



The Town of Barnstable Growth Management Department

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Jo Anne Miller Buntich
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Town of Barnstable Zoning Board of Appeals Minutes September 29, 2010

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday September 29, 2010 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, Elizabeth Jenkins – Principal Planner and Carol Puckett – Administrative Assistant.

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

Laura Shufelt opens the hearing at 7:12 PM. She reads a summary of the appeals being heard tonight.

7:00 PM Appeal No. 2010-003 - Continued

Gregory Expand Nonconforming and/or Accessory Use

Opened January 27, 2010, continued; March 10, 2010, April 14, 2010, May 12, 2010, June 9, 2010, July 14, 2010, August 25, 2010 and to September 29, 2010.

Continued to allow for the Board's review of information submitted and for alternative relief of a variance to be filed and noticed (see Appeal No. 2010-028 below).

Members Assigned: William H. Newton, Brian Florence, Alex M. Rodolakis, James F. McGillen, Laura F. Shufelt - Associate Present: George T. Zevitas

Decision Due: September 20, 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

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"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.

7:00 PM

Appeal No. 2010-028 - Continued

**Gregory
Variance for an Accessory Uses**

Opened August 25, 2010, continued at request of the Applicant to September 29, 2010.

No Members previously assigned. No testimony taken.

Staff Report and Application Materials previously sent

Nathaniel A. Gregory has applied for a Variance to Section 240-44.A, Accessory Uses. The applicant seeks the use of a lot addressed 320 East Bay Road, Osterville, MA for the construction of a pier to be accessory to the principal single-family use of a lot addressed 428 Wianno Avenue, Osterville, MA. The principal residential lot, addressed 428 Wianno Avenue, Osterville, MA, is shown on Assessor's Map 163 as Parcel 024 and the accessory lot, addressed 320 East Bay Road, Osterville, MA, is shown on Assessor's Map 163 as Parcel 020. Both lots are in a Residential F-1 Zoning District.

Members assigned tonight: William H. Newton, Brian Florence, Alex M. Rodolakis, James F. McGillen, Laura F. Shufelt - Associate Present: George T. Zevitas

Attorney Albert Schulz is here representing the applicant. Also with him is John O'Dea from Sullivan Engineering. Attorney Schulz gives a brief summary of the request for the application which is for a pier, ramp and float. Lots 3 and 8 are owned by the applicant. He refers to the map that he has submitted to the board tonight (See attached) He points out the lot on an easel on display and indicates that in 1969 the lots were subdivided into 9 lots and at the April 14th hearing they discussed under 240-24 whether lot 8 is immediately opposite and across the road from Lot 3. The hearing was continued to June 9th and that Mr. McLaughlin's opinion was given on the 7th. He responded on June 9th before the hearing and asked to for the hearing to be continued until tonight. He refers to Charlie McLaughlin's opinion (See attached). He talks about the Padula case and the legislative history regarding the words "immediate" versus "directly" He indicates that the lots are approximately 190 feet away from each other and that he believes they meet the requirements of Section 240-44. He indicates that there are letters of support in the file.

Laura Shufelt indicates that they were read into the file at the last hearing.

Attorney Schulz indicates that the hardship is that his client would not be able to use his property and believes it could be granted without detriment to the neighborhood as there are other piers in the neighborhood. If the board is concerned about parking they would be conducive to a condition that there wouldn't be any parking on the property. Attorney Schulz indicates that there has never been a taking of the fee in East Bay Road and that half the fee belongs to Mr. Gregory; therefore, his ownership in lot 3 extends to the midpoint of East Bay Road which is a public way that the Town did not take the fee and that it is only a public easement.

They discuss the old bylaw in 1969 when it was subdivided and the Padula case

John O'Dea from Sullivan Engineering indicates that he had worked with Attorney Schulz in computing out to the mid-point of East Bay Road from Lot #3 and be able to draw a line straight to Lot #8. William Newton asks about the ability to take to the mid-point of the road. Attorney Schulz indicates that generally you own to the midpoint of the road unless the public way or the Town has taken the fee in the road and in this case the Town has never taken the fee in East Bay Road.

Laura Shufelt comments that she does not believe that this is immediately opposite and that once it was subdivided with an ANR which didn't meet zoning, didn't meet in 1969 the requirements and doesn't meet the requirements for an accessory lot and variance conditions were self-made.

James McGillen comments that he doesn't see anything regarding accessory lots, just uses and this is why it has changed. For 80 years it was an accessory lot for the sole purposed of adding beach or piers. He refers to Mr. McLaughlin's letter and that this special permit should be granted..

Attorney Schulz comments that Town Council were presented with the word "directly" had rejected the words and adopted the word "immediate" and tells him that they wanted to keep it broader.

They discuss the words "immediate" versus "directly".

Alex Rodolakis comments that he doesn't believe this is "immediate"

William Newton makes findings:

With respect to 2010-003 for Nathaniel Gregory who is requesting a special permit under Section 240-93B for a construction of a pier to replace a prior pier on a lot addressed as 320 East Bay Road which is actually an accessory lot and his findings include this:

- 1. Both lots, the accessory lot and the main house lot, are on one deed as is recorded and has been since 1969.*
- 2. Although the access to the principal dwelling is off Wianno Road via an easement the lot frontage is on East Bay Road and his understanding of previous testimony by Attorney Albert Schulz, if you were to use the center line and draw it immediately straight up to the accessory lot you would be able to intersect Lot #8 without ever passing over Lot #9 and he would agree that what you would have done is that you have a piece of property fronting on East Bay Road and it is immediately across the road to Lot #8. He would say, based on the fact that you could go to the middle of the road and draw that line free and clear without intersecting anyone else's property, immediate to him means somewhere around 190 feet and his finding would be it seems to meet the intent of the particular provision*
- 3. The Conservation Commission, according to testimony given, has already approved the construction of the proposed pier as of December 15, 2009 and an order of conditions has been issued*
- 4. The proposed construction of the pier is within the spirit and intent of the zoning ordinance without any substantial detriment to the public good or the neighborhood affected and this seems to be attested from three letters from neighbors who are in full support.*

Art Traczyk clarifies that the findings are done in accordance with Section 240-44 – Accessory Uses. William Newton accepts the amendment.

Vote:

AYE: *Brian Florence, William Newton, James McGillen*

NAY: *Alex Rodolakis, Laura Shufelt*

William Newton makes a motion that the special permit 240-44.A – Use of Accessory Lot for construction of pier to replace a prior pier on that lot be granted.

Vote

AYE: *Brian Florence, William Newton, James McGillen*

NAY: *Alex Rodolakis, Laura Shufelt*

Laura Shufelt indicates that she did not think that the accessory lot was immediately opposite as defined in the ordinance for a special permit for accessory uses. Alex Rodolakis agrees with that reasoning also.

NOT GRANTED

Attorney Albert Schulz asks to withdraw his application without prejudice for a variance.

Motion to withdraw of Appeal regarding Section 240-93B is made by James McGillen

William Newton seconds

Vote:

AYE: *Brian Florence, William Newton, James McGillen, Alex Rodolakis, Laura Shufelt*

NAY: *None*

WITHDRAWN WITHOUT PREJUDICE

William Newton makes findings on Appeal 2010-028 for Nathaniel A. Gregory who has applied for a Variance to Section 240-44.A, Accessory Uses. The applicant seeks the use of a lot addressed 320 East Bay Road, Osterville, MA for the construction of a pier to be accessory to the principal single-family use of a lot addressed 428 Wianno Avenue, Osterville,

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MA. The principal residential lot, addressed 428 Wianno Avenue, Osterville, MA, is shown on Assessor's Map 163 as Parcel 024 and the accessory lot, addressed 320 East Bay Road, Osterville, MA, is shown on Assessor's Map 163 as Parcel 020. Both lots are in a Residential F-1 Zoning District.

- 1. With respect to the three prong test the nature of the lots are such cannot be changed; therefore with respect uniqueness of the lot area it meets that priority**
- 2. There is a definite issue with hardship since the accessory lot is part of the deed to the main property and is limited to only beach and pier operations and to deny this would be a hardship in terms of the lot be essentially useless**
- 2. Granting the variance to allow for pier construction would not be detrimental to the neighborhood or the zoning bylaw. Also, there are three letters of surrounding residents who support this.**

AYE: Brian Florence, William Newton, James McGillen

NAY: Alex Rodolakis, Laura Shufelt

Motion is made by William Newton that Appeal 2010-028 for a variance to accessory uses be granted with the following conditions:

- 1. All uses on the accessory lot shall conform to §240-43 in that they shall be customarily incidental to, subordinate to the principle single family use it serves.**
- 2. Development of the accessory lot is limited to that of the pier, boardwalk and boat storage deck as shown on a plan submitted to the Board entitled "Site Plan Proposed Pier, Ramp, & Float at 320 East Bay Road Barnstable, (Osterville) Mass. as drawn by Sullivan Engineering, Inc., and dated November 4, 2009.**
- 3. The total length of the proposed pier structure, including steps, walks, ramps and floats shall not exceed more than 118 feet in overall length and extend no more than 91 feet into the waters of East Bay as measured from Mean High Water.**
- 4. The proposed pier, float and boat storage deck shall be for personal use only and as accessory to the principle single-family use located on Assessors Map 163 parcel 024 and addressed 428 Wianno Avenue, Osterville. There shall be no commercial use of this structure or renting of any docking space or use of the pier.**
- 5. The locus shall comply with all requirements of the Conservation Commission.**
- 6. Parking shall not be permitted as accessory to the pier. The only exception is for occasional parking for loading and unloading of persons and items as may be needed.**
- 7. Any future development or alteration of the accessory structure beyond that permitted in this variance shall only be permitted by the Zoning Board of Appeals via a modification of this variance.**

James McGillen seconds.

Vote:

AYE: Brian Florence, William Newton, James McGillen

NAY: Alex Rodolakis, Laura Shufelt

Laura Shufelt indicates she voted against as she feels it didn't meet the requirements of the variance for a hardship or the uniqueness of the lots since it was created by an ANR

Alex Rodolakis believes that it would nullify substantially from the intent of the zoning ordinance. Laura Shufelt indicates that she agrees with that also.

NOT GRANTED

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Laura Shufelt calls the McCowan appeal and reads it into the record:

7:15 PM Appeal No. 2010-034 – New

**McCowan Cotuit Trust – 1992
Variance – Bulk Regulations**

Note: On September 20th staff met with Attorney Sarah A. Turano-Flores who is representing this application. Based upon that conversation, it appears that additional relief may be sought in conjunction with this appeal. Staff believes a continuance may be requested.

The McCowan Cotuit Trust – 1992 has applied for a Variance to Section 240-14.E, Bulk Regulations, Minimum Lot Area and Minimum Lot Frontage and Section 240-36 Resource Protection Overlay District. The variance is sought to render the property a buildable lot for a single family dwelling. The subject lot was established in 1961, however, the establishment of the lot did not conform to the zoning requirements for a legally created lot and therefore the applicant seeks to now legalize the lot under zoning. The property is addressed 1372 Main Street, Cotuit, MA and is shown on Assessor's Map 033 as parcel 046. It is in a Residence F Zoning District.

Laura Shufelt indicates that there is a letter in the file from Attorney Tuarno-Flores asking for a continuance.

Motion is made by Laura Shufelt to continue this to November 3, 2010 at 7:00 PM

James McGillen seconds

Vote:

All in favor

CONTINUED TO NOVEMBER 3, 2010 AT 7:00 PM

Motion is made by James McGillen to adjourn.

Seconded.

Vote:

All in favor.