



# Town of Barnstable Zoning Board of Appeals



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Board Members:

Brian Florence – Chair Alex Rodolakis – Vice Chair  
David A. Hirsch –Regular Member Herbert Bodensiek – Regular Member Robin Young – Associate Member Matthew Levesque – Associate Member  
Spencer Aaltonen – Associate Member Jacob Dewey – Associate Member  
James Tinsley – Town Council Liaison

Staff Support

Elizabeth Jenkins – Regulatory / Design Review Planner - [elizabeth.jenkins@town.barnstable.ma.us](mailto:elizabeth.jenkins@town.barnstable.ma.us)  
Anna Brigham – Principal Planner – [anna.brigham@town.barnstable.ma.us](mailto:anna.brigham@town.barnstable.ma.us)  
Carol Puckett – Administrative Assistant – [carol.puckett@town.barnstable.ma.us](mailto:carol.puckett@town.barnstable.ma.us)

## Minutes

**Wednesday, September 28, 2016**

Hearing Room – 2<sup>nd</sup> Floor – 367 Main Street, Hyannis, MA

Brian Florence – Chair	Present
Alex Rodolakis - Vice Chair	Absent
David Hirsch	Present
Herbert Bodensiek	Absent
Robin Young	Present
Matthew Levesque	Present
Spencer Aaltonen	Present
Jacob Dewey	Present

Also present were Elizabeth Jenkins – Regulatory Review Design/Planner and Carol Puckett – Administrative Assistant

*As a quorum has been met, Brian Florence calls the meeting to order:*

### 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 an in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

### Election of Officers

*Brian Florence asks for a motion to continue to October 26<sup>th</sup> for a full complement of the board.*

*Motion is made by Matt Levesque and seconded by David Hirsch to continue.*

*Vote:*

*All in favor*

### Comprehensive Permit Modification Request

**7:00 PM Comprehensive Permit No. 2005-013 - Modification No. 2016-036 Osterville Landing/KTW Group, LLC**

KTW Group, LLC has requested a modification of Comprehensive Permit No. 2005-013 Osterville Landing, as modified. The Applicant is requesting to modify conditions numbered 2 and 3(e) to waive the requirement that a sidewalk be constructed along Darby Way. Comprehensive Permit No. 2005-013, as modified, allows for the development of 11 single-family dwellings, including three dedicated in perpetuity as affordable units. The subject properties are 4-48 Darby Way, Osterville (formerly 449-459 Old Mill Road) as shown on Assessor’s Map 166 as Parcels 001/000-006 and Map 143 as Parcels 040/000-005.

**Members assigned: Brian Florence, David Hirsch, Robin Young, Spencer Aaltonen, Jacob Dewey**

**Representative: John Kenney, Esq.**

Attorney Kenney is here representing the KTW Group, LLC. Also with him tonight are two members of the Group; Chuck Tenago and Bob Welch. He gives a summary of the history of the development. They would like to request a waiver for the sidewalk as the lots are deficient in depth. The homes are built 20 feet from the side of the road. The sidewalk would destroy the ambience, make the driveways shorter and the expense of the sidewalks could be a burden to the affordable units in the development. All the houses have been sold with the exception of one with those owners who have also signed a petition asking to waive the requirement of the sidewalk.

Jacob Dewey asks how the street drainage would be affected. Attorney Kenney states that there are no street drains, just a central retention area. Attorney Kenney states that also, instead of putting a granite curbing they would like to install a Cape Cod berm instead. Brian Florence reminds the members that there determination tonight is either a major or minor modification or whether a public hearing is necessary. Robin Young is concerned that eliminating sidewalks would change things dramatically and thinks that this should be a major modification.

Brian Florence asks for public comment.

Ray Lang of Osterville thinks that it would've been nice, according to how far from the road the houses were placed, to know their plans to eliminate the sidewalks and thinks sidewalks are a safety issue. He thinks that the members should find out when the builder decided they couldn't do sidewalks and would that be a requirement that would change their mind.

Attorney Kenney states that the builder can put sidewalks in but that the owners in the development don't want them.

Spencer Aaltonen makes findings:

The KTW Group, LLC., has requested a modification of Comprehensive Permit Comprehensive Permit 2005-013. The Applicant is seeking to change Conditions 2 and 3e to waive the requirement that a sidewalk be constructed along Darby Way. Comprehensive Permit #2005-013 as modified allows for the development of 11 single-family dwelling units, including three dedicated in perpetuity as affordable units. The subject properties are 4-48 Darby Way in Osterville formerly 449-459 Old Mill Road as shown on Assessor's Map 166 as Parcels 001/000-006; 143/040/000-005. The request to eliminate the requirement for the installation of a sidewalk is insubstantial, the request received by the Board on September 23, 2016 is granted. This decision shall modify condition No. 3(e) of the Comprehensive Permit. All other conditions of the Comprehensive Permit shall remain in full force and effect."

Brian clarifies that the motion is a combination of findings and motion to grant a minor modification.

Seconded by David Hirsch

Vote:

AYE: Brian Florence, David Hirsch, Spencer Aaltonen

NAY: Robin Young, Jake Dewey

Robin Young states that the reason he voted in the negative was because sidewalks enhance a neighborhood, should promote walkability, are for safety and that eliminating it will affect the future of what's going to happen to these neighborhoods.

Jake Dewey thinks that when granted, this was a substantial permit and was part of the plans from the beginning.

Majority rules.

## MINOR MODIFICATION GRANTED

### New Business

7:00 PM Appeal No. 2016-032

48 Magnolia Avenue, LLC

48 Magnolia Avenue, LLC. has applied for a modification of Special Permit No. 2016-020 pursuant to Section 240-91.H(3) Developed Lot Protection. The applicant is proposing to modify Special Permit No. 2016-020 to allow the construction of an 18 foot by 36 foot pool and a 6 foot by 6 foot deck expansion. The proposed pool and deck will increase lot coverage from 5,078 square feet (13.5%) approved in Special permit No. 2016-020 to 5,695 square feet (15.1%). The property is located at 48 Magnolia Avenue (formerly 32 and 34 Magnolia Avenue), Centerville, MA as shown on Assessor's Map 225 as Parcels 011 and 035. It is located in the Residence D-1 Zoning District.

Spencer Aaltonen recuses himself. Jake Dewey also discloses that he is a friend of the engineer on the project. Brian Florence asks Attorney Albert Schulz if he has a problem with Jake Dewey sitting on this. Attorney Schulze states that he does not.

Members assigned: Brian Florence, David Hirsch, Robin Young, Matt Levesque, Jake Dewey

Attorney Albert Schulz is representing the applicant and introduces Linda Bradley, one of the members of the LLC., and Chuck Nolan from Sullivan Engineering. He gives summary of relief being requested. The client would like to allow a pool to be added and a 6X6 deck expansion.

**Brian Florence asks for public comment. No one speaks.**

**David Hirsch 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.**

Massachusetts General Law Chapter 40A, Section 14 authorizes the Board to modify any order or decision in conformity with the provisions of the chapter. Special Permit No. 2016-020 was granted pursuant to Section 240-91(H)(3), which allows for the complete demolition and rebuilding of a residence on a nonconforming lot 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 if the proposed demolition and rebuilding cannot satisfy the criteria established in H.(1) As-Of-Right, then the Board may allow the demolition and rebuilding by Special Permit provided the Board finds that:

- **The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building.** The previously existing dwelling had a front yard setback of 21.2 feet from Magnolia Avenue and the new dwelling has a front yard setback of 21.4 feet thereby improving the encroachment into the required setback. The pool and deck are in compliance with all required setbacks.
- **The proposed lot coverage shall not exceed 20% of the existing lot coverage, whichever is greater.** The proposed lot coverage is 15.1%, inclusive of the pool.
- **The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished, whichever is greater.** The FAR is unchanged at .18.
- **The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories. The grade to the top plate is 25 feet 4 inches, and to the ridge is 31 feet 11 inches. The dwelling is 2 ½ stories.** The proposed pool and deck do not impact building height.

The Board is also asked to find that:

- **The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.**

**Vote:**

**All in favor**

**David Hirsch makes a motion to grant the relief being sought with the following conditions:**

#### **Conditions**

1. Special Permit No. 2016-032 is granted to 48 Magnolia Avenue LLC for the construction of an 18 foot by 36 foot pool and a 617 square foot deck expansion at 48 Magnolia Avenue, Centerville.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan Improvements at 48 Magnolia Avenue" dated November 10, 2015 with a last revision date of September 1, 2016, drawn and stamped by Sullivan Engineering and Consulting.
3. The total lot coverage of all structures and the pool on the lot shall not exceed 15.1% and the floor-area ratio shall not exceed .18.
4. The proposed redevelopment shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
5. All mechanical equipment associated with the dwelling and pool (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 Robin Young**

Vote:  
All in favor

## GRANTED WITH CONDITIONS

*Brian Florence reads the following into the record:*

### Old Business

7:00 PM Appeal No. 2016-028

E R & C Enterprises, Inc.

E R & C Enterprises, LLC has petitioned for a Special Permit in accordance with Section 240-25(C)(1) – Conditional Uses in the Highway Business District for a retail convenience store and food establishment with drive-through. The Applicant, who currently operates a pre-existing nonconforming gas station with car wash and retail, intends to remove the existing drive-through car wash, including all equipment and underground tanks, and construct a 980 square foot addition with a relocated drive-through at the rear of building. The drive-through would be converted to a takeout beverage and food lane. The retail sale of gasoline, a pre-existing nonconforming use, is proposed to continue. The property is located at 577 West Main Street, Hyannis, MA as shown on Assessor's Map 269 as Parcel 003. It is located in the Highway Business (HB) Zoning District and the Wellhead and Groundwater Protection Overlay Districts.

Opened August 24, 2016 – no members assigned – public comment taken, continued to September 14, 2018, continued to September 28, 2016.

*Members assigned: Brian Florence, David Hirsch, Robin Young, Matt Levesque, Spencer Aaltonen*

*Representative: David Lawler, Esq.*

*Attorney Lawler is here representing the owner who is also here tonight. Randy Hart, the traffic expert is also here. He gives summary of history of application before the board and the relief being requested. He thinks traffic and flow are the main concerns. He points out minor areas where the property may encroach onto Town property. He had met with Mark Ells – Town Manager at which time they discussed the owner adopting and maintaining that space. They would be open to the verbiage to that affect. He states that he also has petitions from people who work and live near the subject property who are in favor and notes that he is aware of letters in the file from people in opposition. He also thinks that this is a win because of the lessening of the environmental impact of the existing car wash where the water discharges into the sewer. He doesn't think the traffic and queuing is a problem. He proposes, as a condition of the special permit, to paint a queue line after eight cars and install a sign approved by ZBA staff to that affect. If any cars are behind that line, an employee will be instructed to walk over and instruct that vehicle to either leave or park and go inside. He feels this will eliminate any queuing on site.*

*Randy Hart from Vanasse Hangen and Brutlin, LLC., traffic consultant speaks. He gives summary of what is currently existing on site and the proposal. Two full access driveways that are currently 40' wide and will be reduced to 30' wide. The two full access driveways to West Main Street will be modified: the western driveway will be a right-in only and the eastern will be egress only. They have done a traffic study dated July, 2016 which was submitted which focused on summer peak traffic. He did receive initial response from the peer traffic consultant who stated that his traffic study was sufficient to access the impacts of the project. What he would like to address is are two things that were in the peer traffic consultants letter which were a request to collect data from two locations of a similar type coffee facility in the area for which they have provided data from three facilities, and comments about site plan suggestions. The traffic counts were done during critical time periods for Dunkin' Donut facilities in the area: two of which are very similar to what is anticipated here. He gives the addresses of the similar facilities. He summarizes the queue statistics during critical periods. Mr. Hart states that they also addressed other comments/questions from the peer traffic consultant who requested a delivery truck turnaround template for ingress and egress, stop signage and a request for bike racks which they inserted on the site plan.*

*Mr. Giles Hamm, the peer traffic consultant from VAI is here to speak. He indicates that he has not seen the plan submitted by Randy Hart showing the 22' of car. He states that he has submitted comment letters dated August 3<sup>rd</sup> and September 20<sup>th</sup>. He gives a quick overview of his review of the July traffic study. He states that the vehicle trips in the area will go from 95 vehicle trips in one hour. However, with a donut drive through there will be an additional 166 trips = 260 trips total. The real issue here is queuing and circulation. He states that a 9 car queue is an average of the two sites that the traffic consultant looked at. His concern is that there will be more than 9 cars. He believes that there will be more than 10 cars in the queue during the morning peak hours.*

*They discuss the queue at this and other similar sites.*

*Brian Florence calls a 5 minute recess.*

*Back in session. Brian Florence asks for public comment.*

*Ann Marie Moriarity from Old Craigville Road::*

- *thinks this will be detrimental to this area because of the increase of traffic*
- *is concerned for the children in the adjacent school as well as the early learning center*
- *is concerned about public safety response times*
- *traffic speed*

- *large truck traffic for delivery of food and gas as to what time and additional noise*
- *storage and disposal of food product*
- *what will the hours be*
- *will there potential for loitering*
- *the convenience store that is already there was never permitted*
- *was the April traffic study done while the school was in session or during April school vacation*

*Dan Griffin, Enrico Diani of 33 Blue Jay Drive and Richard Poplasky of 12 Edgewood Road all speak in favor of this proposal.*

*Elizabeth Jenkins notes that 4 letters from abutters with concerns from Pauline Antil, Katherine Moriarity, Ann Marie Moriarity, and Janice Nash as well as a petition signed by 508 customers in support and 28 letters of support (See ZBA file: 2016-028)*

*Brian Florence asks Elizabeth Jenkins about adding a condition for the applicant to come back in order for the board to review traffic accidents and traffic flow in a period of time (possibly 18 months) from now considering the need for them to finish construction.*

*Matt Levesque makes findings.*

**Special Permit Findings**

*E R & C Enterprises, LLC has applied for a Special Permit pursuant to Section 240-25(C)(1) – Conditional Uses in the Highway Business District for a retail convenience store and food establishment with drive-through. The Applicant, who currently operates a preexisting nonconforming gas station with car wash and retail, intends to remove the existing drive-through car wash, including all equipment and underground tanks, and construct a 980 square foot addition with a relocated drive-through at the rear of building. The drive-through would be converted to a takeout beverage and food lane. The retail sale of gasoline, a preexisting nonconforming use, is proposed to continue. The property is located at 577 West Main Street, Hyannis, MA as shown on Assessor’s Map 269 as Parcel 003. It is located in the Highway Business (HB) Zoning District and the Wellhead and Groundwater Protection Overlay Districts.*

*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.*

*In application number 2016-028, E R & C Enterprises, LLC., has requested a Conditional Use Special Permit for retail/convenience store with drive-through at 577 West Main Street, Hyannis, MA.*

1. *Section 240-25(C)(1) of the Zoning Ordinance allows any use permitted in the B District with a Conditional Use Special Permit.*
2. *The proposed use and plan received Site Plan Approval, as evidenced by the letter dated January 5, 2016.*
3. *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.*
4. *The proposed use of the property will not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community and the proposed use is consistent with the local comprehensive plan which designates the area for commercial infill and redevelopment.*

**Vote:**  
*All in favor*

*Matt Levesque makes a motion to grant the relief being sought with the conditions as outlined in the Staff Report dated July 6, 2016, being conditions 1-7 but add condition #8 which will state that an eight (8) vehicle queue will be in place with a gas station attendant supervision and #9 that will state that after an 18 month period that a police report will be provided showing a traffic report and any traffic concerns.*

*Seconded by David Hirsch.*

*Elizabeth Jenkins states that in summary of their discussion that the board would like to ask for a modification to the site plan to include a line showing the limits of the queue and that the site plan shall be submitted to the ZBA’s records as well as to the Building Division’s records prior to any issuance of building permits and that the gas station shall be a full-service gas station with an attendant who will monitor the queue and direct cars over the line to park and enter the facility for service and that at any time should the business model for full-service change that it should necessitate a modification to this special permit, that the Town Manager approval of the use of the right-of-way and the landscaping and that the groundwater monitoring equipment located to the rear of the property – when DEP deems it no longer necessary and removed, that the site shall be improved and landscaped per the plan within a period of six (6) months, the review of the traffic accident report after eighteen (1\*) months, and that the applicant has asked for a general purpose of the drive-through food service to that of a*

*coffee-type business and that perhaps the board might want to limit the tenant to that of selling coffee and similar breakfast items and not fast food without further approval from this board. Also, that the car wash and underground tanks all be properly removed with all permits along with any remediation recommended by any environmental group.*

*Attorney Lawler wants to clarify that it would be foods generally served with coffee-type beverages. Attorney Lawler states that he can work out the verbiage with staff.*

**Vote:**  
*All in favor*

## **GRANTED WITH CONDITIONS**

### **Adjournment**

*Motion is made by Matt Levesque and seconded by Spencer Aaltonen to adjourn.*

**Vote:**  
*All in favor*

Approved