



Town of Barnstable Zoning Board of Appeals



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Board Members:

Brian Florence – Chair Alex Rodolakis – Vice Chair George Zevitas – Clerk
David A. Hirsch – Associate Member Herbert Bodensiek – Associate Member Robin Young – Associate Member
Matthew Levesque – Associate Member
James Tinsley – Town Council Liaison

Staff Support

Elizabeth Jenkins – Principal Planner - elizabeth.jenkins@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, July 8, 2015

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

Brian Florence - Chair	Present
Alex Rodolakis - Vice Chair	Present
George Zevitas - Clerk	Present
David Hirsch	Present
Herbert Bodensiek	Present
Robin Young	Present
Matthew Levesque	Absent

Also present were Elizabeth Jenkins – Principal Planner and Kathleen Thompson – Administrative Assistant.

As a quorum has been met Brian Florence opens the hearing at 7:05 PM.

Call to Order

Introduction of Board Members – *All members present introduce themselves.*

Brian reads the following and no one responds.

Notice of Recording

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

Brian reads a series of continuances for the record:

Appeal No. 2015-029

Marshall

Winton W Marshall has applied to modify condition No. 6 of Special Permit No. 2002-95, which states “there shall be no accessory building added to this property.” The applicant seeks to allow construction of a pier, ramp and float. The property is located at 132 Bay Shore Road, Hyannis, MA as shown on Assessor’s Map 325 as Parcels 080. It is zoned RB Residence B.

The Applicant has requested this be continued to August 26, 2015 at 7:00 PM

Motion is made to continue this appeal by Robin Young and seconded by David Hirsch.

Unanimous in favor

Appeal No. 2015-035

Cwynar

Elaine R. Cwynar has applied to modify Conditions No. 1 & 2 of Variance No. 2007-072. The applicant seeks to amend the conditions to allow for the construction of a 219 sq.ft second floor loft. Under Variance No. 2007-072 the "dwelling shall not be increased in area, limited to "one story" and "the gross area of the building shall not be expanded." The property is located at 29 Norris Street, Hyannis, MA as shown on Assessor's Map 306 as Parcel 033. It is in the Residence B Zoning District.

The Applicant has requested this be continued to August 12, 2015 at 7:00 PM

Motion is made to continue this appeal by David Hirsch and seconded by Robin Young.

Unanimous in favor

Appeal No. 2015-038

Atlantic Development

Atlantic Development has petitioned for a variance to Section 240-25(E) – Front Yard Setback Requirements and to amend the conditions of Variance No. 1995-21. The petitioner seeks to demolish the existing building and site features (pavement, landscaping, fuel storage tanks, utilities, etc) and construct a new self-service BJ's fueling station with canopy, attendant's kiosk and associated driveways, fuel storage tanks, landscaping, utilities, etc. Variance relief is sought to decrease the required front yard setback from Hinckley Road and modify conditions regarding the number of curb cuts on Iyannough Road and Hinckley Road set forth in Variance No. 1995-21. The property is located at 590 Iyannough Road/Route 132, Hyannis, MA as shown on Assessor's Map 311 as Parcel 017. It is in the Highway Business Zoning District.

The Applicant has requested this be continued to July 22, 2015 at 7:00 PM

Motion is made to continue this appeal by David Hirsch and seconded by Robin Young.

Unanimous in favor

Appeal No. 2015-039

Atlantic Development

Atlantic Development has applied for a Special Permit for extension of a preexisting nonconforming site dimension per Section 240-93 and expansion of a preexisting nonconforming use per Section 240-94. The applicant seeks to demolish the existing building and site features (pavement, landscaping, fuel storage tanks, utilities, etc) and construct a new self-service BJ's fueling station with canopy, attendant's kiosk and associated driveways, fuel storage tanks, landscaping, utilities, etc. Special Permits are sought to extend existing nonconformities regarding impervious area (increase impervious area from 73.2% to 84.8% of the lot) and fuel storage (replace 30,000 gallons of fuel storage with three new 64,000 gallon underground fuel storage tanks, plus 200 gallons of diesel fuel for emergency generator). The property is located at 590 Iyannough Road/Route 132, Hyannis, MA as shown on Assessor's Map 311 as Parcel 017. It is in the Highway Business Zoning District.

The Applicant has requested this be continued to July 22, 2015 at 7:00 PM

Motion is made to continue this appeal by David Hirsch and seconded by Robin Young.

Unanimous in favor

Old Business

Appeal No. 2015-030

Guarco

Anne and Brian Guarco have petitioned for a Special Permit pursuant to §240-91H(3) and Massachusetts General Law Chapter 40A Section 6 to demolish and reconstruct a dwelling on a preexisting nonconforming lot that contains less than 10,000 square feet. The Petitioners are proposing to demolish the existing principal dwelling and construct a new, 2,216 sq.ft dwelling. The property is located at 163 Estey Avenue, Hyannis, MA as shown on Assessor's Map 306 as Parcel 197. It is located in the Residence B Zoning District

Members assigned: Alex Rodolakis, George Zevitas, David Hirsch, Herbert Bodensiek, Brian Florence

Continued from June 10, 2015

Representative: Attorney Eliza Cox from Nutter, McClennan & Fish

Attorney Cox introduces herself and Richard Avery from Cape Cod Remodeling and Kieran Healy from the BSC Group.

Attorney Cox summarizes that they presented this project on June 10, 2015 before the Board and the Board had concerns about the overall height of the new project.

At this point Brian Florence suggests that they discuss both appeals and Attorney Cox agrees.

Brian Florence reads the second appeal as follows:

Appeal No. 2015-031

Guarco

Anne and Brian Guarco have applied for a variance to §240-91H(3)(b) and §240-91H(1)(b)[2] for relief from maximum floor area ratio requirements for the demolition of a nonconforming single-family dwelling and reconstruction of a dwelling which exceeds floor area ratio requirements. Alternatively, variance relief is requested from §240-11(E) for relief from Bulk Regulations for minimum lot area and front yard setback to permit the proposed reconstruction. The property is located at 163 Estey Avenue, Hyannis, MA as shown on Assessor's Map 306 as Parcel 197. It is located in the Residence B Zoning District

Members assigned: Alex Rodolakis, George Zevitas, David Hirsch, Herbert Bodensiek, Brian Florence
Continued from June 10, 2015

Attorney Cox continues and introduces Mr. Avery who proceeds to explain the 5 drawings (Exhibit A) he is submitting to the Board to show changes he has made to the plans.

Mr. Avery explains that the five feet in height was eliminated by changing the slope of the roof, dropping an outside wall on the second floor and changing the elevation of the lot in a minor way.

Attorney Cox stated that they would be happy to answer any questions and that she asks the Board to grant the relief that's been requested.

The Board discusses how the new design is very appealing and they appreciate the effort that went into this.

Brian Florence asks if there is any public comment.

None

Findings of Fact

1. Anne and Brian Guarco have petitioned for a Special Permit pursuant to §240-91H(3) and Massachusetts General Law Chapter 40A Section 6 to demolish and reconstruct a dwelling on a pre-existing nonconforming lot that contains less than 10,000 square feet. The Petitioners are proposing to demolish the existing principal dwelling and construct a new, 2,216 sq.ft dwelling.
2. The property is located at 163 Estey Avenue, Hyannis, MA as shown on Assessor's Map 306 as Parcel 197. It is located in the Residence B Zoning District.
3. Section 240-91(H)(3) allows for the complete demolition and rebuilding of a residence on a nonconforming lot containing less than 10,000 square feet of contiguous upland by Special Permit.
4. Site Plan Review is not required for single-family residential dwellings.
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 affected. The dwelling will be in greater conformance with setback requirements and was designed to minimize the height in keeping with the character of the neighborhood.
6. The proposed dwelling does not intensify any existing setback nonconformity; the front setback remains nonconforming, but is an improvement over the existing condition. A minimum 10' setback is provided from all other property lines.
7. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The existing lot coverage is 1,123 sq.ft or 21% of the lot. The lot coverage of the proposed dwelling equals the existing coverage.
8. The Petitioners are seeking relief from the maximum floor-area ratio requirements with Appeal No. 2013-031.
9. The proposed building from average grade plane to plate is less than 30 feet; the proposed dwelling does not exceed 2 ½ stories. The proposed height of the dwelling is 31' 8" to the ridge from average grade.
10. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling. The dwelling will be in greater conformance with the setback requirements and will be located substantially within the footprint of the existing dwelling. The dwelling has been designed to maintain the character of the existing neighborhood.

Motion was made by Alex Rodalakis and seconded by George Zevitas to accept the findings of fact.

The vote to accept the findings was:

AYE: Brian Florence, Alex M. Rodolakis, George Zevitas, David A. Hirsch, Herbert K. Bodensiek

NAY: None

Decision

Based on the findings of fact, a motion was made by Alex Rodalakis and seconded by George Zevitas to grant Special Permit No. 2015-030 subject to the following conditions:

1. Special Permit No. 2015-030 is granted to Anne and Brian Guarco for the demolition of an existing dwelling and rebuilding of a new single family dwelling with a gross floor area of 2,216 square feet at 163 Estey Avenue, Hyannis.
2. The dwelling shall be constructed in substantial conformance with the plan entitled "Plan to Accompany a Zoning Board of Appeals Filing at 163 Estey Avenue" dated April 30, 2015, last revised on June 5, 2015, drawn and stamped by BSC Group; and the floor plans and elevations entitled "Guarco Residence" dated (revised) June 28, 2015, drawn by Hartford & Associates Arch.
3. The total lot coverage of all structures on the lot shall not exceed 1,123 sq.ft or 21% of the lot.
4. Prior to issuance of a certificate of occupancy, a certified as-built plan prepared by a Massachusetts' licensed professional land surveyor shall be submitted to the Building Commissioner to confirm the lot coverage and floor area ratio of the dwelling conforms to the conditions of this decision and Appeal No. 2015-031.
5. The proposed redevelopment shall represent full build-out of the lot. Further expansion of the footprint or square footage of the dwelling or construction of accessory structures is prohibited without prior approval from this Board.
6. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
7. Any conversion of space currently determined to be uninhabitable into habitable space is prohibited.
8. The 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 building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

The vote was:

AYE: Brian Florence, Alex M. Rodolakis, George Zevitas, David A. Hirsch, Herbert K. Bodensiek

NAY: None

Appeal No. 2015-031.

Findings of Fact

1. In Appeal No. 2015-031, Anne and Brian Guarco sought a variance to §240-91H(3)(b) and §240-91H(1)(b)[2] for relief from maximum floor area ratio requirements for the demolition of a nonconforming single-family dwelling and reconstruction of a dwelling which exceeds floor area ratio requirements.
2. The property is located at 163 Estey Avenue, Hyannis, MA as shown on Assessor's Map 306 as Parcel 197. It is located in the Residence B Zoning District
3. There are circumstances relative to 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. The shape of the lot and the presence of wetland resources limits the buildable area of the property.
4. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. The existing dwelling is in a severely deteriorated condition and is located in a flood zone; to be required to renovate and expand the existing dwelling would be a hardship to the applicant.
5. 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. The new dwelling is proposed in greater conformance with setback requirements, mitigation plantings are provided in accordance with Conservation Commission requirements, and the dwelling was designed to minimize height and in keeping with the character of the neighborhood.

Motion was made by Brian Florence and seconded by David A. Hirsch to accept the findings of fact.

The vote to accept the findings was:

AYE: Brian Florence, Alex M. Rodolakis, George T. Zevitas, David A. Hirsch, Herbert K. Bodensiek

NAY: None

Decision

Based on the findings of fact, a motion was made by George T. Zevitas and seconded by Herbert K. Bodensiek to grant Appeal No. 2015-031, a variance from the maximum floor area ratio requirements, subject to the following conditions:

1. Variance No. 2015-031 is granted to allow the rebuilding of a dwelling at 163 Estey Avenue in excess of maximum floor-area ratio requirements. The floor-area ratio of the dwelling shall not exceed 41.6% of the lot and the gross floor area of the dwelling shall not exceed 2,216 square feet.
2. The dwelling shall be constructed in substantial conformance with the plan entitled "Plan to Accompany a Zoning Board of Appeals Filing at 163 Estey Avenue" dated April 30, 2015, last revised June 5, 2015 drawn and stamped by BSC Group; and the floor plans and elevations entitled "Guarco Residence" dated (revised) June 28, 2015, drawn by Hartford & Associates, Architects.
3. Prior to issuance of a certificate of occupancy, a certified as-built plan prepared by a Massachusetts' licensed professional land surveyor shall be submitted to the Building Commissioner to confirm the lot coverage and floor area ratio of the dwelling conforms to the conditions of this decision and Appeal No. 2015-030.
4. The proposed redevelopment shall represent full build-out of the lot. Further expansion of the footprint or square footage of the dwelling or construction of accessory structures is prohibited without prior approval from the Board.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
6. Any conversion of space currently determined to be uninhabitable into habitable space is prohibited.
7. 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 building permit. The rights authorized by this variance must be exercised within one year, unless extended.

The vote was:

AYE: Brian Florence, Alex M. Rodolakis, George T. Zevitas, David A. Hirsch, Herbert K. Bodensiek

NAY: None

Attorney Cox states that they applied for alternative relief with the variance application and they would ask now that it be withdrawn without prejudice.

The vote was as follows:

AYE: Brian Florence, Alex M. Rodolakis, George T. Zevitas, David A. Hirsch, Herbert K. Bodensiek

NAY: None

New Business

Appeal No. 2015-034 Lane

Mark and Susan E. Lane have applied for a variance to Section 240-14(E) – Bulk Regulations. The applicants propose to construct an addition to the southeast side of their existing dwelling that will encroach about 6 feet into the 15 foot required side yard setback. The property is located at 390 Cedar Street, West Barnstable, MA as shown on Assessor's Map 131 as Parcel 007-001. It is located in the Residence F Zoning District and Resource Protection Overlay District.

Representative: Attorney Ben Losordo

**Attorney Losordo introduces Mr. Lane and Shane Mallon of Baxter Nye Engineering & Surveying
He then proceeds to pass out copies of the engineering plans, (Exhibit A)**

Brian Florence assigns members: David Hirsch, Alex Rodolakis, George Zevitas, Herb Bodensiek and Brian Florence.

Attorney Losordo states that Applicant owns 4 acres which are divided into 2 lots. Lot 2 has a house that they would like to put a 14' addition onto which is very close to the lot line. In order to do this they are looking for a variance of 5.4 feet.

The addition needs to be put on the side of the house and not in back as the back slopes down.

Historic has approved this design. We are looking for reasonable relief for this particular situation.

Mr. Hirsch asked how soon the 30 foot setback could be placed on the second lot.

Attorney Losordo answered “Right away”.

Elizabeth Jenkins states that this is included as a draft decision as part of this condition.

Robin Young asked if they have plans to change the driveway.

Attorney Losordo replies “No”.

Mr. Bodensiek asked if they had considered making the addition to the front of the house.

Attorney Losordo states that the problems to adding to the front of the house would not be in keeping with the historical character.

Mr. Bodensiek asked if they had considered moving the lot line.

Attorney Losordo states they were not able to because of the Resource Protection Overlay District.

Brian Florence stated that they have addressed the density issue very well in regard to shape and topography.

He then asks if there is any public comment.

None.

Mr. Bodensiek reads the findings.

Findings of Fact

The statutory requirement of MGL Chapter 40A, Section 10 for granting a variance is a three-prong test. The Board **finds that:**

- 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.

Motion made by George Zevitas and seconded by Herbert K. Bodensiek to accept the findings.

The vote was unanimous.

Suggested Conditions

Based on the findings of fact, a motion was made by Brian Florence and seconded by David Hirsch to grant the variance subject to the following conditions:

1. Relief from the minimum side yard setback requirement of §240-14(E) RF District is granted to allow the construction of an addition located 9.6 feet from the nearest side property line to be constructed to the existing dwelling at 390 Cedar Street, West Barnstable (Lot 2 as shown on Plan Book 430 Page 45).
2. A minimum 30 foot side yard setback from shall be imposed from the northern property line of 370 Cedar Street (Lot 1 as shown on Plan Book 430 Page 45). No structures shall be constructed within this required setback.
3. The addition to the dwelling at 390 Cedar Street shall be constructed in substantial compliance with the plan entitled “Existing Conditions Plan – #370 Cedar Street & #390 Cedar Street, West Barnstable, MA” dated June 1, 2015 drawn and stamped by Baxter Nye Engineering and Surveying and the elevations and floor plans entitled “Lane Residence” dated October 3, 2014 drawn by Fine Line Design.
4. There shall be no additional construction or expansion of the structure within the required 15’ side yard setback without further relief from this Board.

5. This variance shall be recorded at the Barnstable County Registry of Deeds within one year from the date of issuance or this variance shall expire, unless extended by the Board. Copies of the recorded decision shall be provided to the Zoning Board of Appeals and Building Division files prior to issuance of building permits.

David Hirsch would like to amend the findings to require the applicant to create a private restriction requiring the 30 foot setback, as stated in condition 2, to be recorded prior to the issuance of the Building Permit.

The vote was as follows:

AYE: Brian Florence, Alex M. Rodolakis, George T. Zevitas, David A. Hirsch, Herbert K. Bodensiek

NAY: None

Adjourn

Motion is made by George Zevitas and seconded by Robin Young to adjourn.

Vote:

All in favor

Meeting is adjourned at 8:10 PM

Please Note: The list of matters are those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Board may go into executive session. The Board may also act on items in an order other than they appear on this agenda.

* Public files are available for viewing during normal business hours at the Zoning Board of Appeals office located at 200 Main Street, Hyannis, MA

EXHIBITS

Appeal No. 2015-030

Guarco

- **Exhibit A Previous and revised plans**

Appeal No. 2015-034

Lane

- **Exhibit A Engineering Plans**