



# The Town of Barnstable Growth Management Department

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Jo Anne Miller Buntich  
Director

## Town of Barnstable Zoning Board of Appeals Minutes October 13, 2010

***A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday October 13, 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 and Carol Puckett – Administrative Assistant.***

Laura Shufelt - Chair	Present
William Newton - Clerk	Present
Michael Hersey	Present
Craig Larson	Present
Alex Rodolakis	Present
Brian Florence	Present
George Zevitas	Present

***Laura Shufelt opens the hearing at 7:07 PM. She gives a summary of the appeals being heard tonight. She reads the Powell appeal into the record:***

**7:00 P.M.      Appeal No. 2010-035 - New      Powell  
Expansion of Nonconforming Structure**

Dawn E. Powell and Kimberly A. Powell have petitioned for a Special Permit in regards to Section 240-92(B) - Nonconforming Buildings or Structures used as Single and Two-Family Residences. The special permit is sought in order to construct a 10 X 24 foot addition with an attached 6 X 24 foot deck to the rear of pre-existing nonconforming structure. The property is addressed 110 High School Road, Hyannis, MA as shown on Assessor's map 308 as parcel 242. It is in a Residence B Zoning District.

***Members assigned: Michael Hersey, Craig Larson, William Newton, Brian Florence, Laura Shufelt***

***Representing the applicants is Stan Buckler, contractor. He indicates that the applicants want to construct a full bathroom, deck and storage addition onto the house. The house currently sits 4.8 feet from the lot line and the addition would be 5 feet from the lot line.***

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**Brian Florence asks what the distance between the garage and the addition is. Mr. Buckler thinks it might be 10 feet from one corner of the deck. Mr. Buckler explains that the only access to the new addition dictates where the bathroom is placed as the kitchen is in the way. They will be creating a hallway and it can't be over to the other side of the house as there is a bedroom there.**

**William Newton asks about the stability of the ground and is assured by Mr. Buckler that the architect has done the footings.**

**Laura Shufelt asks how the right of way maintains the stability as the topography falls off.**

**Mr. Buckler indicates that there are four foot footings with a wood structure upon that there is a retaining wall present. He thinks there is a rock wall that is retaining the bank and is covered with ivy.**

**Laura Shufelt asks if he has looked at the staff report and is agreeable to the conditions as outlined therein. Mr. Buckler indicates that he does not have a problem with any of the conditions and the Powell's are agreeable.**

**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:**

**Dawn E. Powell and Kimberly A. Powell have petitioned for a special permit in regards to Section 240-92(B) - Nonconforming Buildings or Structures used as Single and Two-Family Residences. The special permit is sought in order to construct a 10 X 24 foot addition with an attached 6 X 24 foot deck to the rear of pre-existing nonconforming structure. The property is addressed 110 High School Road, Hyannis, MA as shown on Assessor's map 308 as parcel 242. It is in a Residence B Zoning District.**

**The subject property is a developed 0.26-acre lot located at the end of High School Road as that road terminates at Pope John Paul II High School. According to the Assessor's record, the home is a two-story, four-bedroom dwelling of 1,866 sq.ft. There is also an accessory one-story garage of 324 sq.ft. The Assessor's record cites that the dwelling dates to 1930. It is the findings of this board that:**

- the application falls within a category specifically excepted in the ordinance for a grant of a special permit,**
- and 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.**

**Seconded by Michael Hersey.**

**Vote:**

**AYE: Michael Hersey, Craig Larson, William Newton, Brian Florence, Laura Shufelt**

**NAY: None**

**Craig Larson makes a motion is made to grant the variance with the following conditions:**

- 1. This variance is granted to allow a proposed addition to the existing dwelling to be located 5-feet from the property line where a 20-foot setback is required.**
- 2. The alterations and expansion of the structure shall be in accordance with plans submitted to the Board.**
  - The plot plan for the addition is titled "Proposed Plot Plan #110 High School Rd., Hyannis" dated May 17, 2010 as prepared by Dan A Speakman, Land Surveyor.**
  - The architectural plans consist of 4 Sheets titled Foundation & Framing Plan, First Floor Plan, Right Elevation and Rear Elevation dated March 1, last revised March 17, 2010.**



**additional affordable unit making a total of 5 units equaling the 25%, they in the past, received the approval of the Board and the Town to have the fifth unit be an existing two bedroom unit which is what they are still proposing. He wants to correct a typographical error in the memo where he might've referred to a one bedroom affordable unit in his narrative but that the application is clear.**

**He talks about the approval letter from the Town Manager to DHCD. He indicates that 5 units equal the 25% affordable and that it had been in error previously indicating that only 4 would be affordable. He gives the jurisdictional requirements of the 40B.**

**James Godsill, Executive Director speaks and indicates that this program supports adults with severe brain disorders and details the support system associated with it and that the program is designed to be a long term commitment to support these individuals. He indicates that if they should age out, they would move them out to a better facility. They currently have 18 individuals in 16 units. He indicates that finding matching roommates is a challenge and that the age range of the population is from 24 to approximately 55 years of age. As they were built and occupied most occupants have been there since 1992/1995 and have found employment as they are closer to the mall and commercial areas.**

**Attorney Freeman speaks and indicates they have a letter of support from the Barnstable Housing Committee. He indicates that the next affordable unit cannot be in Building #1. Also, he indicates they have no problem with the staff report but that the fire department has concerns for which they don't have a problem with. He talks about the waivers and the 30 parking spaces for the 20 units are okay and that this does need a dimensional waiver.**

**William Newton asks if there have been any issues with the public or neighbors. Attorney Freeman indicates that he doesn't know of any complaints from neighbors.**

**Laura Shufelt asks if any of the other units are handicapped accessible. James Godsill indicates that they are not and they have had internal discussions about this and they are trying to address it and a possibility they would make one or two handicapped accessible. Laura Shufelt indicates that when there are 20 units she believes that they may have to make one handicapped accessible. Attorney Freeman indicates that if it was a condition per ADA they would do it but that it is inferred because of the population outlined in the master deed.**

**Craig Larson comments that the plans are from 2005 and that the building code has changed. Attorney Freeman agrees that the code has changed but that the intent is to work with the building department on that.**

**Laura Shufelt clarifies to the Board that they need only be conceptual. They discuss if conceptual plans can be stamped by an architect. They discuss the handicapped accessibility and that it would need to apply to ADA.**

**Laura Shufelt asks who the monitoring agent is. Attorney Freeman indicates that because it is a DHCD, it is self monitoring. Laura asks if LIFE is a certified marketing agent under DHCD? Attorney Freeman is not sure but perhaps a condition could be written outlining that either LIFE would conduct the lottery if certified by DHCD or the Housing Assistance Corporation.**

**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.**

**Laura Shufelt asks Attorney Freeman if this is deemed to be a substantial or insubstantial. Attorney Freeman indicates that agreed to a public hearing but that this is a minor modification.**

**William Newton does findings.**

**On Appeal 2010-036 by LIFE Inc for a modification of 1995-020 and 1992-068 the following findings:**

- 1. By reference, the Board incorporates all finding of fact with regards to local needs made in the 1995 comprehensive permit except to the extent those findings are further modified herein.**
- 2. On September 17, 2010, the applicant, Living Independently Forever, Inc. (LIFE, Inc.), submitted a comprehensive permit application to the Zoning Board of Appeals Office requesting to expand the development authorized in Comprehensive Permit No's. 1992-68 and 1995-20, and modified June 20, 1995, November 25, 1995, December 11, 2002. The application seeks to construct a fifth multi-family building on the property.**
- 3. According to the Department of Housing and Community Development's April 01, 2010 Subsidized Housing Inventory (SHI) the Town of Barnstable had a total of 1,352 low or moderate income housing units, or 6.7% of the total housing stock. The Town has not met the goal of Chapter 40B to provide 10% of its year round housing stock as affordable housing nor has it satisfied any of the statutory minima.**
- 4. The proposed modification locates the fifth multi-family structure on Parcel A. That parcel is 0.33-acres and a part of the total 3.99-acre site conditioned in the comprehensive permits. In the 1995 Permit, Parcel A was restricted by conditions numbered 2 and 22 to "remain in a natural state." Today the applicant seeks to remove that restriction and construct upon that area of the site a single multi-family building consisting of 4, one-bedroom residential units.**
- 5. This proposal is the exact proposal submitted to the Board in a 2006 comprehensive permit application that was granted. However, that comprehensive permit was not extended nor exercised and therefore expired three years after it was issued.**
- 6. The plans submitted are those used in the 2006 application. Building and fire codes have changed since those plans were drawn and the applicant has agreed that the plans would have to be redrawn to meet all applicable codes prior to a building permit application.**
- 7. The development is commonly referred to as "LIFE at Hyannis", a condominium development of four multi-family building totaling 16 two-bedroom units and an office/recreation building. Occupancy of the units is restricted to learning-disabled adults only. The applicant provides on-site support services to the residents. The support services are designed to provide necessary assistance, yet foster independent living within the community.**
- 8. The condominium association is "Living Independently Forever Condominium Trust". The trustees of the condominium have, agreed to a transfer of the development rights to Parcel A to the applicant and consented to the addition of 4 one-bedroom units to the Condominium Trust. The agreement was recorded as the Third Amendment to the Master Deed in August of 2005 at the Barnstable Registry of Deeds in Book 20210 page 245.**

- 9. Granting of this comprehensive permit application would result in the development of the 3.99-acre site into a condominium development consisting of:**
- **16, two-bedroom residential townhouse and ranch units within 4 multi-family buildings totaling 24,250 sq.ft., located on Parcel B,**
  - **4, one-bedroom, single-level town homes residential units within 1 multi-family building totaling 4,000 sq.ft., located on Parcel A, and**
  - **a recreation/office building, shed, fenced tennis court, and on-site parking for 24 vehicles all located on Parcel B and six (6) additional on-site parking spaces on Parcel A.**
- 10. The Board has received comments on the proposed development from the Town Engineer and the Hyannis Fire Department. The applicant has agreed that they will meet those site development standards and the code requirements cited. The applicant has agreed to work with the Hyannis Fire Department and Public Works Department to assure that the building addressing will provide for efficient fire and emergency response.**
- 11. In addition to the existing 4 two-bedroom units dedicated in perpetuity as affordable, the grant of this modification will add one more unit dedicated as affordable in perpetuity. The existing affordable units are all owned by Living Independently Forever Inc., who leases those units to income qualified persons at affordable rents. The existing affordable units are Units A-1, A-2, A-4 and D-3 (Assessors Parcel Numbers 272025-00A, -00B, -00D and -00O).**
- 12. Two of the affordable units date back to the 1992 comprehensive permit, and predate the Board's requirement that the affordability restriction included a clause that the affordable restriction shall survive in the event of a foreclosure.**
- 13. The applicant has agreed to recording at the Registry of Deeds, an affordable housing restriction against each of the affordable units that will assure that the unit will remain affordable to low and moderate income individuals inclusive of that provision that assures affordability will survive in the case of foreclosure.**
- 14. In the 1995 comprehensive permit, the Board conditioned the construction of the Castlewood Circle with Kilkore Drive as a driveway that did not provide through traffic. The extension of Castlewood Circle was, and is, to serve the proposed development only as access, utility services and emergency vehicle access. This is still the case.**
- 15. The proposed units to be added to the condominium are each approximately 705 square feet, single-level, one-bedroom, apartment type units. Additional storage space is provided for each of the unit in the basement area of the proposed building.**
- 16. Upon implementing this modification the total number of bedrooms on the site would be 36. The density of the development is approximately five (5) dwelling units per acre. All of the units will be served by public water and connected to Town sewer.**

**The vote on Findings of Fact:**

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

**NAY: None**

**William Newton makes a motion to grant:**

**Based upon the findings with respect to local needs it is motioned to grant a modification of the Comprehensive Permits 1995-20 for the expansion of the development of "LIFE at Hyannis" provided that all terms, conditions and restrictions of Comprehensive Permit 1995-20 as prior modified shall remain in full effect except as further modified and conditioned herein as follows:**

- 1. This Modification is granted to allow 4, one-bedroom, one-bathroom apartment type units of 705 sq.ft. to be added to the condominium association "Living Independently Forever Condominium Trust". The location of the 4 units shall be in a fifth multi-family building to be built on Parcel A of the development.**
- 2. All references to Parcel A in Comprehensive Permit No. 1995-020, as being restricted to be retained in its natural state, are rescinded. Parcel A shall be permitted to be developed as per plan submitted entitled "Site Plan of Land Castlewood Circle , Map 272 parcel 25 Barnstable (Hyannis), MA, prepared for LIFE Inc." dated May 27, 2005, as drawn by Eagle Surveying & Engineering Inc., scaled 1"=20' ".**
- 3. Engineering of this plan shall conform to the following requirements expressed by Robert A. Burgmann, Town Engineer, in the 2006 attachment to his letter of September 28, 2010;**
  - Water service installed as per item 2,**
  - Sewer line clean-out as per item 3**
  - Roof drainage to the satisfaction of the Town Engineer as per item 4**
  - A grading plan shall be developed for the site and submitted to the Town Engineer for review and his approval. All run-off shall be contained on site. (as per items 5 & 7).**
  - The first floor units shall provide access for visitors in accordance with the Barnstable Housing Committee for "Visitability:**
  - A utility plan shall be developed and submitted to the Town Engineer for his review and approval as per item 8.**
- 4. The fifth multi-family building to be developed on the site shall be substantially in conformance with architectural plans submitted to the Board entitled "L.I.F.E. Quadraplex Castlewood Circle, Hyannis, MA" as drawn by Rescom Architectural Inc., dated July 7, 2005. As those plans predate certain building and fire code changes, the plan shall be redrawn to meet all applicable building and fire regulations prior to a building permit application. Fire protection shall include automatic sprinkler and fire alarm systems, and alarm monitoring as**

*noted in the Hyannis Fire Department letter of October 4, 2010. A copy of the revised plans shall be submitted to the file and reviewed and approved by staff for consistency prior to a building permit application.*

- 5. Occupancy of the housing units is limited to learning-disabled adults. The Applicant shall maintain on-site support services designed to foster independent living within the community.*
- 6. In addition to the 4 two-bedroom units already dedicated to affordable under the Local Initiative Program (LIP), one of the proposed existing two-bedroom units (provide it is not located in Building No. 1) shall be so dedicated to affordable. If an existing two-bedroom unit is to be dedicated as the fifth affordable unit it must be dedicated prior to the issuance of an occupancy permit for any of the new one-bedroom units building.*
- 7. All of the affordable units shall be owned by Living Independently Forever, Inc., and rented to income qualified individuals, the maximum rent of which shall not exceed that allowed by the Department of Housing and Community Development and in full compliance with all requirements of the Local Initiative Program. Living Independently Forever, Inc., shall not transfer ownership of the affordable units to any other entity without permission from the Board.*
- 8. The units shall have energy efficient heating, low flow toilets and showers, and thermal windows and doors. The attics and basements of the structure shall not be developed as a habitable area.*
- 9. All of the new units, like all existing buildings shall be connected to public water supply and the Town's Wastewater Treatment Facility. The applicant shall assume full financial responsibility for all the costs to connect to town water and sewer including responsibility for connection permits and user fee charges for each unit.*
- 10. In addition to the 27 on-site parking spaces located on Parcel B, an additional 6 on-site parking spaces shall be provided on Parcel A as shown on the engineered plan submitted. For clarification, Castlewood Circle, as extended into the development, is that of a two-way driveway. The paved driveway of Castlewood Circle is not to be extended to Kilkore Drive.*
- 11. The applicant shall, to the greatest extent possible, attempt to preserve the existing trees and under-story vegetation on the lot to preserve screening to abutting properties. There shall be no clearing within 5 feet of the side property lines. Upon completion of the building all disturbed area are to be appropriately landscaped and, in addition to the required 5-foot buffer, the applicant shall install a natural screen of vegetation to further screen abutting properties to Parcel A.*
- 12. Prior to applying for any building permit, the applicant shall cause: 1) The existing fire hydrant on Castlewood Circle to be cleared of obstruction to the satisfaction of the Hyannis Fire Department, 2) all on-site dumpster to be screened and in full conformance with the Health Division dumpster regulations, 3) completion of the center fire access lane with the cul-de-sac of Lincoln Road Extension.*



- 13. The applicant shall meet with the Hyannis Fire Department and resolve the issue regarding addressing and site access for fire protection as cited in the Fire Department letter of October 4, 2010 prior to any application for a building permit.**
- 14. The master deed shall be amended to contain a restriction that all five dedicated affordable units shall remain in perpetuity as low or moderate income housing units.**
- 15. The applicant shall have recorded at the Barnstable Registry of Deed an affordable housing restriction on all five of the affordable units they own that assure the affordability of the unit shall survive in the event of a foreclosure. The restriction shall be drafted by the applicant, and reviewed and approved by the Town Attorney's Office and Growth Management Department prior to recording.**
- 16. The applicant shall comply fully with all conditions imposed in the project eligibility letter of the Department of Housing and Community Development.**
- 17. Within 3 months after the final one-bedroom occupancy permit is issued, the applicant shall cause a project cost accounting by a certified public accountant be made and submitted to DHCD, the Town of Barnstable Growth Management Department Affordable Housing Specialist, and a copy to the Zoning Board of Appeals file.**
- 18. This modification of the comprehensive permit is granted to LIFE, Inc., it shall not be transferred to any other person or entity without prior written approval of the Board of Appeals.**
- 19. This modification shall be filed at the Barnstable County Registry of Deeds within sixty (60) days after certification of the Town Clerk of the Town of Barnstable.**

**Seconded by George Zevitas**

**Attorney Freeman wants to clarify about the extension of the emergency access is noted but doesn't know how extensive it would be and would like that to be modified that it shall be done to the satisfaction of the Fire Department prior to an occupancy permit.**

**Art Traczyk indicates that it is a small connection and points it out. They discuss. Art indicates that they could change it to be before the issuance of the building permit? They discuss. Attorney Freeman asks if they could modify it to say that rather than they can't apply for a building permit.**

**They discuss the cost examination including financial surety that DHCD requires and does not mind referencing that condition but to do to something more burdensome to the non-profit would not be appropriate. Laura Shufelt indicates that this permit and this permit is solid on final approval but wasn't sure if they were going forward.**

**Michael Hersey wants to waive permit fees and connection fees or any fees as it relates to this project and that this is an extreme legitimate project that should have every consideration by the Town and thinks that the accounting condition not be required. Also, he does not think that there should be a holdup of construction because of the fire lane and it should be amended to say that an occupancy permit won't issue until that fire lane is established to the satisfaction of the Fire Department.**

**Laura Shufelt indicates that the connection fees could be waived, the accounting is a requirement of a 40B and the fire lane was a prior condition that wasn't met and thinks it needs to be done before this goes forward.**

**Attorney Freeman talks about there is appropriated fire access and is not sure the need for the connection is that great and asks that it be postponed until permit of occupancy.**

**They vote on Michael Hersey's first amendment of waiving the fees:**

**Vote:**

**AYE: Craig Larson, Michael Hersey, William Newton**

**NAY: George Zevitas, Laura Shufelt**

**Art Traczyk indicates that there is a letter from Bob Burgmann – Town Engineer stressing that those fees not be waived.**

**Laura Shufelt then explains that the accounting fees are a requirement of 40B's. Michael Hersey withdraws the amendment concerning the accounting fees.**

**Laura Shufelt calls for a vote on Michael Hersey's last amendment regarding that it would not be a pre-condition of a permit that it would be a condition of the occupancy permit.**

**They discuss.**

**Vote:**

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

**NAY: None**

**Laura Shufelt indicates that the amendment is for all of #12.**

**Laura Shufelt wants to add to condition #4, that it comply with handicapped AAB (Architectural Access Board) regulations. William Newton asks if they could exceed that. Laura Shufelt indicates that they could but they are market units and her opinion is that they need to meet the requirement.**

**Vote:**

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

**NAY: None**

***Laura Shufelt wants to amend Condition #20 to include that LIFE Inc., be added as marketing agent or shall engage an approved lottery agent.***

**Vote:**

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

***NAY: None***

***Laura Shufelt wants to add that LIFE Inc., shall submit to the Zoning Board of Appeals an annual monitory report as required by DHCD.***

**Vote:**

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

***NAY: None***

***Attorney Freeman wants to change Condition #13 to occupancy permit***

**Vote:**

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

***NAY: None***

***Vote on conditions as amended:***

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

***NAY: None***

## **GRANTED WITH CONDITIONS**

***Motion to adjourn is made by Michael Hersey and seconded by Craig Larson.***

**Vote:**

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

***NAY: None***