



Town of Barnstable
Zoning Board of Appeals
Minutes
October 27, 2010

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday October 27, 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 - Chair	Present
William Newton - Clerk	Absent
Michael Hersey	Present
Craig Larson	Present
Alex Rodolakis	Present
Brian Florence	Present
George Zevitas	Present

Approval of Minutes from September 29, 2010 and October 13, 2010

Laura Shufelt opens the hearing at 7:04 PM. She gives a summary of appeals being heard tonight and calls the Reed Appeal

7:00 PM Appeal No. 2010-009 – Continued

**Reed
Appeal of the Building Commissioner**

Opened April 28, 2009, continued July 14, 2010, September 15, 2010 and to October 27, 2010.

Continued for review and input of the Town Attorney's Office and for alternative variance relief to be filed and noticed.

Attorney's Comments attached. No application for alternative relief was submitted.

Board Members Assigned: William H. Newton, James F. McGillen, Michael P. Hersey, Craig G. Larson, Laura F. Shufelt - Associates Present: George T. Zevitas, Alex M. Rodolakis

Decision Due: November 19, 2010

Carol Anne Reed has appealed the Building Commissioner's February 12, 2010 denial of a building permit to construct a single family dwelling on a lot addressed as 1175 Shootflying Hill Road, Centerville, MA. The appeal is being made pursuant to Section 8 of MGL Chapter 40A and is requesting that the Board overrule the Commissioner and find that the lot is a legally-created, pre-existing undersized nonconforming lot that is independently buildable. The subject property is shown on Map 190 as parcel 221, and addressed 1175 Shootflying Hill Road, Centerville, MA. The lot is in a Residence D-1 and Residence C Zoning District and in the Resource Protection Overlay District.

Laura Shufelt indicates that a letter has been received from Attorney Duane Landreth asking that this appeal be withdrawn without prejudice.

Motion is made by Laura Shufelt and seconded by Brian Florence to Withdraw without Prejudice.

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

Laura Shufelt then calls the EAC Disposal appeal:

7:05 PM Appeal No. 2009-025 – Continued

**EAC Disposal, Inc.
Modification of Variance No. 1996-14**

Opened April 1, 2009, continued, May 20, 2009, August 5, 2009, September 23, 2009, November 4, 2009 December 9, 2009, February 10, 2010, moved to February 24, 2010, April 14, 2010, May 26, 2010, July 14, 2010, August 11, 2010, September 15, 2010 and to October 27, 2010.

Continued for an update on Outside Consultant.

Board members previously assigned: William H. Newton, George T. Zevitas, Brian Florence, Alex M. Rodolakis, Laura F. Shufelt

Decision Due: June 18, 2011

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

Members assigned tonight: George Zevitas, Brian Florence, Alex Rodolakis, Laura Shufelt

Laura Shufelt indicates that the ZBA has received a check from Attorney Sabatt's office for EAC Disposal regarding the consultant. Attorney Sabatt speaks and indicates that he has been able to find out about an operational plan but doesn't know the status of that. He has also talked with Art Traczyk about continuing this to December as the consultant hasn't made it to the site as of yet. Attorney Sabatt indicates that the next meeting will be an update on what will transpire.

Motion is made by Laura Shufelt and seconded by William Newton to continue this to December 1, 2010 at 7:00 PM

Vote:

AYE: George Zevitas, Brian Florence, Alex Rodolakis, Laura Shufelt

NAY: None

CONTINUED TO DECEMBER 1, 2010 AT 7:00 PM

Motion is made by Craig Larson and seconded by George Zevitas to approve the minutes from September 29, 2010.

Vote:

All in favor

Motion is made by Craig Larson and seconded by Michael Hersey to approve the minutes from October 13, 2010.

Vote:

All in favor

**Laura Shufelt then calls a recess for two minutes.
Back in session at 7:10 PM**

Laura Shufelt calls the Oyster Harbors appeal and reads it into the record:

7:10 P.M. Appeal No. 2010-043 - New

**Oyster Harbors Club, Inc.
Alteration & Expand Nonconforming Use**

Oyster Harbors Club, Inc., has petitioned for a Special Permit pursuant to Section 240-93.B, Alteration and Expansion of a Nonconforming Buildings or Structures Not Used as Single- or Two-Family Dwelling, and Section 240-94.B, Expansion of a Pre-existing Nonconforming Use. The petitioner seeks to demolish an existing 571 square foot children's play center and to reconstruct a larger, two-story structure of 2,506 square feet for the play center. The building and use is accessory to the principal nonconforming use of the property as a club house. The property is addressed 170 Grand Island Drive, Osterville, MA and is shown on Assessor's map 053 as parcel 012-001. It is in a Residence F-1 Zoning District.

Members assigned: Michael Hersey, Craig Larson, Alex Rodolakis, George Zevitas, Laura Shufelt

Attorney Douglas Murphy is representing the applicant. With him is John O'Dae of Sullivan Engineering and Doug Mayo the club's manager. Attorney Murphy gives a history of the club and submits a book on the history of the club which he needs returned. He indicates it is a gated community and contains the core facilities for the club. There is a beach cabana and a tennis pro shop, lawn and gardens, parking area for the core facility and a children's accessory building on a seasonal basis for club member's children only. They were here in 2005 asking to demo the then existing main clubhouse and to replace with a larger structure. However, tonight they are asking for smaller structure of 520 square feet on one floor with an open deck. They would also like to reorient the structure. They are seeking to enlarge and reorient for the sake of the children. They would continue both indoor and outdoor activities of the children. No plans on changing the policy of member's children or their guest's children. It is a seasonal operation which operates in the daylight hours and is utilized to engage in crafts indoors as well as provide a changing area. There are presently 400 regular members and 40 senior members which will not change. There will be no change of use and it will not be more detrimental than what that exists. It will conform to all setbacks and the only non conformity is the use of the building in a nonconforming fashion.

General Manager, Doug Mayo, speaks and indicates that he has been the manager for 8 years. He indicates that this is a seasonal environment which members partake in activities May through October. Primary use for the children's area is for activities such as tennis programs, beach and crafts programs, and that he gets approval yearly from the Board of Health.

Attorney Murphy indicates that there will be no increase on the demand of the septic and will be no increase in traffic.

Laura Shufelt asks if this is going to need approval from the Conservation Commission. Attorney Murphy indicates that they have been through the Conservation Commission which hasn't issued an order of conditions as of yet and that they were working on a work limit line. He indicates that this also has been through Site Plan Review.

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

Helen Beatty Wesling whose family owns the property at 390 North Bay Road speaks. She indicates that Attorney Edward Kirk had been representing her family until recently when he indicated that he now has

a conflict of interest and cannot fairly represent him. She is respectfully asking for a continuance in order to get legal representation.

Attorney Murphy indicates that they would ask the Board to act on this matter tonight as they are looking at the onset of late fall and that his client would like to get going on this project.

George Zevitas asks what the complaints would be

Ms. Wesling indicates that the current Pooh's corner is approximately 500 square feet and the proposed expansion is 2200 square feet. Her family would like to study this in terms of usage, times of operation, etc., and would like further delineation. Also, they would like to get some type of agreement in terms of the use and times, how many children are included, when does the camp start and end, etc. Ms. Wesling indicates that she doesn't have a full list of questions and is afraid that some of her questions would not be answered and is asking for a continuance to get a full list of questions from her family and proper representation.

Alex Rodolakis asks what the schedule is for Oyster Harbors regarding if they were to continue this.

Attorney Murphy indicates that they have an agreement with a contractor to start 21 days, assuming there are no appeals during the appeal period. Attorney Murphy indicates there are no plans to change the activities and they will be the same and only change is to reorient the building and make it larger.

Craig Larson asks if the proposed new structure will be heated. Attorney Murphy and Mr. Mayo indicate yes. Craig Larson asks if they would be willing to limit the use during the certain months. Attorney Murphy indicates that if his client were to exceed what is there now there is relief available.

Michael Hersey asks if there is currently any limitations on the hours of operation. Attorney Murphy indicates no. Craig Larson asks if his client would be willing to put a limitation on it. Mr. Mayo indicates that he would have to go back to the club members and that they might not want to limit or restrict hours for the facility.

Laura Shufelt suggests that they have a meeting next Wednesday which is only a week away in order to let Ms. Wesling obtain representation. They discuss.

Laura Shufelt asks Ms. Wesling if one week is agreeable to which she agrees

Craig Larson asks Attorney Murphy if they have talked to the neighbors. Attorney Murphy indicates that he had talked to Attorney Kirk about a month ago and needed to confer with his clients who were concerned about hours and activities. Craig Larson asks how far from the neighbor's house the proposed project is.

John O'Dea measures and indicates that it is approximately 139 feet from the building to property line. Attorney Murphy indicates that the club, in the past, has been willing to maintain a buffer.

Michael Hersey makes a motion to continue this to November 3, 2010 at 7:35 PM

Vote:

AYE: Alex Rodolakis, George Zevitas, Craig Larson, Michael Hersey, Laura Shufelt

NAY: None.

CONTINUED TO NOVEMBER 3, 2010 AT 7:35 PM

At 7:43, Laura Shufelt calls Crown Castle and reads it into the record:

7:20 PM

Appeal No. 2010-042 - New

Crown Castle

Modification Var. No. 1989-021

Crown Castle, a/k/a Crown Atlantic Co., LLC has applied for a modification of Variance No. 1989-021 as previously modified in Appeals Nos. 2002-034 and 2009-066. This modification seeks to co-locate on an existing communication tower three panel antennas and a base cabinet for "Clearwire", a wireless internet provider. The existing tower is leased to Crown Atlantic Co., LLC., and is addressed 1731 Service Road, West Barnstable, MA. It is shown on Assessor's Map 194 as parcel 010-W00 and T00. It is in a Residence F Zoning District.

Members assigned: Michael Hersey, Craig Larson, Brian Florence, Alex Rodolakis, Laura Shufelt

Representing Crown Castle is Attorney Gregory Mers from Duval, Klasnick & Pastel, LLC. He gives a history of who owns the tower and the proposed relief being requested. He indicates that Clearwire proposes to put the antennas up and that the latest staff report issued by Art Traczyk he requested they come to discuss several issues to which he indicates were provided the previous Friday. He then talks about the 3 prong test and that Clearwire would suffer substantial hardship if they could not operate its wireless communications. To request relief is in keeping with the intent of the zoning bylaws and reads Section 240-106 regarding communication towers. He indicates that the relief being sought will help enhance wireless communications within the town.

Laura Shufelt indicates that a letter was submitted from the Andres and reads it into the record.

Laura Shufelt indicates that there is no one here from the public to speak either in favor or in opposition.

Art Traczyk indicates that there was an addendum to the original decision that went up to 160 feet and doesn't know where Mrs. Andres, in her letter, is getting the extra twenty feet. Art talks about the lighting in the letter and if it needed to be lit that the applicant would 've been notified by FCC.

They discuss the fall zone.

Brian Florence makes findings:

Crown Castle, a/k/a Crown Atlantic Co., LLC has applied for a modification of Variance No. 1989-021 as previously modified in Appeals Nos. 2002-034 and 2009-066. This modification seeks to co-locate on an existing communication tower, three panel antennas and a base cabinet for "Clearwire", a wireless internet provider. The existing tower is leased to Crown Atlantic Co., LLC., and is addressed 1731 Service Road, West Barnstable, MA. It is shown on Assessor's Map 194 as parcel 010-W00 and T00. It is in a Residence F Zoning District.

Co-location on existing towers is strongly recommended by the Cape Cod Commission Regional Policy Plan, the Local Comprehensive Plan, and is encouraged by the Growth Management Department.

The applicant has shown that the addition of the proposed equipment would present no structural issue of the town by a letter dated October 22, 2010 and July 21, 2010.

- 1. The exiting and proposed equipment will present no structural issue for the tower.**
- 2. The existing and the proposed levels of radio-frequency energy emissions from the tower are, and will, comply with Federal Communications Commission (FCC) standards and requirements by and undated letter entitled "Evaluation of Compliance for Guidelines for Exposure to Radio Frequency Radiation"**
- 3. The applicant has substantiated that Clearwire is FCC licensed by a letter dated 03-19-2010**
- 4. To grant relief by modifying the existing variance**

5. *This motion to grant modification of 1989-021 to Crown Castle for co-location and operation of communication equipment on an existing tower located at 1731 Service Road, West Barnstable subject to the following:*

The installation and operation is limited to that of three antennas mounted and associated ground equipment as shown on plans submitted and approved by the Site Plan Review Committee entitled "Clearwire, 1731` Service Road Centerville, MA" as prepared for Clearwire by GPD Associates, dated August 12, 2010, and consisting of 10 sheets (T-1, A-1, A-2, S-1, S-2, E-1, E-2, E-3, E-4, E-5).

All other conditions of Variance No. 1989-021 shall remain in full force and effect except as modified herein.

Craig Larson seconds.

Vote:

AYE: Alex Rodolakis, Brian Florence, Craig Larson, Michael Hersey, Laura Shufelt

NAY: None

MODIFICATION HAS BEEN GRANTED

Brian Florence makes a motion to adjourn

Michael Hersey seconds.

Vote:

All in favor.

Meeting adjourned. At 7:59 PM