



# Town of Barnstable Zoning Board of Appeals



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## Minutes

### Wednesday, February 22, 2017

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

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

Also present were Anna Brigham – Principal Planner and Carol Puckett – Administrative Assistant

**As a quorum has been met, Brian Florence opens the hearing at 7:00 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 in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Brian Florence reads the following into the record:

#### New Business

**7:00 PM Appeal No. 2017-008**

**Glick**

Marvin and Diane Glick are appealing the Building Commissioner’s constructive denial of a request for zoning enforcement. The Appellants seek enforcement of a zoning violation on 305 Baxters Neck Road, specifically the construction of a retaining wall inside of the zoning setback area adjacent to the Glick property located at 285 Baxters Neck Road. The appeal is filed pursuant to Massachusetts General Law 40A Section 7, citing Sections 240-123 (enforcement), 240-14 (RF Zoning District) and 240-128 (Definitions) of the Zoning Ordinance. The property that is the subject of this appeal is located at 305 Baxters Neck Road, Marstons Mills, MA as shown on Assessor’s Map 075 as Parcel 009. It is located in the Residence F (RF) Zoning District.

**Brian Florence notes that attorney for the applicant has submitted a letter asking for a continuance to March 22, 2017 at 7:00 PM**

**Motion to continue to March 22, 2017 at 7:00 pm is made by Jake Dewey and seconded by Matt Levesque.**

**Vote:**

**All in favor**

**Brian reads the following into the record:**

**7:01 PM Appeal No. 2017-009**

**Devaney**

William P. Devaney has applied for a Special Permit pursuant to Section 240-94(B) Expansion of a Pre-existing Nonconforming Use. The Applicant seeks to improve one of two cottages on the property by adding a kitchen, bathroom and utilities, in addition to making general carpentry repairs. The property is located at 120 Main Street, Centerville, MA as shown on Assessor's Map 208 as parcel 058. It is located in the Residence D-1 and Resource Protection Overlay Zoning Districts.

**Brian Florence explains the process and informs the applicants present tonight that there are only 4 members present and that a unanimous vote by all members present must be given in order to grant their request.**

**Members assigned: Brian Florence, Matt Levesque, Spencer Aaltonen, Jake Dewey**

**Representative: Jeffrey Wheeler, one of the owners and his brother-in-law who is also a part owner. Mr. Wheeler states that they are applying to expand a nonconforming use. These cottages were purchased in 2008 from the Chester family and since that time were used as separate cottages. Each has sleeping, living and sanitation facilities. Their request is to put a kitchenette and bathroom in the cottage. They had to update the septic system and the system was approved by the state because of the complexity of the system. The large cottage is the "boat house". The other smaller cottage for which they are seeking relief, has one has a bedroom, living room/dining room and an open area where the composting toilet is. Currently, they have small kitchen appliances. Small cottage is about 360 sf. Neither cottages are currently winterized and they currently don't plan on winterizing them. The buildings are lower than the adjoining structures, have been treated as two separate dwellings and taxed as such. Doesn't think this will be detrimental to the neighborhood as they are not expanding the footprint and no one will notice when walking by.**

**Brian asks when the cottage first started being used as a cottage. Mr. Wheeler believes it was in 1962 when the previous owner had title and that they rented them also. Bill Devaney speaks and notes that when they had applied for a building permit to do renovations, the Building Division saw this as an intensification of use.**

**Jake Dewey asks if it was a garage at any time. Mr. Devaney thinks it could've been a hunting lodge and an artist studio at another time. Jake asks how they rent them. Mr. Devaney states that when rented, it is rented as one.**

**Brian asks for public comment.**

**Jeremy Devaney, Mr. Devaney's son, lives at 115 Main Street which abuts the property. He notes that it has been maintained with guidance and thought of the pond front and has not been rented extensively and by no means is a commercial enterprise. It also gives them another place for family to stay when visiting.**

**Board discusses.**

**Jake Dewey likes to see it as one rental and not rented individually.**

**Jake Dewey makes findings:**

#### Special Permit Findings

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit. *Section 240-94 B. allows for the expansion/intensification of a preexisting nonconforming use 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.
- The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

**Vote:**

**All in favor**

**Jake Dewey makes a motion to grant with the following conditions:**

#### Conditions

1. Special Permit No. 2017-009 is granted to William P. Devaney for intensification/improvement of the 360 square foot seasonal cottage at 120 Main Street, Centerville, MA.
2. The interior design shall be constructed in substantial conformance with the plans submitted in the application entitled "Proposed Floor Plan" received January 27, 2017.
3. The proposed redevelopment shall represent full build-out of the lot. Further expansion or intensification of the structures or construction of additional accessory structures is prohibited without prior approval from the Board.
4. All mechanical equipment associated with the dwellings (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.

5. 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 Spencer Aaltonen*

**Vote:**  
*All in favor*

## **GRANTED WITH CONDITIONS**

*Brian reads the following into the record:*

**7:03 PM Application No. 2017-010**

**Crac, Inc.**

Crac, Inc. d/b/a Chart Room at Crosby's have requested a modification of Special Permit Nos. 2003-60, 2007-44 and 2009-22 issued for the expansion of a preexisting nonconforming use. The Applicant seeks to modify the permits to allow for a change in ownership, increased hours of operation, expanded days of use and to allow for outdoor seating. The subject property is located at 330 West Bay Road, Osterville, MA as shown on Assessor's Map 116 as Parcel 013. It is zoned MB-A2 Marine Business A-2.

*Members assigned: Brian Florence, Matt Levesque, Jake Dewey, Spencer Aaltonen*

*Attorney David Lawler is here representing the applicants. Also with Attorney Lawler tonight are the principals: David Jarvis and Tom Gordon who own CRAC, Inc.*

*Attorney Lawler gives summary of relief being sought and where the property is located. He doesn't think it is more detrimental to the neighborhood. It is located in the boat yard surrounded by residential dwellings. There is a marina that holds events also. They want to keep the number of seats the same but want to extend the time period to coincide with the seasonal liquor license. He explains the requested opening timeframe. They are seeking the seats for outside dining. There is a rain day plan and sunny day plan regarding the seats and explains. Mr. Jarvis' sons: Tom, Kevin and Sean Jarvis, who are also present tonight, will, one or all of them, be onsite during the open season. The business has been closed for 18 months but in 2015 when they knew they were not going to renew, people sought out Mr. Jarvis because of the Chart Room reputation and to allow this establishment to be operated. Attorney Lawler gives copy of the liquor license to the chair (Exhibit A). He explains how Mr. Jarvis pulled the liquor license and was under the impression that they could rely on the # of seats as shown on the liquor license (61) and the closing time past 12:30 am. Mr. Jarvis made a deposit based on these town records but wasn't aware of the Zoning Board of Appeals decision limiting the seats and closing time. He believes that the business previously at this site had been run later than 11:00 pm at night and had no complaints.*

*Brian discloses that in the past has had a dispute with the property owners, the Egans, which has been resolved and asks if Attorney Lawler is comfortable with this. Attorney Lawler is comfortable with it. Brian Florence asks Attorney Lawler to clarify and consult with his clients. Attorney Lawler confers with clients who are okay with Brian sitting on this.*

*Jake asks about the Angler's Club located above the restaurant. Attorney Lawler explains that it gets used for tournaments, and events that the members can come and go at their pleasure. The club has a television and bar but no liquor license and that members want they can bring their own liquor.*

*Attorney Lawler explains the parking situation and that parking has never been an issue.*

*Jake asks what price point will be for the food in the restaurant. Mr. Jarvis considers themselves as a seafood restaurant and Mr. Gordon states that they will be serving sandwiches, salads, chowder, steamers, entrees.*

*Brian Florence lists correspondence (Exhibit B) received and asks for public comment.*

*Scott Crosby, who lives at 62 Crosby Circle speaks and is opposed to the expansion of the hours, days and seating and thinks it would be detrimental to the neighborhood and is concerned about the noise, late night traffic and activity. The use has been changed since 1954 when it the original snack bar was built and when his parent's operated it. All other restaurants in the area: Crisps, Wimpys' etc., all close at reasonable hours. As for the licensing, there is a lot of documentation and the licensing board never agreed to go past 11:00 pm. He is concerned about the hours and the neighborhood and thinks it more of a drinking establishment. 61 seats make no sense and doesn't think they can do that because of the septic. There have been problems with the noise from the fan/blower from the restaurant. About going later into the season: it seems that every few years someone new buys the restaurant and asks to extend what was previously approved. It is a boat yard atmosphere and not a restaurant on Main Street. He asks members to look at this closely. Brian Florence asks Mr. Crosby if he has read the staff report conditions. Mr. Crosby responds that he has looked it over.*

*Debra Foschi, 22 Crosby Circle, is a year-round resident has lived here since 1993 and prior to coming here tonight rode by the subject property which is full of boats and very little parking. She notes that this is also a boat sales yard and that some of the boats remain until, or if, sold. She supports them coming to the neighborhood but notes that she is concerned about this turning into a drinking establishment. She gives a comparison about the Chart Room in Falmouth as to what time it closes and the proximity of the Chart Room in Falmouth to the residential area.*

*Scott Crosby returns and notes that the letters in opposition are direct abutters and the people that are in support do not live in the area.*

*Adriana Crosby from 62 Crosby Circle objects to this. There have been many years of constant complaining by others. To think they need to be open later than 11:00 pm is highly unreasonable. She is concerned about children in the neighborhood and is stressful to fight this and would like to enjoy being outside in the summertime. She is also concerned about noise and trash in the area. They want to enjoy their summer as residents. For years, the noise has been detrimental and people have constantly complained about the exhaust fans which have never been fixed.*

*Attorney Lawler rebuts. His clients have replaced every piece of equipment in the restaurant including the fan and if there are any issues, the new restaurant managers will address it.*

*Brian Florence has problem with the language as to the dates the restaurant is open. Attorney Lawler explains seasonal liquor license. He states that there is no intention to be open in January. It will be weekends after Columbus Day and is okay with after October 15<sup>th</sup>. More than happy to go with a condition about not being open after Columbus Day, just Thursday, Friday, Saturday. Mr. Jarvis clarifies that their intention is to be open full time until Columbus Day then to do weekends which will be Thursday night, Friday night, all day Saturday and Sunday day (probably close at 5:00 pm) until Thanksgiving. They would see how that would go. Then if there were any private holiday parties they could host those on Thursday through Saturday.*

*Brian is concerned about seating also and asks Attorney Lawler and staff if there are any police complaints. Neither has researched.*

*Attorney Lawler talks about parking spaces and shows the board a plan (Exhibit C). They discuss designated spaces.*

*Brian asks that the plan be entered into the record so that staff can work with Attorney Lawler to designate the parking spaces and demarcate them as such for each spot or with a sign for each of the spots so that no boat parking take place in those spots, based on the town's parking formula and have this as a condition if this proposal is approved.*

*Debra Foschi asks for clarity of dates of operation and time closing hours. Brian states that the proposed closing time would be 12:30 am. She doesn't think this is an appropriate place for this kind of establishment and thinks 12:30 am is too late.*

*Jake Dewey asks Attorney Lawler what time deliveries and trash removal will take place. Mr. Jarvis states that they have requested morning deliveries because of the boaters, etc. He states that the deliveries will take place between 9:00 am and 12:00 pm; none before 8:00 am. Attorney Lawler states that they would be comfortable with a condition to that effect.*

*Adrianna Crosby asks about the ZBA process and questions if the neighbors have problems with the proposal, whether their concerns are considered.*

*Debra Foschi speaks again about police reports, asks if the board can look at the history and if this could be continued in order to be considered.*

*Spencer Aaltonen makes findings:*

#### Special Permit Findings

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Special Permit No's 2003-60, 2007-044, and 2009-022 were issued pursuant to today's Section 240-94.B of the Zoning Ordinance, Expansion/Alteration of a Nonconforming Use. MGL Chapter 40A Section 14, Powers of the Zoning Board of Appeals, empowers the Board with the authority to modify any decision it makes. In addition, the permits issued specify that they are transferable to future owners by permission from the Board. Therefore, the Board is authorized to act on the request before them.
- Site Plan Review has issued an approval letter dated February 1, 2017.
- 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 Board is also asked to find that:

- The proposed modification to previous Special Permits would not be substantially more detrimental to the neighborhood than the existing business.

**Vote:**  
**All in favor**

**Spencer makes a motion to grant with following conditions:**

### Conditions

1. Special Permit No. 2017-010 is granted to CRAC, Inc. for the modification of Special Permit No's 2003-60, 2007-044, and 2009-022 to allow for a change in ownership, increased hours of operation, expanded days of use, and to allow for outdoor seating.
2. The subject property is located at 330 West Bay Road, Osterville, MA (Crosby's Boatyard) as shown on Assessor's Map 116 as Parcel 013.
3. The permit is issued for the seasonal use of the property which was originally listed from April 1st to January 15th. But after review that it will be used seasonally through October 15, then after that Thursday, Friday, Saturday, Sunday until 5:00 pm until January 15<sup>th</sup>
4. The hours of operation will be 8:00 AM to until 12:30 AM.
5. The number of seats will remain at 49. There are two seating scenarios depending on the weather. The "Sunny" plan provides for 13 outdoor seats with 36 indoor seats. The "Rainy" plan provides for 5 outdoor seats with 44 indoor seats. In each plan, the indoor seating includes 12 seats at the bar.
6. The establishment shall remain primarily that of a restaurant and at all times that alcoholic beverages are available for sale, food shall also be available for sale on the premises.
7. The manager and staff shall be responsible for assuring that noise generated does not disrupt abutting neighbors. The applicant shall be responsible for maintaining the noise reduction devices - baffles and sound insulation material – installed in the kitchen fan.
8. No boats shall be stored on the leased premises of the parking area between May 15th and October 15th. With parking plan in conformance with parking formulas will be completed with staff
9. The proposal shall be maintained in accordance with all Site Plan Review recommendations, all Board of Health regulations without variance, and all applicable fire and building code regulations.
10. The petitioner shall be responsible for securing approval of the hours of operation by application to the Licensing Board of the Town of Barnstable. Any increase in the seating or hours of operation shall require Zoning Board approval.
11. The permit is issued to the applicant, "CRAC, Inc.", owners David Jarvis and Thomas Gordon. It is not transferable without prior permission of the Zoning Board.
12. 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.

**Second by Jake Dewey**

**Attorney Lawler wants to put designated parking area in Condition #8**

**Vote:**  
**All in favor**

## GRANTED WITH CONDITIONS

**Attorney Lawler wants to reach out to the Crosby's and during construction to address the issues. They want to be good neighbors.**

### Correspondence

Received 02-10-17 from Cape Cod Commission, Limited Development of Regional Impact Scoping Decision for the Greenside Office Park Project located at 10 Attucks Lane, Hyannis, MA

### Matters Not Reasonably Anticipated by the Chair

### Upcoming Meetings

March 8, 2017, March 22, 2017, April 12, 2017

### Adjournment

**Motion is made by Spencer Aaltonen and seconded by Jake Dewey to adjourn.**

**Vote:**  
**All in favor**