



Town of Barnstable Zoning Board of Appeals



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Anna Brigham – Principal Planner – anna.brigham@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, April 12, 2017

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

Brian Florence - Chair	Present
Alex Rodolakis - Vice Chair	Present
David Hirsch	Absent
Herbert Bodensiek	Present
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 is present, Brian Florence opens the hearing at 7:06 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.

Minutes

January 11, 2017

Motion to accept minutes as submitted was made by Matt Levesque and seconded by Spencer Aaltonen

Vote:

All in favor

Brian reads the following into the record:

Old Business

7:00 PM Appeal No. 2017-001

Beauregard

Todd and Anne Beauregard are appealing the decision of the Building Commissioner to issue a building permit (B-16-2228) for the construction of a single-family home with deck, portico and attached garage on property located at 45 East Avenue, Osterville, MA. The appellants claim the lot on which the single-family dwelling is to be constructed has merged with an abutting lot at 25 East Avenue and is therefore not entitled to

the “grandfather” protection provided by §240-90 and M.G.L Chapter 40A §6. The subject property is located at 45 East Avenue, Osterville, MA as shown on Assessor’s Map 139 as Parcel 079. It is located in the Residence F-1 (RF-1) and Resource Protection Overlay Zoning Districts.

Continued from January 11, 2017. **Time Extension: New Date for Decision Due: 06-08-17**

Members assigned 01-11-17: Brian Florence, David Hirsch, Herbert Bodensiek, Spencer Aaltonen, Jacob Dewey. No testimony taken

Members assigned 02-08-17: Brian Florence, David Hirsch, Jake Dewey, Spencer Aaltonen, Herbert Bodensiek

7:01 PM Appeal No. 2017-002

Beauregard

Todd and Anne Beauregard are appealing the decision of the Building Commissioner to issue a building permit (B-16-2229) for the construction of a single-family home with deck, portico and attached garage on property located at 25 East Avenue, Osterville, MA. The appellants claim the lot on which the single-family dwelling is to be constructed has merged with an abutting lot at 45 East Avenue and is therefore not entitled to the “grandfather” protection provided by §240-90 and M.G.L Chapter 40A §6. The subject property is located at 25 East Avenue, Osterville, MA as shown on Assessor’s Map 139 as Parcel 080. They are located in the Residence F-1 (RF-1) and Resource Protection Overlay Zoning Districts.

Continued from January 11, 2017. **Time Extension: New Date for Decision Due: 06-08-17**

Members assigned 01-11-17: Brian Florence, David Hirsch, Herbert Bodensiek, Spencer Aaltonen, Jacob Dewey. No testimony taken

Members assigned 02-08-17: Brian Florence, David Hirsch, Jake Dewey, Spencer Aaltonen, Herbert Bodensiek

Brian Florence notes that a letter dated April 2, 2017 has been submitted from Attorney Michael Ford asking to continue this to April 26, 2017.

Motion is made by Jake Dewey and seconded by Spencer Aaltonen to continue this to April 26, 2017 at 7:00 PM.

Vote:

All in favor

CONTINUED TO APRIL 26, 2017 AT 7:00 PM

Brian Florence reads the following into the record:

7:03 PM Appeal No. 2017-014

Centerville Village Apartments Realty Trust

Adam J. Hostetter and Kristen Williams Haseotes, Trustees of the Centerville Village Apartments Realty Trust have applied for Special Permits pursuant to §240-93(B) Nonconforming Buildings or Structures not used as single or two-family dwellings and §240-94(B) Expansion of a Preexisting Nonconforming Use. The Applicant seeks to expand the preexisting nonconforming multi-family residential use on the property. The proposal is to relocate and preserve the existing filling station building on the property; demolish the remainder of the structures; and construct nine single-family dwellings (four two-bedroom units and five one-bedroom units). The property is located at 981 Main Street, Osterville, MA as shown on Assessor’s Map 117 as Parcels 026 and 178. It is located in the Residence C and Wellhead Protection Overlay Zoning Districts

Decision Due: 06-06-17

Continued from March 8th and March 22, 2017 – No members assigned. No Testimony taken.

Brian Florence notes that Attorney Michael Schulz, via email, has requested a continuance to May 10, 2017.

Motion to continue to May 10, 2017 at 7:00 PM is made by Alex Rodolakis and seconded by Matt Levesque.

Vote:

All in favor

CONTINUED TO MAY 10, 2017 AT 7:00 PM

Brian Florence reads the Drown appeal into the record:

New Business

7:00 PM Appeal No. 2017-019

Drown

Gary and Mary Drown have applied for a Special Permit pursuant to Section 240-47.1.A(1) Family Apartments to construct a 1,018 square foot family apartment in an existing attached garage. A Special Permit is required from the Zoning Board of Appeals for a family apartment in excess of 800 square feet. The property is located at 194 Packet Landing Way, West Barnstable, MA as shown on Assessor’s Map 179 as Parcel 039. It is in the Residence C Zoning District.

Decision Due: 07-11-17

Members assigned tonight: Brian Florence, Alex Rodolakis, Herbert Bodensiek, Spencer Aaltonen, Matt Levesque

Representative: Gary Drown is here representing himself.

Mr. Drown explains that they are proposing to construct a family apartment for his 87 year old mother-in-law. The apartment will consist of a galley kitchen and a bath in the existing garage along with expanding into the family room by removing some walls to make an upstairs bedroom (he hands in a diagram: Exhibit A). The only change from the application is that he did not include the entryway and the stairs which equals the 1,110 square foot calculation. He states that they have been before Old King's Highway and the Conservation Commission and received approval for the project.

Chair asks for public comment. No one speaks.

Alex asks Mr. Drown if he is aware of the rules and regulations of the family apartment. Mr. Drown replies that he does understand and explains that his mother-in-law will be living there and perhaps the other part owner of the property, Joseph, will be occupying the apartment after he retires. Brian asks Mr. Drown if he has had a chance to read the staff report, specifically the Conditions section. Mr. Drown states that he has read it and is okay with the conditions and confirms that they will not be increasing the current bedroom count and that the square footage will be 1,110 square feet.

Brian asks for public comment. No one speaks.

The board discusses. Brian thinks this is a formality and has no objections.

Alex makes findings:

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit: Section 240-47.1(A)(1) of the Barnstable Zoning Ordinance allows for a family apartment greater than 800 square feet, not to exceed 1,200 square feet, with a Special Permit from the Zoning Board of Appeals.
- Site Plan Review is not required for single-family residential structures or family apartments.
- 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:

All in favor

Alex makes a motion to grant with the following conditions:

Conditions

1. Special Permit 2017-019 is granted to Gary Drown to establish a family apartment within his dwelling at 194 Packet Landing, West, Barnstable. The family apartment shall be limited to a one-bedroom unit not to exceed 1,018 square feet.
2. The family apartment shall be maintained in compliance with the requirements of Section 240-47.1.
3. There shall be no increase in the number of bedrooms.
4. The on-site septic system shall comply with the Town of Barnstable Board of Health regulations and Title V without variances from the Board of Health.
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 of a Certificate of Occupancy for the family apartment. 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

Brian reads the following into the record:

7:01 PM Appeal No. 2017-020

Parrella

Cynthia Parrella has applied for a Special Permit pursuant to Section 240-91.H(3) Nonconforming Lot - Developed Lot Protection. The applicant is proposing to demolish an existing 1,313 square foot dwelling and construct a new 2,248 square foot, three-bedroom single-family dwelling with a one-car garage on a developed lot that contains less than 10,000 square feet. The proposed structure will not be in compliance with current zoning setback requirements but will be more conforming than the existing structure. The property is located at 109 First Avenue, Osterville, MA as shown on Assessor's Map 116 as Parcel 043. It is located in the Residence C and Resource Protection Overlay Zoning Districts.

Decision Due: 07-11-17

Members assigned tonight: Brian Florence, Alex Rodolakis, Herbert Bodensiek, Jake Dewey, Matt Levesque
Representative: Philip Boudreau, Esq.

Attorney Boudreau gives summary of relief being requested. He states that the lot is less than 10,000 square feet and that they will not be in conformance to the side yard setback but will not be more nonconforming than what exists, thus a Special Permit. The Floor Area Ratio (FAR) and Gross Floor Area (GFA) fit within the parameters of the bylaw. Currently the locus has a single family home, old block foundation, no central heat. Applicant could add on to the house but it doesn't make sense financially. The issue tonight deals with the basement whether it is included in the FAR. It is his position that if the basement is prohibited from any further development because of the way FAR is defined, then it cannot be capable of human habitation and why would it be included in FAR. He thinks that it is clear that a new modern structure will fit into the neighborhood where other houses in the neighborhood are larger. He also believes that it is in the spirit and intent of the bylaw would not be more detrimental to the neighborhood.

Alex discloses that Attorney Boudreau has represented him in the past and asks if there is a problem with him sitting on this and if the abutter would like him to recuse himself. Attorney Boudreau has no issues. Herbert Bodensiek also discloses that Attorney Schulz is currently representing him in a real estate matter but can be fair and impartial. Attorneys Boudreau and Schulz have no problem with Herb Bodensiek sitting on this.

Brian Florence asks why the applicant can't move the proposed dwelling 2.5 feet in order to comply. Attorney Boudreau states that this is an undersized lot. The applicant, David Parrella, states that if they slid the building to the right they would be into the ten foot setback. Brian asks if he decreased the square footage would they then comply. David Parrella states that they did a couple of layouts of the plan and wanted to push the house back. If they took the garage and slid it back they would have issues with the septic system and if they had less than 10 feet on the right side it precludes them from getting back there to build the (septic) system and for any work in the future.

Alex asks about building height. Mr. Parrella states that to the peak, it should be twenty-four (24) feet. Attorney Boudreau states that it is within the thirty (30) feet allowed as-of-right. Alex asks if they would be comfortable with 25 or 26 feet to plate. Mr. Parrella has no objection to not exceed twenty-six (26) feet. Attorney Boudreau consults with Mr. Parrella about the side yard setback.

Brian asks for public comment

Attorney Albert Schulz is representing the Seiferts to the east (97 First Avenue). They believe that the basement needs to be included in GFA. He has calculated the area and if the basement was included in the GFA, it would bring the total to 40%. He notes that the plans have the basement with up to eight (8) feet and a large access egress window in the back which would indicate to him that there could be plans to improve the basement. He is aware that this board has approved similar special permits for Mr. Parrella within the last couple of years: 82 Blomid Road (Appeal #2015-041) which was a demo-rebuild. The replacement dwelling was a three (3), one (1) car garage somewhat similar to this design and in that staff report it was reported that it was to be a full basement accessible from an interior staircase and that the basement was not included in GFA. Again, for another property located at 101 Hollingsworth Street, (2015-053) a special permit was granted with 3 bedroom 2100 sf home and the staff report stated that the basement was not included without any explanation. He states that putting a condition doesn't resolve the issue and would be impossible to enforce. He received a call today stating that perhaps the building department should make an inspection of 82 Blomid and 101 Hollingsworth Road involving their basements for compliance. He believes that it has been the building department's position that anything over 6'7" in the basement area is capable of human habitation. His client, Kevin Seifert, speaks. He is concerned about the basement being considered as part of the footage and that making a larger home would change the character of the neighborhood.

Leslie Balotti, an abutter at 113 First Avenue is in opposition and agrees with Mr. Seifert. She has lived there for 15 years, lives in a house approximately 100 years old and is happy with the smaller homes. She is concerned about the size of the proposed house.

Timothy Fulham of 218 Parker Road agrees with the other two abutters in opposition and thinks that this would be a detriment to the neighborhood.

Board deliberates.

Brian doesn't think they can meet the intent of the bylaw and is concerned about the dimensional setback. Herb doesn't think it is in keeping with the neighborhood.

Attorney Boudreau thinks that the bylaw deals with massing on a lot and if this had a crawl space or slab it would have the same massing and thinks the bylaw is silly. Thinks that the town attorney would have to deal with a lot of special permits that were granted that did not include the basement.

Brian Florence asks Mr. Parrella if the basements on the two houses at 82 Blomidon and 101 Hollingsworth Roads are finished. Mr. Parrella says no and doesn't own them any longer.

Attorney Boudreau knows that the board is not looking at his favorably and suggests that perhaps the board could obtain an opinion from the town attorney. Attorney Boudreau would like to seek continuance to get a redesign and perhaps an opinion from the town attorney.

Motion is made by Jake Dewey and seconded by Matt Levesque to continue this to May 10, 2017 at 7:00 pm

**Vote:
All in favor**

CONTINUED TO MAY 10, 2017 AT 7:00 PM

Alex Rodolakis and Jake Dewey recuse themselves from the Shay appeal

7:01 PM Appeal No. 2017-017

Shay

Joseph F. Shay, Jr. has applied for a Special Permit pursuant to Section 240-92(B) Nonconforming Buildings or Structures. The Petitioner is proposing to construct an exterior elevator shaft on the southwest side of a pre-existing nonconforming structure that will intrude into the side/rear yard setback. The property is located at 76 Washington Avenue, Hyannis Port, MA as shown on Assessor's Map 287 as Parcel 096. It is located in the Residence F-1 Zoning District.

Decision Due: 06-20-17

Continued from March 22, 2017

7:02 PM Appeal No. 2017-018

Shay

Joseph F. Shay, Jr. has petitioned for a variance from Section 240-13.E – Bulk Regulations. The Applicant is seeking relief from the existing side/rear yard setback requirement of fifteen (15) feet to construct an exterior elevator shaft which will result in a thirteen and a half (13.5) foot side/rear setback. The property is located at 76 Washington Avenue, Hyannis Port, MA as shown on Assessor's Map 287 as Parcel 096. It is located in the Residence F-1 Zoning District

Decision Due: 06-07-17

Continued from March 22, 2017

**Members assigned tonight: Brian Florence, Herbert Bodensiek, Spencer Aaltonen, Matt Levesque
Representative: Eliza Cox, Esq. Also with her is Craig Ashworth who is the builder on this project**

Brian informs Eliza that there are only 4 members, needs unanimous vote and asks if she is okay with that. She is.

Attorney Cox gives summary of relief being requested and asks to proceed with the variance first. She states that this project proposes an elevator shaft for the aging owners and what they are proposing is to construct is an elevator shaft. It will be located away from the road frontage and will go from the first to the 3rd level. Equipment for the shaft will be located in the basement. The proposal was also before the Barnstable Historical Commission (BHC) and was approved. She gives summary of

problem that would be encountered if put on the north side of the building. In terms of the variance, it is an unusual lot: long and rectangular, is in the historic district and uniquely constructed with a partial basement. The hardship would be in trying to locate the elevator shaft on the north side. They want to keep it out of the frontage and only had two sides of the building on which they could locate this. If constructed on the north side would be financially expensive, involve remodeling the kitchen and losing a bedroom which would be a hardship. She states that this would not be a detriment to the neighborhood and was approved by BHC. This would also be in keeping with the other quaint homes which are all close to the lot lines.

Brian asks where the bedrooms are located. Mr. Ashworth states that the master bedroom is located on the third floor and believes that the second floor has 3 bedrooms and another sitting room with shared bath.

Brian Florence asks for public comment: No one speaks.

Brian reads letters into the record: first dated March 17, 2017 from Andrew and Shannon Hayden in support, another letter dated March 14, 2017 from Nancy L. Matthews, Trustee for 112 Realty Trust in favor and another letter dated April 5, 2017 from Jeanne and Mark Shriver in support.

Matt Levesque makes findings for the variance as outlined in staff report dated March 15, 2017:

Variance Findings

The statutory requirement of MGL Chapter 40A, Section 10 for granting a variance is a three-prong test. The Board is required to find that each of the following three requirements has been met in order to consider granting the variance:

1. 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;
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
3. 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.

Vote:

All in favor

Motion is made by Matt to grant with the conditions as outlined in staff report for the variance:

Suggested Variance Conditions

Should the Board find to grant the variance, it may wish to consider the following conditions:

1. Variance No. 2017-018 is granted from Section 240-13 (E) to Joseph F. Shay, 76 Washington Avenue Hyannisport, MA for relief from the existing side/rear yard setback requirement of fifteen (15) feet in order to construct an exterior elevator shaft which will result in a thirteen and a half (13.5) side/rear setback.
2. The improvements shall be in substantial conformance with the site plan entitled "Site Plan of # 76 Washington Ave Hyannisport, MA prepared for Joseph F. Shay Jr." by down cape engineering, inc., dated January 18, 2017 and plans received February 27, 2017.
3. This construction shall represent full build-out of the lot. No additional increase in building coverage or gross square footage shall be permitted without prior approval of this Board.
4. This decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of a building permit. The rights authorized by this variance must be exercised within one year, unless extended.

Vote:

All in favor

GRANTED WITH CONDITIONS

Attorney Cox then states that she would like to Withdraw without Prejudice: Appeal No. 2017-017 (Special Permit Request) as it is now not needed.

Motion to Withdraw without Prejudice, the Special Permit, Appeal No. 2017-017, is made by Matt Levesque and seconded by Herbert Bodensiek

**Vote:
All in favor**

WITHDRAWN WITHOUT PREJUDICE

Correspondence

Received 03-28-17 from Planning Board. Notice of Public Hearing on Proposed Zoning Amendment – TC Item No. 2017-018 – Amending Chapter 240 of the Zoning Ordinance to Establish a Temporary Moratorium on the Cultivation, Manufacture, Sale and Distribution of Recreational Marijuana and Associated Activities.

Received 04-04-17 from Cape Cod Commission. Notice of Referral for Cape Cod Five Cents Savings Bank located at 1520 Iyannough Road and 131 Attucks Lane, Hyannis as a mandatory Development of Regional Impact (DRI) pursuant to Section 3 of Chapter A of Cape Cod Commission Regulations, Enabling Regulations Governing Review of Developments of Regional Impact.

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

April 26, 2017, May 10, 2017, May 24, 2017

Adjournment

Motion to adjourn is made by Herbert Bodensiek and seconded by Matt Levesque

**Vote:
All in favor**

For exhibits, please see corresponding ZBA file.

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