



Town of Barnstable

Zoning Board of Appeals



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Board Members:

Craig Larson – Chair Brian Florence – Vice Chair Alex Rodolakis – Clerk George Zevitas - Member
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, December 9, 2015

Hearing Room – 2nd Floor – 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 | Present |

Also present were Elizabeth Jenkins – Principal Planner and Carol Puckett – 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 Florence reads the following with no response:

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.

Approval of Minutes

Minutes of October 14, 2015

Motion is made by Alex Rodolakis and seconded by Matt Levesque to approve the minutes as submitted.

Vote:

All in favor

Brian Florence states that, if there are no objections, he would like to call the Chick-Fil-A appeal first. As there is none, Alex Rodolakis also recuses himself and leaves the room.

7:01 PM Appeal No. 2015-057

Chick-Fil-A, Inc.

Chick-Fil-A, Inc., as lessee, has petitioned for a Special Permit pursuant to Section 240-39(M) or, in the alternative, a modification of Special Permit Nos. 1998-31 and 2008-21. The proposed project is a site redevelopment consisting of the removal of an existing parking lot and the construction of a new 5,219 (+/-) square foot restaurant with drive-through and installation of new parking lot, landscaping, and utilities. The properties are located at 921 Iyannough Road/Route 132, 0 and 104 Enterprise Road Hyannis, MA as shown on Assessor's Map 294 as parcels 018, 019 and 023. They are in the Highway Business (HB), Business (B), Shopping Center Redevelopment Overlay – Drive-Through Restaurant Sub Zone Zoning Districts.

Continued from November 18, 2015. Members assigned: Brian Florence, George Zevitas, David Hirsch, Herbert Bodensiek, Robin Young

Members assigned: Brian Florence, George Zevitas, David Hirsch, Herbert Bodensiek, Robin Young
Representative: Michael Ford, Esq. Attorney Ford states that this had been continued as the board requested more information from the applicant in regards to the status and history of the proposed lot, abutters, site plan approval, and traffic concerns. Staff requested traffic and traffic peer review reports which have been completed and states that the applicant's traffic consultant is here as well as the town's traffic consultant and suggests hearing from the town's consultant first.

Randy Hart from Vanasse, Hangen & Brustlin (VHB), the town's consultant, speaks first. He lists materials they had submitted and states that, based on the original review, there is a memo dated November 30th. Subsequent to that memo, was a conference call between the town, the applicant's consultant and himself at which time they went over every comment in the memo. He states that the study done by the applicant's consultant was done professionally and meets industry standards and states that the mitigation plan is very responsive to the impacts of the project. He also states that there is an offering for opticon¹ maintenance work which he explains could be considered a benefit. He touches on the major aspects on the study. However, they discovered that there was one intersection that they felt should've been included which was the intersection at Enterprise Road and Corporation Drive. They felt it was important because of its close proximity to the proposed project and in close proximity to the Enterprise and Bearses Way roads. They provided the supplemental analysis which is relatively minor and was satisfied with the response and information. He talks about accident data which their consultant is required to look at the last three years of data. However, because of the collected data put this area above the state average, they asked the applicant's traffic consultant to expand the data from the two years to five years to get more patterns and asked them to supplement the data with data the Barnstable Police Department and the Massachusetts Highway Department which they agreed to which is forthcoming. As for the site plan, the drive-thru has dual lanes and had asked about empirical data to insure that the queue lanes are adequate which they provided from their facility in Cherry Hill, NJ. He has proposed, after the facility is up and running and during peak summer hours, that a study be done to quantify the cut through activity at the site which they have agreed to and, if necessary, will take additional measures. Mr. Hart states that Chick-Fil-A has also addressed his concerns as outlined in his memo.

Jeffrey Dirk, P.E., PTOE, FITE from Vanasse & Associates, the applicant's consultant, states that in the case of mitigation, they have gone over and above what was required to insure that mitigation for the project was addressed and that the impact of the project and the needs of the town were addressed.

Attorney Ford states that the Site Plan Review Committee had the benefit of Mr. Hart's revisions which were made to the site plan letter which the board received. As for the permission of the TD Bank permit, he explains that the demolition of the Blanchard's liquor store was to happen, however, Blanchard's wanted to own their own property. As for TD Bank, there was an amendment to the SCROD overlay which allowed the bank to relocate to this site. He explains why the lot on which Chick-Fil-A is to be built was never used as overflow parking. He states that he has also been working with abutters on an agreement which memorializes that which is on this plan he has tonight. As for the potential odor concerns by Mr. Bornstein, they provided to Mr. Bornstein and staff, who are satisfied, the protocol the applicant uses for their cooking process. As for Mr. Court's concerns about cutting through Pine Needle Lane, the revised site plan took out some of the deciduous trees and proposes 10 arborvitae, staggered, in order to create a visual and noise screen and will add 6 more for a total of 16. As for signage, they have added directional signage and through negotiations, his clients will be contributing to the gate requested.

Attorney Ford reviews the conditions as outlined in the staff report dated December 9, 2015 on page 8, condition #8, he would suggest capping at \$20,000.

¹ to manipulate traffic signals in the path of an [emergency vehicle](#), halting conflicting traffic and allowing the emergency vehicle right-of-way, to help reduce [response times](#) and enhance traffic safety

Elizabeth Jenkins then explains that generally when a permit was subject to Cape Cod Commission review, the Commission would review before the town. However, through a new process, the town is conducting local permitting prior to them (CCC) weighing in on the Decision of Regional Impact (DRI) modification application. Staff has reviewed the conditions and thinks #8 is responsive and is confident that they can go to the Commission and make that assertion as well.

Questions from the board:

David Hirsch is concerned about Enterprise Road and Corporation Street traffic. Jeff Dirk adds that they looked at that intersection and is why the signal will be used at Bears's Way to make the turn down Route 28 and was actually coupled with their observations and the fact that both the town and the state are spending significant funds to improve the Route 28 intersection. The expectation will be that the preferred route will be to come to the signal at Bears Way and make the left hand turn there. He explains the queue and the timing of the queue. Attorney Ford notes that the Cape Cod Commission will also be looking at this.

Brian Florence asks for public comment:

Mark Thompson reports that Mr. Court and the applicant have agreed to the shared costs for the gate. He also thinks that the applicant could plant 20 Green Giant arborvitae instead of 16 and thinks that they could come to an agreement. He thinks that the applicant's project will be a welcomed site.

Nelly Sheehan, owner of Suits You Swimwear, speaks and states that she has worked out most of her concerns with the applicant. Attorney Ford notes that he has spoken to Ms. Sheehan's attorney, John Kenney, who states that the agreement has been signed but is awaiting a mortgagee's bank sign off.

Elizabeth Jenkins notes that the parking spaces on the plan are as presented to the board and if any modification were to be done, it would have to come before this board which in turn would notify Ms. Sheehan.

The Board discusses

Attorney Ford is comfortable with a motion to move on the staff report dated December 9th but correct Condition #8 being to change it to "not to exceed the sum of \$20,000". Elizabeth Jenkins suggests to Attorney Ford to also update the commitment to 16 arborvitae. Attorney Ford would like a reference that the plan will reflect the number of Giant Green arborvitae planted on the westerly line and is not sure how many but could be a condition that the revised plan showing the actual number as agreed.

Brian makes findings: (See document addressed to Brian Florence from Elizabeth Jenkins dated December 9, 2015.

Findings

1. Chick-Fil-A, Inc. ("the Applicant"), as lessee, has petitioned for a Special Permit pursuant to Section 240-39(M) or, in the alternative, a modification of Special Permit Nos. 1998-31. The proposed project is a site redevelopment consisting of the removal of an existing parking lot and the construction of a new 5,219 (+/-) square foot restaurant with drive-through and installation of new parking lot, landscaping, and utilities.
2. The subject properties are located at 921 Iyannough Road/Route 132, 0 and 104 Enterprise Road Hyannis, MA as shown on Assessor's Map 294 as Parcels 018, 019 and 023 ("the Property"). They are in the Highway Business (HB), Business (B) and Shopping Center Redevelopment Overlay – Drive-Through Restaurant Sub Zone Zoning Districts.
3. Zoning Code Section 240-39(M), the Shopping Center Redevelopment Overlay District and Drive-Through Restaurant Sub Zone Zoning District allows for the development of a restaurant with a drive-through subject to the grant of a Special Permit. The existing parking lot on the subject Property was subject to Special Permit No. 1998-31 and the Applicant seeks to amend that permit to the extent necessary to allow the development proposed herein.
4. The Site Plan Review Committee reviewed and approved the proposed development plans, as substantiated by the approval letter dated December 8, 2015.

Purposes

5. All development activities associated with the proposed development will be carried out so as to provide for and maintain:
 - a. Protection of neighboring properties against harmful effects of uses on the development site;

- i. Landscape screening has been provided at the perimeter of the Property to screen neighboring properties and the public right-of-way from the impacts of vehicular traffic within the site.
 - ii. The Applicant has incorporated an off-street parking area serving the adjoining property to the east into the proposed site plan and provided cross-access necessary to ensure full accessibility to that property.
 - b. Convenient and safe access for fire-fighting and emergency rescue vehicles within the development site and in relation to adjacent streets;
 - i. The Hyannis Fire Department has reviewed and approved the proposed site plan, as reflected by the Site Plan Review approval letter, submitted for the record.
 - c. Convenience and safety of vehicular and pedestrian movement within the development site and in relation to adjacent streets, properties or improvements.
 - i. The Applicant provided a Transportation Impact Assessment, prepared by Vanasse & Associates, Inc. dated September 2015 detailing the traffic impacts of the proposed redevelopment. This study was peer reviewed for the Town by VHB, the results of which were presented in a memorandum to the Town dated November 30, 2015. These studies conclude that, subject to implementation of measures to address vehicular and pedestrian safety on adjoining roadways, improve or maintain levels-of-service at study area intersections, reduce trip reduction, and provide internal traffic calming measures, the proposed project can be accommodated within the confines of the existing transportation infrastructure in a safe and efficient manner.
 - ii. Traffic calming measures, including textured pavement (or material as approved by the Town Engineer), speed humps and raised crosswalks have been provided to help ensure safe vehicular and pedestrian movement through the site and to vigorously discourage "cut-through" traffic.
 - d. Satisfactory methods of stormwater management and groundwater recharge have been provided with due regard to the protection of the Town's groundwater resources;
 - i. The proposed site plan incorporates bioretention areas to treat stormwater and promote groundwater recharge.
 - ii. Satisfactory methods of stormwater management have been provided, as substantiated by the approval letter dated December 8, 2015.
 - e. Satisfactory methods for storage, handling and disposal of sewage, refuse and other wastes resulting from the normal operations of the establishments on the development site;
 - i. Such methods have been provided, as substantiated by the approval letter dated December 8, 2015.
 - f. Convenience and safety of off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishments on the development site;
 - i. Chick-fil-A receives daily deliveries from a small box truck and deliveries 2-3 times per week from larger trucks. The Applicant has demonstrated the proposed delivery vehicles can be accommodated on the Property without traversing landscaped islands within the site or impacting public ways or other areas of public travel. Subject to compliance with conditions, the proposed delivery plan should not interfere with on-site circulation to the satisfaction of the Hyannis Fire Department and the Department of Public Works.
 - g. Adequate off-street parking and traffic mitigation measures that will enhance the efficiency of the transportation system taking into consideration the overall Town traffic needs identified in the Barnstable/Yarmouth Transportation Study prepared by the Town in conjunction with the Town Local Comprehensive Plan;
 - i. Adequate off-street parking has been provided as required by the Town Zoning Ordinance, as substantiated by the approval letter dated December 8, 2015.
 - ii. The Transportation Impact Assessment, prepared for the Applicant by Vanasse & Associates, Inc. dated September 2015, as peer reviewed for the Town by VHB (reference memorandum to the Town dated November 30, 2015), evaluate the transportation impacts of the proposed project based on standard engineering practice and for conformance with Town of Barnstable requirements. These studies conclude that, subject to implementation of measures to address vehicular and pedestrian safety on adjoining roadways, improve or maintain levels-of-service at study area intersections, reduce trip reduction, and

provide internal traffic calming measures, the proposed project can be accommodated within the confines of the existing transportation infrastructure in a safe and efficient manner.

- h. Harmonious relationship to the terrain and to existing buildings in the vicinity of the development site; and
 - i. The proposed project is a reuse of an existing underutilized paved parking area. The proposed buildings and site have been designed to function with the surrounding commercial uses in the area.
- i. Attractive and functional design with due regard to the existing conditions of the development site and the use thereof for a regional shopping center, in order to promote the interests of the community.
 - i. The proposed project enhances the use and value of the land within the regional shopping center and provides a substantial improvement over existing, underutilized conditions.

Site Development Standards

6. The proposed development is consistent with the required site development standards:
- a. A reasonable effort shall be made to improve, conserve and protect natural features that are of some lasting benefit to the site, its environs and the community at large.
 - i. The proposed project is a redevelopment of an existing paved parking area and the proposed plan will improve the appearance and natural condition of the Property.
 - b. The placement of buildings, structures, fences, lighting and fixtures on each site shall not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent properties.
 - i. The placement of the buildings on the site enhances the visibility of the buildings and minimizes the appearance of surface parking areas. The proposed site plan and transportation improvements, subject to compliance with conditions, will account for all traffic impacts of the project and will not negatively impact traffic circulation or vehicular or pedestrian safety.
 - ii. The Applicant has incorporated an off-street parking area serving the adjoining property to the east into the proposed site plan and provided cross-access necessary to ensure full accessibility to that property. The Applicant has also provided landscape screening around the perimeter of the site to screen adjoining and nearby properties from the impacts of the proposed development.
 - c. At any driveway, a visibility triangle shall be provided in which nothing shall be erected, placed, planted or allowed to grow so as to materially impede vision from within motor vehicles between a height of three feet and eight feet above the average center-line grades of the intersecting street and driveway, said triangle being bounded by the intersection of the street line and the edges of a driveway and a line joining points along said lines 20 feet distant from their projected intersection.
 - i. The Transportation Impact Assessment, prepared for the Applicant by Vanasse & Associates, Inc. dated September 2015, as peer reviewed for the Town by VHB (reference memorandum to the Town dated November 30, 2015) confirm there are no encroachments in required site visibility triangles, subject to compliance with the condition that plantings be properly maintained.
 - d. Adequate illumination shall be provided to parking lots and other areas for vehicular and pedestrian circulation. All illumination shall be directed and/or shielded so as not to interfere with traffic beyond the perimeter of the site.
 - i. Adequate on-site illumination has been provided and meets all requirements of the ordinance, as substantiated by the approval letter dated December 8, 2015.
 - e. All areas designed for vehicular use shall be paved with a minimum of either 2 1/2 inches bituminous asphalt concrete, six-inch portland cement concrete pavement, or other surface, such as brick or cobblestone, as approved by the Town Engineer.
 - i. All areas designed for vehicular use meet all paving requirements and have been approved by the Department of Public Works, as substantiated by the approval letter dated December 8, 2015.
 - f. All parking spaces shall be arranged and clearly marked in accordance with the parking lot design standards contained in § 240-39J herein. Signs and pavement markings shall be used as appropriate to control approved traffic patterns.

- i. All parking spaces are in compliance with the requirements of the Zoning Ordinance and traffic markings and controls are proposed to accommodate the on-site traffic patterns. The site plan provides controls, including stamped concrete paving (or other material as approved by the Town Engineer) and speed humps and raised crosswalks to strongly discourage cut-through traffic. Raised crosswalks and pavement markings are provided to promote pedestrian safety on the site.
 - g. All utility service transmission systems, including but not limited to water, sewer, natural gas, electrical and telephone lines, shall, whenever practicable, be placed underground. Electric, telephone, cable TV, and other such utilities shall be underground, except for transformers, electric switching boxes or similar equipment and gas meters, which may be above ground.
 - i. All utility service transmission systems are underground as required.
 - h. All drainage shall be designed so that all runoff shall be disposed of on site, groundwater recharge is maximized, and neighboring properties will not be adversely affected.
 - i. Stormwater and drainage plans for the Property have been approved by the Town Engineer, as substantiated by the approval letter dated December 8, 2015. Approvals for stormwater connections currently in force authorize the proposed form of drainage, specifically discharge of stormwater to pond(s) to the west of the Property under common ownership.
 - ii. The proposed site plan incorporates bioretention areas to treat stormwater and promote groundwater recharge.
 - i. The materials submitted shall describe estimated average daily and peak hour vehicle trips to be generated by the site and traffic flow showing adequate access to and from the site and adequate circulation within the site taking into account the Barnstable/Yarmouth Transportation Study. The proponent of a regional shopping center will include in such materials reasonable measures to lower traffic demand to the regional shopping center. Reasonable efforts shall be made to provide vehicular and pedestrian connections within the redevelopment area to adjoining properties devoted to retail use.
 - iii. The Transportation Impact Assessment, prepared for the Applicant by Vanasse & Associates, Inc. dated September 2015, as peer reviewed for the Town by VHB (reference memorandum to the Town dated November 30, 2015) describe the anticipated trip generation of the project and the proposed traffic circulation patterns and access. The Applicant has proposed measures to reduce the trip generation of the proposed project, including sidewalks within the project site that connect to the pedestrian infrastructure on Route 132 and Enterprise Road; adequate site lighting for pedestrians; full handicap access; two bicycle racks; and information and information on nearby public transportation provided by the RTA. Additionally, the Applicant has proposed measures to discourage cut-through traffic on the Property.
7. The proposed property redevelopment will require modification of an existing Development of Regional Impact (TR96025) by the Cape Cod Commission. In coordination with the Commission, local review and permitting of the proposed development as required by the Barnstable Zoning Ordinance is being conducted and will be completed prior to Cape Cod Commission consideration of the DRI modification.
8. Design of the building and site has been completed taking into consideration the Design Guidelines for Cape Cod prepared by the Cape Cod Commission, in addition to all Site Plan Review requirements.
9. 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.

Vote:

AYE: Brian Florence, George Zevitas, Herbert Bodensiek, Robin Young

NAY: David Hirsch

Motion is made by Brian Florence to grant the relief being sought as outlined in the staff memo dated December 9, 2015 with the following amendments:

#2: Attorney Ford states that they have agreed to provide 20 arborvitaes on the westerly property line. .

#8 Brian Florence states that the language will be changed to read: "to be capped at \$20,000". .

Seconded by George Zevitas

Vote:

AYE: Brian Florence, George Zevitas, Herbert Bodensiek, Robin Young, David Hirsch

NAY: None

GRANTED WITH CONDITIONS

At 8:30, Brian calls the Wilhelmina Realty Trust and reads the following into the record:

Old Business

7:00 PM Appeal No. 2015-054

Wilhelmina Realty Trust

Susan M. Crocker, Trustee of the Wilhelmina Realty Trust has applied for a variance to §240-14(E) RF Bulk Regulations and §240-36 Resource Protection Overlay District to divide one lot into two lots which do not meet the current lot area, frontage, and setbacks requirements of the Ordinance. The property is located at 51 Prince Avenue, Marstons Mills, MA as shown on Assessor's Map 077 as Parcel 002. It is in the Residence F and Resource Protection Overlay Zoning Districts

Continued from November 18, 2015. Noen members assigned.

Members assigned: Brian Florence, George Zevitas, Alex Rodolakis, Matt Levesque, Robin Young

Representative: Attorney Ford who states that there are two sisters who reside in separate dwellings on the lot, Susan Crocker and her sister Sharon Crocker. He points out the dwellings where the sisters live and states that the property has been in the family for over 100 years. He states that in 2008 the sisters caused to be prepared a division plan and the division plan drew a line through the lot to create lots 1 and 2 which was endorsed by the Planning Board as a result of a provision in MGL Chapter 41 Section 81L, 81O, & 81P which provides that if you divide a parcel into two lots each of which has on it a house that pre-existed the creation of Subdivision Control Law which he believes come into effect in Barnstable around 1963, then its not deemed to be a subdivision. The Planning Board, as a result of being shown that both of the houses pre-dated Subdivision Control, endorsed the plan. However, endorsement of that plan does not give them zoning protection which was finally decided by the Supreme Court only this year in a decision involving a case on the Vineyard which, in summary, is that a variance is needed in order to divide the lots. As to the conditions for the granting of a variance, Attorney Ford states that they are unique in that each structure has their own septic systems which were upgraded 5 or 6 years ago to Title V ; as for the hardship involved, both sisters want to make some improvements to the houses which would necessitate them being treated as separate parcels and also give them the ability to transfer or sell. He also states that they are unique because of the fact that there are two houses on one lot. Also, as for topographical uniqueness, one of the dwellings is on a knoll and has its own driveway. Therefore, he requests that the applicants be able to record the ANR plan so that they can move forward with their redevelopment.

Attorney Ford states that he has letters in support from Nelson and Shelly Abru of 54 Prince Avenue and from Dan Sullivan of 42 Prince Avenue.

Board member Robin Young asks Attorney Ford about redevelopment plans. Attorney Ford states that he has put, as a condition if approved, that any raze and replace be in conformance with the bylaw.

In reference to the same condition Attorney Ford has proposed, Brian Florence asks if the applicants would then need to apply for a new variance in order to reconstruct the buildings. Attorney Ford states that is why he has proposed a condition that would obviate the need to come back before this board. They discuss. Brian Florence isn't sure he is comfortable with that.

George Zevitas asks what makes a bedroom in the barn legal. Attorney Ford states that when the barn was replaced the room was deemed by the Board of Health to be a bedroom and clarifies that it is not an apartment. They discuss condominiums for the property.

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

Jacqueline Easter of 3645 Falmouth Road, which abuts the back of the applicant's property, is in support.

Dan Sullivan of 42 Prince Avenue is here in support.

Herb Bodensiek leaves at 9:05 pm

The board discusses again Attorney Ford's proposed condition. Elizabeth Jenkins states that the proposed conditions given to the members and Attorney Ford does not include that proposed condition and if the board needed a legal opinion that it would be appropriate.

Alex Rodolakis makes findings:

Susan M. Crocker, Trustee of the Wilhelmina Realty Trust has applied for a variance to §240-14(E) RF Bulk Regulations and §240-36 Resource Protection Overlay District to divide one lot into two lots which do not meet the current lot area, frontage, and setbacks requirements of the Ordinance. The property is located at 51 Prince Avenue, Marstons Mills, MA as shown on Assessor's Map 077 as Parcel 002. It is in the Residence F and Resource Protection Overlay Zoning Districts.

Variance Findings

The statutory requirement of MGL Chapter 40A, Section 10 for granting a variance is a three-prong test have been met in particular

- with the unique shape of the lot, the pre-existing structures on the lot that had been there prior to the Barnstable zoning bylaws being in place creates the ground for the variance being sought.
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial to the applicants, 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. Other lots in the area have similarly sized lots

Vote:

All in favor

Alex Rodolakis makes a motion to grant the relief being sought as outlined in the Staff Report dated December 9, 2015 being Condition 1 through 7.

Seconded by George Zevitas

Vote:

All in favor

GRANTED WITH CONDITIONS

Alan Morrow of 30 Otis Road talks about the Joe Laham site which Attorney Ford had represented before this board at a previous hearing and that a 6 foot fence was erected instead of an 8 foot fence. Brian Florence calls him out of order and asks him to sit.

At 9:17, Brian Florence calls the Deaton appeal and reads it into the record:

New Business

7:00 PM Appeal No. 2015-058

Deaton

Maria F. Deaton has applied for a Special Permit pursuant to Section 240-91.H(3) Nonconforming Lots. The applicant is requesting to reconstruct and expand a razed single-family dwelling on the existing footprint and foundation on a lot containing less than 10,000 square feet of upland. The property is located at 71 Seventh Avenue, Hyannis, MA as shown on Assessor's Map 246 as parcel 151. It is in the Residence B Zoning District.

Members assigned: Brian Florence, Alex Rodolakis, George Zevitas, Robin Young, Matt Levesque

Representative: Attorney Peter Freeman

Attorney Freeman introduces Maria Deaton and Craig Ferrari from Down Cape Engineering. He submits a plan with the upland calculation (EXHIBIT A – See ZBA File 2015-058). Attorney Freeman gives a summary of relief being requested and also submits

photos (EXHIBIT B). Attorney Freeman explains that this was not a voluntary raze and replace and that there was severe snow storm damage done to the property. The applicant then submitted an insurance claim. When she received the check it was then sent to the bank but that the funds were never released and therefore the applicant did not have the funds to rebuild at that time. He states that this problem is still ongoing. The applicant then hired a builder who pulled a building permit in June of this year. The plan was to keep a portion of the first floor which was not considered to be a tear down. The permit was issued, the builder found structural problems and tore down the remainder of the structure. The builder was then told by the Building Department that because of the complete tear down he would be required to acquire a Special Permit from the Zoning Board of Appeals and is why they are here. Attorney Freeman notes that the footprint will not change but will include a small second story.

He compares the rebuild requirements to what they are proposing and states that it will be in conformance.

The board discusses.

Attorney Freeman adds that they also have the approval of the Conservation Commission (ConComm).

Brian Florence asks for public comment. No one speaks.

Robin Young makes findings:

Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:
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.
- Site Plan Review is not required for single-family residential dwellings.
- 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.

Further, Section 240-91(H)(3) requires the Board to find that the proposed dwelling is in compliance with standards for setback, lot coverage, floor area, and height, as follows:

- The proposed setbacks are equal to the setbacks of the existing dwelling; the previously existing and proposed rear deck do not conform to the required 35 foot setback to wetlands.
- The dwelling and decks will be built within the footprint of the dwelling that previously existed. The lot coverage will not be greater than the lot coverage of the former dwelling
- The proposed floor-area ratio is 24.2%; the maximum permissible FAR is 30%.
- The proposed building height is approximately 18' to the highest plate and two stories; the maximum permissible building height, is 30 feet to the highest plate and 2 ½ stories.
- The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

Vote:

All in favor

Robin Young makes a motion to grant the relief being sought with the following conditions 1 through 6 on the staff memo dated December 2, 2015:

Conditions

1. Special Permit No. 2015-058 is granted to Maria F. Deaton for the reconstruction of a 2,206 gross square foot dwelling at 71 Seventh Street, Hyannis.
2. The dwelling shall be constructed in substantial conformance with the plan entitled "Site Plan of 71 Seventh Avenue West Hyannisport" dated March 20, 2015, drawn and stamped by Down Cape Engineering, Inc.; and the floor plans and elevations entitled "Proposed Addition & Renovation at 71 Seventh Avenue West Hyannisport, MA" dated April 22, 2015, drawn by Jo Ann Bentley Architect Inc, sheets A-1 through A-6.

3. There shall be no expansion of the footprint of the dwelling or accessory structures and the floor-area ratio shall not exceed 0.245 without prior approval of this Board.
4. The new construction shall comply with all Building Code requirements, including those for construction within a flood zone, as applicable.
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. 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.

Seconded by Matt Levesque

Vote:

All in favor

GRANTED WITH CONDITIONS

Matt Levesque leaves at 9:37 pm.

Brian Florence reads the following into the record:

7:01 PM Appeal No. 2015-059

Kouri

Joshua Kouri has applied for a Special Permit pursuant to Section 240-94(A) to change a nonconforming use to another nonconforming use. The applicant seeks to change the use of the existing structure facing Route 28, currently permitted by Special Permit No. 1982-48 for retail use. The applicant is proposing to occupy one unit and use it for office space; a second smaller unit would be offered for office or continued retail use. The property is located at 5 Main Street, Cotuit, MA as shown on Assessor's Map 009 as Parcel 018. It is located in the Residence F Zoning District.

Members assigned: Brian Florence, Alex Rodolakis, George Zevitas, David Hirsch, Robin Young
Representative: Josh Kouri

Mr. Kouri states that there is a nonconforming unit and would like to split that space into two units: one for an office and the other unit to be an additional rental for continued retail use or office space. 25% of that space is what he would like to be the additional rental space. It would be a less intense use than the existing retail space because of the smaller area for retail/office use which would result in less traffic and impact on the neighborhood. Brian Florence asks him about construction equipment. Mr. Kouri states that he has a shop in Hyannis where the equipment will be stored and this will strictly be an office.

Brian Florence asks for public comment. No one speaks.

Alex Rodolakis asks if there will be walls to separate the areas. Mr. Kouri answers yes and will be seeking permission to take out an existing bay window and put in a door.

Brian Florence makes findings:

Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

1. **In Special Permit Application No. 2015-059, Joshua Kouri seeks to change a nonconforming use and modify Special Permit No. 1983-43 into to convert a retail space into an office space and an approximately 384 square foot space for either retail or office use.**
2. **Section 240-94(A) allows for changes to a lawful preexisting nonconforming use. Massachusetts General Law Chapter 40A Section 14 provides the Zoning Board of Appeals authority to modify orders and decisions in conformity with the**

provisions of said Chapter. The nonconforming retail use of the property is governed by Special Permit Nos. 1983-48 and 1991-45.

3. *The proposed conversion of the retail space to an office, to be used by the property owner, and the retention of an approximately 384 square foot space for office and/or retail use is a less intense use of the building that generates no additional parking demand or trip generation. The owner's use of the office space results in three leasable tenant spaces on the property.*
4. *There is no square footage expansion of the commercial use proposed. The additional office use is not a new nonconforming use of the property. The use is located on the same lot and in the same location as when it became nonconforming.*
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.*
6. *The addition of office space and the continuation of retail sales on the property will be no more detrimental to the neighborhood than the uses permitted with Special Permit No. 1983-48.*

Vote:

All in favor

Brian makes a motion to grant with the following conditions as drafted in the staff report dated November 3, 2015:

Conditions

1. Special Permit No. 2015-059 is granted to Joshua Kouri to allow the conversion of retail area to office space and the creation of an approximately 384 square foot space to be used for either retail or office at 5 Main Street, Cotuit.
2. Medical offices, retail sales of automobiles, restaurant/food service uses, retail sales of gasoline, and convenience stores are prohibited by this permit.
3. The retail and office uses shall operate within the existing structure. No expansion of the retail sales floor or habitable office space on the property shall be permitted without proper permissions from this Board.
4. Site access shall be limited to Main Street; direct access to the property from Route 28 is prohibited.
5. All sales and display of merchandise shall be contained within the structure; outdoor display is prohibited.
6. 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.

Vote:

All in favor

GRANTED WITH CONDITIONS

Adjournment

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

Vote:

All in favor