



Town of Barnstable
Zoning Board of Appeals
Minutes

Wednesday, July 10, 2013

2nd Floor Hearing Room – 367 Main Street, Hyannis, MA

William Newton – Vice Chair	Present
Craig Larson - Clerk	Present
Alex Rodolakis	Absent
Brian Florence	Present
George Zevitas	Present
David Hirsch	Present

Also present were Elizabeth Jenkins, Principal Planner and Carol Puckett – Administrative Assistant.

Call to Order

Introduction of Board Members. ***David Hirsch, George Zevitas, Brian Florence, William Newton, and Craig Larson introduce themselves.***

William Newton reads the following:

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

No one responds.

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 Chair, Vice-Chair and Clerk.

Motion is made by William Newton and seconded by David Hirsch to nominate Craig Larson for Chair.

Vote:

All in favor

Motion is made by Craig Larson and seconded by William Newton to nominate Brian Florence as Vice-Chair.

Vote:

All in favor

Motion is made by Craig Larson and seconded by David Hirsch to nominate Alex Rodolakis as Clerk.

Vote:

All in favor

Approval of Minutes

Minutes from June 12, 2013

Motion is made by William Newton and seconded by Brian Florence to approve the minutes as submitted.

Vote:

All n favor

Craig Larson then calls the Bow Lane Realty Trust request into the record:

New Business

7:00 PM

Request for 6-Month Extension

Bow Lane Realty Trust

By letter received June 30, 2013, William F. Swift & Wendy S. Lapine, Trustees of Bow Lane Realty Trust have requested a 6-month extension of Variance No. 2012-046, filed August 31, 2012. The variance was granted for properties located at 46 Bow Lane & 1758 Hyannis Road, Barnstable, MA on Assessor's Map 299 as parcels 049 & 053. Relief was granted from lot shape factor, contiguous upland, and minimum side yard setback requirements.

MGL Chapter 40A, Section 10 authorizes the Zoning Board of Appeals to grant one extension of a variance for a period not to exceed 6 months. A public hearing is not required.

Members assigned: David Hirsch, George Zevitas, Brian Florence, William Newton, Craig Larson

Attorney Eliza Cox from Nutter McClennen and Fish is representing the applicant. She states that she had represented the trust before this board previously with the original variance request. She states that they are asking for a six month extension as requested in a letter to the Zoning Board dated June 28, 2013 outlining their request (Exhibit A).

Motion is made by William Newton and seconded by Brian Florence to grant a six month extension.

Vote:

AYE: David Hirsch, George Zevitas, Brian Florence, William Newton, Craig Larson

Nay: None

SIX MONTH EXTENSION GRANTED

At 7:10, Craig Larson reads the next appeal into the record:

7:00 PM

Appeal No. 2013-036

Lynch/Rodriguez/Pollard

Christopher Lynch & Raquel Rodriguez as owners of 234 Little River Road and Douglas C. and Patty Pollard as owners of 218 Little River Road have applied for variances from §240-36 RPOD Resource Protection Overlay District and §240-7 Lot Shape Factor. The Applicants seek to reconfigure their common lot line by exchanging an equal area of property. The land swap will result in two, 1.39 acre developed lots exceeding the maximum allowed lot shape factor. The properties are located at 218 and 234 Little River Road, Cotuit, MA as shown on Assessor's Map as 054 as Parcels 006/004 and 006/005. They are in the Residence F Zoning District and the Resource Protection Overlay District.

Members assigned: David Hirsch, George Zevitas, Brian Florence, William Newton, Craig Larson

Attorney Michael Ford is representing the applicants as well as the neighbors, the Pollards. Attorney Ford indicates that these people have been long term neighbors and that the parcels met zoning back in the 90's. He summarizes the relief being requested. He states that the fence as well as a shed encroaches into the Pollard property. Additionally, the Lynch's are interested in constructing a garage to the south of their existing house and the relocation of the lines, as proposed, will allow for a better buffer zone. He indicates that these lots are nonconforming as they are in the RPOD and that in order to exchange parcels of equal size; they must apply for a variance. If they did not apply for the variance they would lose their nonconforming rights. They need a variance from the RPOD and from the shape factor provision of the ordinance. He would suggest that under 40A,

§10, that it is the shape of these parcels that is unique to the reconfiguration of the common boundary line that they would like to undertake. As for the hardship, without the variance relief, they would have to keep the lot lines where they are with the encroachments that have been there for more than 10 years. He doesn't believe that this derogates from the intention of the bylaw because he doesn't believe that the bylaw intended to prevent common owners from swapping equal amounts of land that would not render lots any nonconforming than they are now. Also, he doesn't believe that granting this would be a detriment to the common good.

Craig Larson asks if there is anyone from the public who would like to speak either in favor or in opposition. No one speaks.

George Zevitas asks how long the fence and shed have existed. Attorney Ford believes it has been for approximately more than five years and that when the applicants had a survey done in regards to building a garage, they discovered the problem with the fence and shed encroachment.

Brian Florence asks if Attorney Ford had read the conditions as outlined in the staff report and if he is okay with them. Attorney Ford indicates that they have read the conditions and are in agreement with them. Also, it is noted that the endorsed plan and decision would have to be filed within the year to exercise the rights as well as no further division of the lots. Brian Florence asks if they will meet the side line requirements for the shed. Attorney Ford states that he will meet with the Building Commissioner regarding this.

William Newton asks Elizabeth Jenkins what the status of the lots would be if relief is granted regarding nonconformities. Elizabeth Jenkins indicates that the variance would make them legally created with a new shape factor as established in the application. The board discusses the shed. Elizabeth Jenkins indicates that it could be put into the conditions that the shed must be in compliance with side yard setbacks of the district.

Brian Florence makes findings:

In Appeal No. 2013-036, Christopher Lynch & Raquel Rodriguez as owners of 234 Little River Road and Douglas C. and Patty Pollard as owners of 218 Little River Road have applied for variances from §240-36 RPOD Resource Protection Overlay District and §240-7 Lot Shape Factor. The Applicants seek to reconfigure their common lot line by exchanging an equal area of property. The land swap will result in two, 1.39 acre developed lots exceeding the maximum allowed lot shape factor. The properties are located at 218 and 234 Little River Road, Cotuit, MA as shown on Assessor's Map as 054 as Parcels 006/004 and 006/005. They are in the Residence F Zoning District and the Resource Protection Overlay District.

- 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
- 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

Seconded by William Newton

Vote:

AYE: David Hirsch, George Zevitas, Brian Florence, William Newton, Craig Larson

NAY: None

Motion is made by Brian Florence to grant with the following conditions:

1. The variance is granted from the minimum lot area requirements of §240-36 the Resource Protection Overlay District and the maximum lot shape factor requirements of §240-7 to allow an equal exchange of lot area as depicted on the

plan entitled: "Plan of Land at Little River Road" prepared for Christopher M. Lynch by BSS Design, dated April 30, 2013.

2. A minimum lot area of 1.39 acres and shape factor figures of 23.16 and 23.04 are permitted for 234 Little River Road and 218 Little River Road, respectively.
3. An Approval Not Required (ANR) plan shall be prepared based upon the plan referenced in Condition No. 1. The plan shall incorporate a reference to this variance and notation that the lots are subject to compliance with all conditions of the variance.
4. The Approval Not Required (ANR) plan shall be submitted to the Planning Board for endorsement and thereafter recorded at the Registry of Deeds along with the recording of this variance. Copies of the recorded ANR plan and this decision shall be submitted to the Zoning Board of Appeal's file for this variance to be in effect.
5. There shall be no further division of the lots.
6. If the variance and Approval Not Required (ANR) plan have not been recorded at the Barnstable County Registry of Deeds within one year from the date of issue of this variance, this variance shall expire, unless extended.

Brian Florence wants to add another condition stating that all structures be in compliance with the setback requirements of the zoning ordinance.

Seconded by William Newton

Vote:

AYE: David Hirsch, George Zevitas, Brian Florence, William Newton, Craig Larson

NAY: None

GRANTED WITH CONDITIONS

Craig Larson then calls the Gosnold appeals and asks Attorney Cox how she would like to proceed. Attorney Cox would like to have the special permit first. Craig Larson reads them into the record:

7:05 PM

Appeal No. 2013-037

Gosnold, Inc.

Gosnold, Inc., as lessee, is petitioning for a Conditional Use Special Permit in accordance with §240-25C Conditional Uses in the Highway Business zoning district to allow medical use within an existing structure. The petitioner is proposing to utilize an existing 22,736 gross sq.ft building to provide educational counseling and treatment services to persons afflicted with addiction and mental health issues. The property is located at 1185 Falmouth Road, Centerville, MA as shown on Assessor's Map 229 as Parcel 100-003. It is in a Highway Business (HB) zoning district

Members assigned: David Hirsch, George Zevitas, Brian Florence, William Newton, Craig Larson

Attorney Eliza Cox is representing the applicant. Also with her tonight are Ray Tomassi, president and CEO of Gosnold and Alisa Galazzi Director of Primary Care Integration. Attorney Cox gives a background of Gosnold indicating that it is a nonprofit organization governed by a board of directors. She indicates that this is an out patient facility which provides addiction counseling and mental health counseling which includes therapy and providing medication. Some medications are prescribed to those patients who must be participants. Gosnold takes specimen samples, either urine or blood specimens, on-site and ships them off-site but has the ability to produce immediate results on-site if needed. The property is within the HB zoning district with a two story commercial building of over 22, 000 square feet owned by Rainbow Realty Trust. They have been in this building for over 10 years. It is not a new use but has been existing for over ten years in this location. When an occupancy permit for the recent expansion was to be issued recently, the Town determined that relief from this board would be required. She would suggest that Gosnold's use does not have a detrimental affect and that there will be no changes to the exterior of the building or parking requirements.

Craig Larson asks if there is anyone from the public who would like to speak either in favor or in opposition. No one speaks.

Brian Florence asks Attorney Cox if she has seen the conditions. Ms. Cox states that her client and herself are okay with the conditions.

William Newton asks about future expansion plans. Attorney Cox consults with her clients and indicates that 10, 200 feet is what Gosnold will be occupying with the additional space and if they would need to add more space in the future, they would come back before the Zoning Board of Appeals to modify the permit.

Elizabeth Jenkins clarifies that this permit will be issued to the applicant.

Craig Larson states that most medical facilities require more parking spaces than this zoning area which is Highway Business. He wants to limit the parking and asks Mr. Tomassi for his input in order to tweak Condition #2 to reflect that.

Attorney Cox discusses with her clients. Attorney Cox indicates that this is a hybrid use and the total space that is occupied by Gosnold is 10, 200 square feet. She states that if the ZBA wants to limit it to 11, 000 square feet that they would be okay with that but feels it is unnecessary.

Tom Perry – Building Commissioner speaks and states that when his department looks at a general medical use, they don't look at it as parking intensive. For one doctor there could be 5 patients at any one time. When they look at a Emerald Physician type facility, the parking is a more intense parking requirement.

Craig Larson asks Tom Perry if he would be comfortable with 12000 square feet of medical care. Tom Perry agrees.

Elizabeth Jenkins confirms that they condition would state that it shall not exceed 12000 square feet without further approval.

William Newton makes findings:

1. In Appeal No. 2013-037, Gosnold, Inc. is seeking a Conditional Use Special Permit to establish an additional 2,000 square feet of medical office space in an existing 22,736 building at 1185 Falmouth Road (Rte 28) in Centerville. The locus is zoned HB and is in a Groundwater Protection Overlay District. The multi-tenant building was constructed in 1986 and can be accessed from Route 28 or West Main Street.
2. Gosnold Inc.'s proposal is to expand their existing operation within the _____ building by adding 2,000 square feet of leased _____ spaced. According to the floor plans submitted, the space will consist of two exam rooms, two offices, a nurses' station and a reception area. The Applicant has indicated that "no new treatments that are not already being offered" will result _____ and that the _____ space "is needed to accommodate the number of patients that Gosnold has _____ in its care." According to the _____ Applicant, Gosnold "provides educational counseling and treatment services to persons _____ afflicted with addiction and _____ mental health issues, as well as their families.' Medical sampling and limiting testing, along with other outpatient _____ activities, will occur at this location.
3. In Appeal No. 2013-037, Gosnold, Inc, has requested a Conditional Use Special Permit to allow medical use within an existing structure in the HB Zoning District. Section 240-25(C)(1) of the Zoning Ordinance allows restaurants and food service establishments in the HB District with a Special Permit.
4. No changes are proposed to the exterior of the building, parking lot, or site
5. After an 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 affect
6. The use does not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.

Seconded by Brian Florence

Vote:

All in favor

A motion is made by William Newton to grant the relief being requested with the following conditions:

1. Special Permit No. 2013-037 is granted to Gosnold, Inc. to allow medical use, including medical sampling and testing, in an existing building in the HB District at 1185 Falmouth Road (Route 28), Centerville.
2. Total square foot of the medical office shall not exceed 12000 square feet .
3. The use shall be permitted in conjunction with the educational counseling and treatment services that Gosnold now provides to persons afflicted with addiction and mental health issues, as well as their families.
4. 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 for this special permit to be in effect. The rights authorized by this special permit must be exercised within two years, unless extended by the Board

Seconded by Brian Florence

Vote:

AYE: David Hirsch, George Zevitas, Brian Florence, William Newton, Craig Larson

NAY: None

GRANTED WITH CONDITIONS

7:05 PM

Appeal No. 2013-038

Gosnold, Inc.

Gosnold, Inc. is appealing the Building Commissioner's determination that the proposed use of property at 1185 Falmouth Road is a 'medical use' requiring special permit relief and is seeking to qualify the use as an exempt educational use under MGL Ch 40A §3. Gosnold is a nonprofit corporation that provides addiction and mental health outpatient treatment. The Appellant is proposing to expand their leased facility by 2,000 sq.ft; the facility provides educational counseling and treatment services to persons afflicted with addiction and mental health issues. The property is located at 1185 Falmouth Road, Centerville, MA as shown on Assessor's Map 229 as Parcel 100-003. It is in a Highway Business (HB) zoning district.

Members assigned: David Hirsch, George Zevitas, Brian Florence, William Newton, Craig Larson

Attorney Cox asks to withdraw without prejudice.

Motion is made by Craig Larson and seconded by Brian Florence to grant the request to withdraw without prejudice.

Vote:

AYE: David Hirsch, George Zevitas, Brian Florence, William Newton, Craig Larson

NAY: None

WITHDRAWN WITHOUT PREJUDICE

Correspondence

Other Business

Craig Larson indicates that since the past chair, Laura Shufelt, was also the Amnesty Hearing Officer, that someone needs to be assigned in her place. This position has been one that gets approval through the Town Manager. Mr. Larson is suggesting that this board write a letter to the Town Manager requesting that in place of the same member being the hearing officer, that it be changed to any member, at any time, be the hearing officer. Craig Larson states the he had asked the Town Manager about this matter and was instructed to have the board write a letter as this would need to be a change to the Administrative Code done through Town

Council. Mr. Larson states that they can't vote on this tonight as it was not on the agenda and that this is a general discussion. Brian Florence thinks it is a good idea.

Motion is made by Brian Florence and seconded by William Newton to adjourn.

Vote:

All in favor.

Meeting adjourned at 8:02 PM