

**Town of Barnstable**  
**Zoning Board of Appeals**  
**Minutes**  
**June 9, 2010**

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***A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday June 9, 2010 at 7:00 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. A quorum was met. Also present were JoAnne Buntich – Director of Growth Management, Charlie McLaughlin – Assistant Town Attorney, Art Traczyk – Principal Planner– Elizabeth Jenkins, Principal Planner, and Carol Puckett – Administrative Assistant.***

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

***Laura Shufelt opens the hearing at 7:13 PM. She reads a summary of the appeals being heard tonight. She then calls the Gregory appeal and reads it into the record:***

**Appeal No. 2010-003 - Continued**

**Gregory  
Expand Nonconforming Structure & Accessory Uses**

Opened January 27, 2010, continued to March 10, 2010, April 14, 2010, May 12, 2010 and to June 9, 2010. This was continued to allow for the review and input of the Town Attorney's Office.

Members Assigned: William H. Newton, Brian Florence, Alex M. Rodolakis, James F. McGillen, Laura F. Shufelt  
Decision Due: July 22, 2010

Nathaniel A. Gregory has petitioned for a Special Permit pursuant to Section 240-93 B – Alteration or Expansion of a Pre-existing Nonconforming Structure and a Special Permit pursuant to Section 240-44 A – Accessory Uses. According to the application submitted, the petitioner seeks the “construction of a pier to replace a prior pier” on an accessory lot located across the road from the principal lot on which the single-family dwelling it serves is located. The principal residential lot is addressed 428 Wianno Avenue, Osterville, MA and is shown on Assessor's Map 163 as Parcel 024. The accessory lot is addressed 320 East Bay Road, Osterville, MA and is shown on Assessor's Map 163 as Parcel 020. Both lots are in a Residential F-1 Zoning District.

***Attorney Albert Schulz is representing the applicant. Also with him is John O'Day from Sullivan Engineering.***

**Members assigned tonight: William Newton, Alex Rodolakis, James McGillen, George Zevitas, Laura Shufelt (George Zevitas is replacing Brian Florence who is not present tonight)**

**Laura Shufelt indicates that since the last meeting there was a letter from Charlie McLaughlin and also something today from Attorney Schulz which she hasn't had time to read.**

**Attorney Schulz asks that this be continued to the next available hearing  
Laura Shufelt indicates that she would like it to go forward tonight.**

**They discuss when it can be continued until. Art Traczyk requests an extension be done.**

**Motion to continue this to July 14th at 7:00 PM**

**Seconded**

**Vote:**

**All in favor**

**CONTINUED TO JULY 14, 2010 AT 7:00 PM**

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**James McGillen leaves.**

**Laura Shufelt then calls the Vinagre appeal and reads it into the record:**

**Laura indicates that Attorney Michael Schulz has requested that this be continued.**

**Appeal No. 2010-018 - Continued**

**Vinagre  
Variance for a Detached Family Apartment**

Opened, May 12, 2010, continued to June 9, 2010 at request of the applicant.  
No Members Assigned, No Testimony Given

Staff Report and Application Materials previously distributed to the Board.  
Decision Due: July 9, 2010

Norberto H. Vinagre has applied for a Variance to Section 240-47.1. Family Apartments. The applicant seeks a variance to allow for an existing apartment unit that is located in a detached structure to be utilized as a family apartment. The subject property is shown on Assessor's Map 209 as Parcel 071 and addressed 122 Old Stage Road, Centerville, MA. It is in a Residential D-1 and a Residential C Zoning Districts.

**Attorney Albert Schulz is here for his son Attorney Michael Schulz and requests that it be continued.**

**Motion to continue to July 14<sup>th</sup> at 7:00 PM**

**Seconded**

**Vote:**

**All in favor**

**CONTINUED TO JULY 14, 2010 AT 7:00 PM**

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**Laura then calls the Balise appeals and reads them into the record:**

**Appeal No. 2010-021**

**- New**

**Balise Automotive Realty, LP**

## Conditional Use Special Permit - Automobile Dealership

Balise Automotive Realty, LP has petitioned for a Conditional Use Special Permit pursuant to Section 240-25.C(1), Conditional Uses in the Highway Business Zoning District to allow for the display of vehicles as a part of the Balise Automobile Dealership. The subject lots are addressed as 516 and 528 Bearses Way, Hyannis, MA and are shown on Assessor's Map 293 as Parcels 008 & 009. The lots are in the Highway Business and Business Zoning Districts.

Appeal No. 2010-022

- New

Balise Automotive Realty, LP

Special Permit Nonconforming Buildings or Structures

Balise Automotive Realty, LP has petitioned for a Special Permit pursuant to Section 240-93.B, Nonconforming Buildings or Structures. The petitioner is seeking to demolish the existing buildings and redevelop the site for display of vehicles. The redeveloped site will not conform to current required landscape buffers and the permit is sought to allow the redevelopment based upon the existing nonconformities in the lots. The subject lots are addressed as 516 and 528 Bearses Way, Hyannis, MA and are shown on Assessor's Map 293 as Parcels 008 & 009. The lots are

**Members assigned tonight: William Newton, Craig Larson, Alex Rodolakis, George Zevitas, Laura Shufelt**

**Attorney Michael Ford is here representing the applicant. Also with him is Matt Eddy site engineer from Baxter & Nye who has prepared the plans with this application, and the principal of Balise Automotive Realty, Mr. Jeff Balise. He gives a summary of the relief being requested. He gives a brief history of the location and project. He indicates that the first lot (516) is immediately on the corner and site of a car wash that is closed. The proposal also includes an adjoining parcel on 528 which currently has a vacant structure on it. There are two curb cuts that serve those parcels. Both lots are in HB and one also in B but both have been treated as they are in the HB. They are in AP overlay district which is the least restrictive of the groundwater districts. Both the car wash and retail store has been closed. They would like to raze both structures. The proposal is to redevelop the site and the lots would be combined and in place of those structures is a vehicle display area in conjunction with the adjoining Ford dealership. One of the curb cuts will be closed as indicated in Site Plan Review. A landscape buffer will be established for the first time. It is proposed to be treed and the Town Warden had some input as to what type of trees that they were looking for in order to improve the area. The second curb cut (furthest away from Bearses Way) will be narrowed to 24 feet and will be limited. Also, as part of this redevelopment further down on Bearses Way, which is currently a vehicle display area and storage area, there will be a car wash constructed which Site Plan Review has seen and anticipate that this will be approved. It is in the Business zone and didn't need relief and also in the AP zone. The carwash will be open to the public and available to the dealership. He walks through the criteria for special permits. He indicates that an approval letter was issued today from Site Plan Review. Also, on the second permit under 240-94B, the reason they need it is that there is one portion that doesn't comply which is the landscape buffer. He believes they are making the condition better and is more beneficial as they are improving the conditions. He would like to address the Board on the suggested conditions. First is the one involving the curb cut on Bearses Way. Also, there is a provision in there that suggests that there should be fencing and he is suggesting some language which he hands to the Board. He clarifies that he is referring to the split rail fencing. He had a discussion with Art Traczyk this afternoon and he understood that the intent was to not have cars parked out on the grass. He discussed it with Mr. Balise who has not done it at any of his other dealerships. He suggest new language which would be "Parked vehicles shall be prevented from parking on or overhanging into the green area by the placement of vehicle stops to delineate and protect the**

***green buffer from the interior parking area and that the fence requirement be eliminated” The other concern he has is #5 of the condition of the first special use permit. His proposed language would be to order the applicant to limit the use of the curb cut consistent with the condition as opposed to simply ordering it to be closed causing them to coming before them to appeal it. His proposed language would be “Should that curb cut become one of common use to enter or exit the dealership, the Building Commissioner can request and order that the applicant take steps to limit the use of the curb cut consistent with this condition”.***

***Alex Rodolakis doesn’t think that the stops would be enough and there would be uniformity with a fence. He would be more in favor of a fence.***

***Attorney Ford’s concern is that anything that partially obstructs is counter productive and the goal is to have the vehicles seen and a fence would not be conducive to that.***

***Craig Larson suggests maybe a single split rail.***

***Attorney Ford comments that this is just for the inventory of the cars and agrees with Alex Rodolakis as he has seen a dealership with cars on the lawn who have been conditioned not to.***

***Craig Larson asks what will happen with the other building***

***Attorney Ford indicates that they own other parcels but that this area needed immediate attention and is the first step in cleaning up the area.***

***Jo Anne Buntich indicates that this is a very busy intersection and the State has just completed a safety survey of the intersection and they are looking to make some improvements. Additionally, the Town is preparing imminently to do streetscape and pavement upgrades to Corporation and Enterprise Roads. She was satisfied that this was the best solution to this project. They had a lot of conversation about the buffer and wanted the green area and feels that the applicant has accomplished that.***

***Craig Larson asks what would happen if these lots were sold off.***

***Art Traczyk indicates that if it was converted to a parking lot that it would have to be upgraded and that they would have to come back to the ZBA for permission.***

***Jo Anne Buntich indicates that this could be handled with a finding.***

***Laura Shufelt asks about delineation of where the vehicles are to be placed. Matt Eddy indicates that it is not stripped parking as it is not designed to be a parking area and pointes out the defined areas.***

***Alex Rodolakis asks about restriction about ramps or the ability to cars being on platforms.***

***Art Traczyk indicates that they had not put that into the conditions.***

***Attorney Ford has asked for a recess to consult with his client.***

***Laura Shufelt calls a ten minute recess. Laura calls the hearing back in session at 8:08 PM.***

**Attorney Ford indicates that he has had an opportunity to discuss this with Mr. Balise and that Mr. Balise is okay with no ramps or platforms. As to the second issue, he would ask the Board hear directly from Mr. Balise.**

**Mr. Balise speaks and indicates that they now have 19 dealerships and the setback issue exists in almost every town they operate in. He indicates that they do not have a facility in any town where they have had an issue. The curb stop of cement is placed back two feet from the berm and it would almost be impossible to drive over a curb stop and then a berm. His concern is that they want a beautiful dealership and landscape and the fence would detract from the cars and the landscape itself.**

**William Newton asks what dictated what they provided on the plan in regards to the buffer.**

**Mr. Balise wanted to maximize the number of spaces and stay with curb aisles that would work. They came up this through negotiation with Growth Management.**

**William Newton asks if they would be agreeable to green space at least off Route 28 and asks if they could get to 20. Mr. Balise indicates that they would lose a whole row and would lose 28 cars and by constructing the car wash they are trading space.**

**They discuss the fence versus the cement stops. Attorney Ford suggests that Mr. Balise can use the stops and if they violate it that they would then have to put in a fence.**

**Laura Shufelt asks if there is anyone here from the public who would like to comment. No one speaks.**

**Laura asks for a recess to put some findings together.**

**Laura Shufelt calls the hearing back in session.**

**Craig Larson makes findings for both appeals:**

**In Appeal Nos. 2010 – 021 and 022, the petitioner is seeking to redevelop two Assessor's parcels<sup>1</sup> located at the intersection of Route 28 and Bearses Way in Hyannis. The two parcels total 52,557 sq.ft. in area (1.2 acres). The proposal is to remove the existing structures and improve the lots for the outdoor display of automobiles associated with the principal use of Balise Ford of Cape Cod. The 516 and 528 Bearses Way parcels, that are the subject locus for the permits, are developed with a 4,749 sq.ft. car wash building that has been closed for sometime and a 3,310 sq.ft. specialty retail commercial building that is vacant. The developments on both of the lots do not conform to today's setback regulations or to today's site development standards. Virtually all of the locus is zoned Highway Business and now permits only offices and banks as-of-right. The use of the lots predates the 1985 rezoning to Highway Business and the uses are pre-existing nonconforming uses.**

**In Appeal #2010-021 it is the findings of this Board that:**

- The application falls within a category specifically accepted in the ordinance for a grant of a special permit.**
- That a site plan has been reviewed by the Site Plan Review Committee and found approvable.**

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<sup>1</sup> The two parcels are Assessor's parcel numbers 008 & 009. Together those parcels constitute five lots, Lot Nos. 1 & 2 on Land Court Plan 18367-C and Parcels Nos. 1, 2 and 3 on a Plan of Land filed with the Barnstable Registry of Deeds in Plan Book 305, page 77.

- ***And, 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. In fact, it improves the area and traffic, safety by closing a number of curb cuts.***

**Vote:**

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

**NAY: None**

**Craig Larson makes a motion to approve 2010-021 with the following conditions:**

**For Appeal 2010-021 – the Conditional Use Special Permit**

- 1. This conditional use special permit is issued to Balise Automotive Realty, LP for the use of the parcels addressed as 516 and 528 Bearses Way, Hyannis, MA to be used for the display of vehicles for retail sales accessory to the abutting automobile dealership and service garage located at 322 Falmouth Road, Hyannis.***
- 2. The subject parcels (addressed as 516 and 528 Bearses Way, Hyannis, MA) shall be developed as shown on plans submitted and entitled "Balise Automotive Group 516, 528 and 574 Bearses Way 57 Corporation Street Hyannis Massachusetts" dated 5-06-10 with a last revised date of 5-24-10 as prepared by Baxter Nye Engineering & Surveying and consisting of 16 sheets.***
- 3. The maximum number of display vehicles permitted in this display lot (516 and 528 Bearses Way) is 111.***
- 4. All signage shall conform to the zoning regulations. No variance from the sign code is permitted during the duration of this permit as the use authorized herein is to be accessory to the dealership located at 322 Falmouth Road.***
- 5. The curb cut onto Bearses Way shall be indicated with signage as an entry to the dealership. It is intended only for the use by vehicles that are for sale being taken out to, or being returned from "test drives". The exit shall be signed "right-turn only". Should that curb cut become one of common use to enter and/or exit the dealership, the Building Commissioner can request and order the applicant to take steps to limit the use for the curb cut consistent with this condition.***
- 6. The display lot shall not now or in the future be fenced in along Route 28 and Bearses Way by chain link fencing.***
- 7. Lighting of the lot shall conform to the Lighting Standards of the Cape Cod Commission. The height of the light standards shall not exceed 26 feet. All lighting shall be shielded and shall not glare onto abutting properties or onto surrounding public ways.***
- 8. Raised display areas, ramps, or other such devices are hereby prohibited.***

**William Newton seconds.**

**Laura Shufelt wants to make sure Condition #5 that it says "shall not be indicated with sign to the entrance" which Craig had left out.**

**Amendment accepted.**

**Vote:**

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

**NAY: None**

## GRANTED WITH CONDITIONS

**Craig Larson does findings for Appeal #2010-022:**

- 1. The proposal before the Board represents an improvement over which exists**
- 2. The front yard landscape area is now zero will be increased to an average of 10 to 11 feet**
- 3. The same findings that the applicant falls within the category specifically excepted in the ordinance for the granting of a special permit**
- 4. The site plan has been reviewed by the Site Plan Review Committee and found approval**
- 5. 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.**

**Seconded.**

**Vote:**

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

**NAY: None**

**Craig Larson makes a motion to approval Appeal #2010-022 with the following conditions:**

- 1. The subject parcels addressed as 516 and 528 Bearses Way, Hyannis, MA shall be developed as shown on plans submitted and entitled "Balise Automotive Group 516, 528 and 574 Bearses Way 57 Corporation Street Hyannis Massachusetts" dated 5-06-10 with a last revised date of 5-24-10 as prepared by Baxter Nye Engineering & Surveying and consisting of 16 sheets.**
- 2. The proposed 11.75-foot wide front yard landscape area abutting Route 28 and Bearses Way shall not be used for the parking of any vehicles it shall be maintained as green space. Parked Vehicles shall be prevented from parking on or overhanging into that green area by the placement of vehicle stops and for the maintenance of a split rail fence to delineate and protect the green buffer from the interior parking area.**
- 3. The lot shall be properly drained as per plans submitted. The engineer, as a part of the as-built plan, shall certify that the lot is properly drained as per plan and no area of standing water exists.**
- 4. Any future alteration to the locus shall only be permitted provided the alteration made is more conforming to then applicable zoning requirements.**
- 5. No part of the site shall be used as a parking lot for the general public unless the site is changed to comply with zoning requirements for parking lots.**

**Seconded**

**They discuss.**

**Amendment to #2, that not only will there be concrete stops there will be a Cape Cod berm along around the edge as indicated on the plans.**

***Laura Shufelt asks about the sidewalk easement and comments that she didn't see as a condition but that it is on the plan. They discuss and Craig Larson agrees to amend the decision with another condition that "All conditions as per Site Plan Review".***

***Accepted***

***Vote:***

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

***NAY: None***

**GRANTED WITH CONDTIONS.**

***Chairman's Discussion***

***Laura Shufelt indicates that there will be no meeting on June 23, 2010 for the ZBA.***

***Art Traczyk indicates that there is a package put together for the Board members sitting on EAC regarding proposals submitted and asks that the members review and contact him with any questions.***

***Motion to adjourn***

***Seconded***

***Vote:***

***All in favor***

***Meeting adjourned at 8:40 PM.***

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