, Alex Rodolakis, Michael Hersey, William Newton, Laura Shufelt

NAY: None

GRANTED WITH CONDITONS

Laura Shufelt indicates that the minutes from December 11, 2008 will be voted on at the next meeting.

Board discusses when the next meeting will be which will be on March 25, 2009.

Motion to adjourn

Seconded

All in favor

Meeting adjourned at 8:57 PM
