



**Laura Shufelt called the Touhey Appeal - Variance to Home Occupation and read the following legal advertisement into the record:**

**7:10 PM            Appeal No. 2010-025 - New                            Touhey  
                         Variance to Home Occupation**

Carrie-Lee Touhey has applied for a Variance to Section 240-46 Home Occupation. The applicant is seeking the variance to allow, as a home occupation, the preparation of baked goods and sale of the baked goods via internet orders from the residential premises. The property is addressed as 36 Harrington Way, Hyannis, MA and is shown on Assessors Map 288 as parcel 051. It is in a Residence B Zoning District.

**Members assigned: Laura Shufelt, James McGillen, Craig Larson, William Newton and George Zevatas.**

**Motion to open the public hearing was made, seconded, and voted unanimously.**

**Kathleen Sullivan addressed the Board and explained that she has received favorable feedback from both the State Health Department and the Barnstable Board of Health, and intends to fully comply with all requirements of a residential kitchen, however she could not file a Business Certificate without zoning approval from the Building Commissioner. She stated that her business is not a retail business and that no one will visit the home, there will be no signs, advertisements or increased traffic. Sales will be through the internet with delivery to customers by mail. If the home occupation thrives, she will seek a retail space from which to operate, however she must keep costs low. The Board of Health limits the quantity that can be produced as a residential kitchen. She stated that her neighbor, Peter Kelly of 50 Rustic Lane, Hyannis supported her application.**

**James McGillen asked Ms. Sullivan if she was agreeable to the proposed conditions set forth in the staff report and she stated that she was. Mr. McGillen acknowledged that an address must be provided for the Business Certificate when registering with the Town, however internet sales are not based on a physical address. He stated that it appears that the language in the home occupation bylaw's excluded uses should read: The sale of retail or wholesale merchandise *on* the premises instead of *from* the premises. He stated that he did not feel that a grant of a variance was outside of the intent of the bylaw especially since under the bylaw a delivery vehicle is allowed as of right if the home business was located in the Residence B District, indicating that delivery of a product was intended to be made from the premises.**

**There was discussion among the Board members regarding variance criteria for this application and it was determined that criteria could be substantially met. It was also discussed that interpretation of the bylaw could possibly be made that would not to require relief and it was discussed that the bylaw should be tightened up to clarify a provision for internet sales.**

**Public comment was invited and Mr. Richard A. McGee of 21 Harrington Way, Hyannis spoke in favor of the granting of the variance.**

**Motion was duly made and seconded to close the public hearing. So voted unanimously.**

**The following Findings of Fact were duly read into the record and seconded:**

- 1. Appeal No. 2010-025 is that of Carrie-Lee Touhey seeking a Variance to Section 240-46 Home Occupation. The applicant seeks the variance to allow, as a home occupation, the preparation of baked goods and sales of the baked goods via internet orders from the residential premises. The property is addressed as 36 Harrington Way, Hyannis, MA and is shown on Assessors Map 288 as Parcel 051. It is in a Residence B Zoning District.**
- 2. The Building Commissioner has determined that the proposed business would not conform to § 240-46(16) that states "customary home occupations shall not include such uses similar to, and including**

.... the sale of retail or wholesale merchandise from the premises". The applicant determined to proceed with a variance to the provisions of Section 240-46 Home Occupation to allow for her home occupation.

3. Owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, and a literal enforcement of the provisions of the zoning ordinance would involve substantial financial hardship to the petitioner.
4. The desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance as there would be no outward changes to the home.

**Vote in favor of Findings of Fact:**

**Aye:** George Zevitas, Craig Larson, James McGillen, Laura Shufelt and William Newton

**Nay:** None.

**Based upon the above Findings of Fact, a motion was duly made and seconded to grant the variance subject to the following conditions:**

1. This variance is issued to allow the production of baked goods and the sales of that product only via the internet, as a home occupation. It is issued to Carrie-Lee Touhey d/b/a "The Cape Cod Cookie" for property addressed as 36 Harrington Way, Hyannis, MA. It is nontransferable to any other person or premises.
2. The relief granted is only to the home occupation use and is still subject to conformance to all other conditions of Section 240-46.A and B for an as-of-right home occupation and all additional conditions herein.
3. All requirements of the Health Division shall be fully complied with.
4. Sales of the product shall only be permitted via the internet. There shall be no exchange of products to customers at the premises. All products shall be shipped to or delivered by the applicant or agent to the purchaser.

**The vote was as follows:**

**Aye:** James McGillen, William H. Newton, Craig Larson, George Zevitas and Laura Shufelt

**Nay:** None

**GRANTED WITH CONDITIONS**

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**7:20PM      Appeal No. 2009-025 – Continued      EAC Disposal, Inc.  
Modification of Variance No. 1996-14**

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

Attorney Charles Sabbatt addressed the Board to request a continuance to August 25, 2010. He informed the Board that he spoke to Town Attorney, Charles McLaughlin regarding this appeal and that a meeting will be set up within the next 2 weeks to resolve an issue that has arisen. After a poll of the Board members, it was determined that a quorum for this appeal could not be met on August 25, 2010. It was agreed by all parties to continue to September 15, 2010, 7:00 p.m.

Motion was duly made and seconded to continue the appeal to September 15, 2010 at 7:00 p.m. So voted unanimously.

### **CONTINUED TO SEPTEMBER 15, 2010, 7:00 P.M.**

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**7:25 PM      Appeal No. 2010-018 – Continued      Vinagre**  
**Variance for a Detached Family Apartment**

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.

Chair Shufelt stated that a letter has been received from Attorney Schultz requesting a continuance to August 25, 2010, 7:15 p.m.

A 5 minute recess was called at 7:26 p.m. in order to determine Board member's availability for meetings in the near future.

When the Board returned to session at 7:31 p.m., Laura Shufelt recalled the Vinagre appeal. A motion was duly made and seconded to continue this matter to August 25, 2010 at 7:15 p.m. So voted unanimously.

### **CONTINUED TO AUGUST 25, 2010, 7:15 P.M.**

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Chair Shufelt called the JDJ Housing Development - Village Green Modification Request and read the following legal advertisement into the record:

**7:30 P.M.      Comprehensive Permit No. 2003-90      JDJ Housing Development, LLC**  
**Request      The Village Green - Modification**

JDJ Housing Development, LLC and Dakota Partners, Inc., have requested a modification of Comprehensive Permit No. 2003-090 as previously modified for the development of The Village Green. The modification request seeks to make changes to the approved plans for the development including: changes in the unit types and area, increase in building footprints and gross building area, interior layout and exterior changes in the proposed structures, integration of the community club house into one of the apartment buildings, adjustments to the site plan to accommodate the building changes, and to modify the distribution of affordable units and workforce housing units amongst the buildings and also to allow the option to change the subsidy program to include the state and federal Low Income Housing Tax Credit Program. The subject property is addressed 0 Independence Drive,

Barnstable, MA, and is shown on Assessor's Map 332 as parcel 010-001. The property is zoned IND - Industrial and GP - Groundwater Protection Overlay Zoning Districts.

**A communication from Dakota Partners, Inc. was received requesting continuance to August 25, 2010. Motion was duly made and seconded to continue the public hearing to August 25, 2010, 7:30 p.m. So voted unanimously.**

**CONTINUED TO AUGUST 25, 2010, 7:30 P.M.**

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**Chairman's Discussion:**

**Laura Shufelt informed the Board of an upcoming zoning amendment that would allow neighbors to swap equal amounts of land if it would not create a new non conformity to do so as of right. The zoning ordinance has been drafted by the Growth Management Department at the suggestion by the Zoning Board of Appeals. A first read will be taken at the 1<sup>st</sup> Town Council meeting in September and is sponsored by Counselor Barry.**

**Motion was duly made and seconded to adjourn at 7:40 p.m. So voted unanimously. ADJOURNED**

Respectfully submitted,

Ellen M. Swiniarski  
Regulatory Review Coordinator