



Town of Barnstable
Zoning Board of Appeals
Minutes
December 12, 2012

Laura Shufelt - Chair	Present
William Newton – Vice Chair	Absent
Craig Larson	Present
Alex Rodolakis	Present
Brian Florence	Present
George Zevitas	Absent

Staff also present were Elizabeth Jenkins – Principal Planner and Carol Puckett – Administrative Assistant.

Laura Shufelt opens the hearing at 7:05 PM

Introduction of Board Members – Members present introduce themselves.

Approval of minutes from October 10, 2012 and November 14, 2012

Motion is made by Craig Larson and seconded by Brian Florence to approve the minutes as submitted.

Vote:

All in favor

At 7:06, Laura calls the Brewer Appeal and reads it into the record:

7:05 PM

Appeal No. 2012-059 - New

Brewer

John H. & Carol J. Brewer have applied for a variance to Section 240-47.1.A(3) Family Apartments, which requires family apartments to be located in, or connected to, the principal single-family dwelling. The applicants are proposing to utilize the upper story of an existing detached garage for the purposes of a family apartment. The subject property is located at 205 Cedar Street, West Barnstable, MA as shown on Assessor's Map 131 as Parcel 059. It is located in the Residence F Zoning District.

Representative: Jeni A. Landers, esq., from Wynn & Wynn Attorneys at Law

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

Attorney Landers indicates that the applicants have agreed to go forward with a four member board. Along with the application there was a report on the septic, other documents and a topographical map. In summarizing the relief being requested, Attorney Landers indicates that if the garage were attached to the primary dwelling that there wouldn't be a need for this request for relief. She indicates that the garage was built in 2002 and soon

thereafter the applicant, Mr. Brewer, started working on the upstairs of the garage. Over the years, their son Gary has been using the space over the garage as his primary residence and that it has been renovated to include a bedroom, living room, bathroom and kitchen. Recently, the applicant, in cooperation with the Building Commissioner, installed another egress. The primary dwelling consists of three bedrooms and with the apartment above the garage, the total bedroom count is four. She hands the board members copies of the topographical map showing the differences in the height of the garage versus the primary dwelling. She indicates that the difference is from 72 to 84 feet making it a substantial hardship in trying to attach the structures. The Brewer's understand that this is only for family members, is not to be rented out, and, if vacated by a family member, would need to be returned to its previous condition or that they would need to apply to the Amnesty Apartment Program. She indicates that the applicants accept the conditions as outlined the staff report if granted. In allowing the applicants to use this as a family apartment does not change the look of the home, the lot or neighborhood and that there will be no outside structural changes made. As to the topographical test for a variance, she indicates that it would be almost impossible to connect the two buildings in a reasonable way and enforcing the ordinance, in this case, would be a hardship to the applicants who have been using this garage for years as a space, is looking to use this for a family member and that it would not be a detriment to the neighborhood

Brian Florence clarifies that someone is living there and that there is currently a violation of the ordinance as it exists now and that what they are asking for is to make a violation lawful. Attorney Landers indicates that Mr. Brewer did create this apartment without the variance in place and did not understand that a detached family apartment would be different than an apartment within the home. When working with the Building Commissioner in getting the second egress, the applicant came to understand that he needed the variance for the detached family apartment. Brian asks to clarify how many bedrooms in the main house and the use of those bedrooms. Attorney Landers indicates that one bedroom is for Mr. & Mrs. Brewer, the second bedroom is an office and the third is a guest bedroom. Brian Florence asks how far from the house the garage is. Mr. Brewer indicates that it is at least fifteen feet and, if enclosed, would create a problem in pumping out of the septic system. Brian Florence asks Mr. Brewer to draw where the septic is.

Laura Shufelt indicates that she is also the Amnesty Apartment Program Hearing Officer and that this property has an application pending for that program for next month. Mr. Brewer indicates that he was contacted by someone regarding this and that there was a site visit done by the Building Commissioner. However, he indicates that he is not interested in the program because it cannot be rented to family members and is not looking to rent it.

Laura Shufelt would like to add a condition indicating that the family apartment would not be transferable.

Brian Florence comments that he believes this is a self imposed hardship and that there is room in the principal structure to provide what they want to do. He doesn't think it unreasonable for them to have the son move into the principal structure while going through the variance process, doesn't think that the board should be granting relief for an ongoing violation and is inclined to vote against this. Craig Larson comments that there is no cease and desist order issued currently on this property. Elizabeth Jenkins indicates that the applicant has been working in full cooperation with the Building Commissioner in remedying the situation.

Attorney Landers indicates that the apartment is needed to afford privacy for the parties involved.

The board discusses.

Brian Florence asks if they would entertain a condition to abandoning the zoning violation until a certificate of occupancy is issued. Mr. Brewer indicates that he is okay with that condition. They discuss language to that effect. Laura suggests that it be that the apartment will be vacated until an occupancy permit has been approved.

Brian Florence then indicates that he would like to see Condition #6 of the draft decision deleted as he feels that this board does not have authority to enforce building codes or Title V health codes.

Craig Larson would like to make an amendment it instead of deleting it. The board discusses. Alex Rodolakis, Laura Shufelt and Craig Larson is okay with the language as is. They decide that Condition \$6 stays. Brian Florence comments that he cannot vote for this if it stays. They discuss again and agree to strike it for this appeal but to have the Town Attorney look at this and to discuss at a future hearing.

Craig Larson does findings:

John H. & Carol J. Brewer have applied for a variance to Section 240-47.1.A(3) Family Apartments, which requires family apartments to be located in, or connected to, the principal single-family dwelling. The applicants are proposing to utilize the upper story of an existing detached garage for the purposes of a family apartment. The subject property is located at 205 Cedar Street, West Barnstable, MA as shown on Assessor's Map 131 as Parcel 059. It is located in the Residence F Zoning District.

The Petitioner seeks a variance from Section 240-47.1(A)(3), as the proposed family apartment is not attached to or within the principal dwelling.

- 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;
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
- 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.

Vote:

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

NAY: None

Craig Larson makes a motion to grant the relief being sought with the following conditions: (as printed on page 2 with #6 being deleted and adding #9). Elizabeth Jenkins indicates that #10 needs to be added as the chair had requested it.

1. Variance No. 2012-059 is granted to establish a family apartment on the upper floor of a detached accessory building at 205 Cedar Street, West Barnstable.
2. The family apartment shall not exceed 800 square feet and shall have no more than one bedroom.
3. The family apartment shall be maintained in compliance with the requirements of Section 240-47.1.
4. There shall be no renting of rooms (lodging) permitted on the property during the life of this variance.
5. Rooms on the basement level of the single-family dwelling shall not be used as bedrooms.
- ~~6. The property shall be in compliance with all requirements of the Building Code, local Board of Health, and Title V.~~
7. When the family apartment is vacated or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use of the family apartment shall be terminated and this variance shall become null and void. At that time, this variance shall cease. The applicant or property owner shall be responsible for the removal of the kitchen, unless the unit is properly permitted under the Accessory Affordable Apartment Program.
8. This decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of a Certificate of Occupancy for the family apartment. The rights authorized by this variance must be exercised within one year, unless extended.

9. There shall be no occupancy of the family apartment prior to issuance of an occupancy permit from the Building Division.
10. This permit shall not be transferable without prior approval from this board

Seconded by Brian Florence.

Vote:

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

NAY: None

GRANTED WITH CONDITIONS

Laura Shufelt then calls the MetroPCS appeal:

7:10 PM Appeal No. 2012-060 - New

MetroPCS Massachusetts LLC

MetroPCS Massachusetts LLC, as lessee, has applied for a modification of Variance No. 2002-116. The Applicant seeks to install two dish antennas approximately two feet in diameter on an existing monopole communications tower. The variance conditions prohibit 'dish type communication devices' from being installed on the tower. The subject property is located at 215 Old Falmouth Road, Marstons Mills, MA as shown on Assessor's Map 100 as Parcel 071. It is in a Residence F Zoning District.

Laura Shufelt indicates that there is an email from the applicant's representative, Mike Johnsen, asking to continue this matter until January 9, 2012.

Motion is made by Laura Shufelt and seconded by Brian Florence to continue this to January 9, 2013 at 7:00 PM

Vote:

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

NAY: None

CONTINUED TO JANUARY 9, 2013 at 7:00 PM

7:15 PM Appeal No. 2012-061 - New

Morin

Jacques N. Morin has applied for a Variance from Section 240-11.E Bulk Regulations – Minimum Lot Area, Minimum Lot Width and the Minimum 100-foot setback required from Route 28 and from Section 240-36, the two-acre minimum lot area requirement of the Resource Protection Overlay District. The applicant seeks to develop the .28 acre lot with a three-bedroom single-family dwelling set back approximately 45 feet from the front property line on Route 28. The property is addressed 1358 Falmouth Road (Route 28), Centerville, MA, and is shown on Assessor's Map 229 as Parcel 099. It is in a Residence D-1 Zoning District and the Resource Protection Overlay District.

Laura Shufelt indicates that there is a letter from the applicant's attorney, Michael Ford, requesting a continuance to January 9 2013 when a full compliment of the board is expected.

Motion is made by Laura Shufelt and seconded by Brian Florence to continue this to January 9, 2013 at 7:00 PM

Vote:

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

NAY: None

CONTINUED TO JANUARY 9, 2013 at 7:00 PM

7:15 PM **Appeal No. 2012-055 – Cont'd**

Haseotes

Kristen Williams Haseotes and George Haseotes have petitioned for a Special Permit pursuant to Section 240-131.4(D)(2) Change, Expansion or Alteration of Uses and Structures and Section 240-131.4(E) Special Permit for Dimensional Relief. The Petitioners are proposing to completely demolish the existing dwelling at 158 Long Beach Road and reconstruct a new dwelling. The new dwelling will be elevated above the floodplain. The subject property is located at 158 Long Beach Road, Centerville, MA, as shown on Assessor's Map 205 as Parcel 009. It is in the Craigville Beach District and the Long Beach/Short Beach Neighborhood Overlay District.

Opened November 14, 2012 – no members assigned. Decision due 2/12/2013.

7:15 PM **Appeal No. 2012-056 – Cont'd**

Haseotes

Kristen Williams Haseotes and George Haseotes have petitioned for a Special Permit pursuant to Section 240-131.4(D)(2) Change, Expansion or Alteration of Uses and Structures and Section 240-131.4(E) Special Permit for Dimensional Relief. The Petitioners are proposing to completely demolish the existing dwelling at 168 Long Beach Road and reconstruct a new dwelling. The new dwelling will be elevated above the floodplain. The subject property is located at 168 Long Beach Road, Centerville, MA, as shown on Assessor's Map 205 as Parcel 008. It is in the Craigville Beach District and the Long Beach/Short Beach Neighborhood Overlay District.

Opened November 14, 2012 – no members assigned. Decision due 2/12/2013.

Laura Shufelt indicates that a letter has been received by the applicant's attorney, Michael Schulz, to continue this to January 9, 2013 at 7:00 PM

Motion is made by Laura Shufelt and seconded by Brian Florence to continue this to January 9, 2013 at 7:00 PM

Vote:

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

NAY: None

CONTINUED TO JANUARY 9, 2013 at 7:00 PM

7:20 PM **Appeal No. 2012-058 – Cont'd**

Cummaquid Golf Club

The Cummaquid Golf Club of Yarmouth and Barnstable has petitioned for a special permit pursuant to Section 240-94 Nonconforming Use and to modify Special Permit 1972-16. The Petitioner seeks to demolish the existing golf course clubhouse and rebuild a new, larger clubhouse. The gross floor area of the existing clubhouse is 11,238 sq.ft and the proposed clubhouse is 21,089 sq.ft. The subject property is located at 35 Marstons Lane, Barnstable, MA as shown on Assessor's Map 350 as Parcel 001. It is zoned Residence F-2.

Opened November 14, 2012 – no members assigned. Decision due 2/12/2013.

Laura Shufelt indicates that Attorney John Kenney has submitted a letter dated December 10, 2012 asking to withdraw without prejudice.

Motion is made by Laura Shufelt and seconded by Brian Florence to withdraw without prejudice.

Vote:

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

NAY: None

WITHDRAWN WITHOUT PREJUDICE

Robert K. Gustafson has petitioned to transfer and modify Special Permit 2002-132. The petitioner seeks a change in the owner/holder of Special Permit 2002-132 and seeks to modify the special permit to use the first floor of the building for professional offices and to retain the residential unit on the upper floor. The property is located at 1492 Main Street, West Barnstable, MA as shown on Assessor's Map 197 as parcel 048. It is in a Residence F Zoning District.

Laura Shufelt indicates that an email has been received from the applicant, Bob Gustafson, asking to continue this to January 9, 2013 at 7:00 PM when a full compliment of the board is expected.

Motion is made by Laura Shufelt and seconded by Brian Florence to continue this to January 9, 2013 at 7:00 PM

Vote:

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

NAY: None

CONTINUED TO JANUARY 9, 2013 at 7:00 PM

Open: Chair's Discussion

▪ Vote on the 2013 Hearing Date Schedule

Motion is made by Brian Florence and seconded by Alex Rodolakis to approve the 2013 ZBA Hearing Schedule.

Vote:

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

NAY: None

▪ Election of Officers

In accordance with MGL Chapter 40A Section 12, Section 240-125 of the Zoning Ordinance and the Zoning Board of Appeals, Rules and Regulations, notice is hereby given that the Zoning Board will hold its annual election from its membership for Chairman, Vice-Chairman and Clerk.

As there is not a full compliment of the board, Laura Shufelt will table this until the January 9, 2013 hearing.

Upcoming Meetings:

- January 9, 2013, January 23, 2013 (subject to Board approval of 2013 schedule)

Craig Larson would like to have a discussion about deleting the Board of Health and reference to building permits in the conditions of a ZBA decision. They discuss and it is decided that it will be discussed further at another hearing.

Laura Shufelt indicates that the ZBA is looking for volunteers to fill positions on the board and if anyone is interested to please contact the Town of Barnstable.

Motion is made by Brian Florence and seconded by Craig Larson to adjourn.

Vote:

All in favor.

Meeting adjourned at 7:42 PM

