



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, June 28, 2017

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

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

No one is here from the legal department. Therefore, the executive session is tabled.

Executive Session

The Zoning Board of Appeals may vote to go into Executive Session under G.L. c. 30A §21(a)(3), if the chair declares that an open meeting may have a detrimental effect on the litigating position of the Committee, the Zoning Board of Appeals may vote to go into executive session to discuss litigation strategy with regard to the following pending case:

- Pacheco v. Town of Barnstable Zoning Board of Appeals

If so voted, the Executive Session will be held in the Town Council Conference Room at 7:00 P.M.

Election of Officers

Tabled to next hearing.

New Business

Brian reads the following two appeals into the record:

7:00 PM Appeal No. 2017-042

Cassidy

Seth P. Cassidy has applied for a Special Permit in accordance with Section 240-47.1.A(1) Family Apartments. The applicant is proposing to re-establish a family apartment consisting of approximately 1,100 square feet in an existing detached accessory structure. In accordance with Section 240-47.1 A(1), the Zoning Board of Appeals may allow a family apartment up to 1,200 square feet by a special permit finding. The property is located at 118 Hopewell Lane, Cotuit, MA as shown on Assessor's Map 040 as parcel 065. It is in a Residence F Zoning District.

7:01 PM Appeal No. 2017-043

Cassidy

Seth P. Cassidy has petitioned for a Variance from Section 240-47.1 A(3) Family Apartments. The petitioner is proposing to establish a family apartment consisting of approximately 1,100 square feet in an existing detached accessory structure. Relief is requested to Section 240-47.1 A(3), which requires family apartments to be located within or connected to a single-family dwelling. The property is located at 118 Hopewell Lane, Cotuit, MA as shown on Assessor's Map 040 as parcel 065. It is in a Residence F Zoning District.

Members assigned tonight: Brian Florence, Alex Rodolakis, David Hirsch, Herbert Bodensiek, Robin Young

Representative: Seth Cassidy and his wife are here representing themselves. Mr. Cassidy explains that there was an existing garage that was converted by the previous owner and used as a family apartment. However, when the property was conveyed the special permit and variance became null and void and they would now like to re-establish it so that his father-in-law can live there. The apartment is 1100 sf, two bedrooms which they would like to keep as is. There is carbon monoxide detectors, etc.; Alex Rodolakis asks how long the previous owner had someone living there. Mr. Cassidy is unsure.

Brian asks for public comment. No one speaks.

Alex makes findings on the special permit per Staff Report dated June 13, 2017 (Exhibit A)

Vote:

All in favor

Based on those findings, Alex makes a motion to grant relief being requested in accordance with the conditions as shown on the staff report dated June 13, 2017 (Exhibit A).

Vote:

All in favor

Brian asks the applicants to speak to the 3 prong test for the variance. Brian asks them to make a case or ask for a continuance or withdraw without prejudice.

They discuss and Brian states that they will continue this to later this evening.

7:02 PM Appeal No. 2017-047

McCartin

Mark McCartin, Trustee of Strawberry Hill Nominee Realty Trust, has applied for a Special Permit in accordance with Section 240-25.C(1) HB Business District. The applicant is seeking a Conditional Use Special Permit to demolish an existing building and construct a new, two-story office building for medical office use. The subject property is located at 1030 Falmouth Road, Hyannis, MA as shown on Assessor's Map 250 as Parcel 065. It is located in the Residence D-1 (RD-1), Highway Business (HB) and Groundwater Protection (GP) Overlay Zoning Districts.

Alex Rodolakis recuses himself from the McCartin case.

Members assigned tonight: Brian Florence, David Hirsch, Herbert Bodensiek, Robin Young, Spencer Aaltonen

Representative: John Kenney, Esq. with Matt Eddy and Mark McCartin along with Greg Siroonian who designed the building.

Attorney Kenney explains that this is a split lot and is seeking a Special Permit in the Highway Business zoning district for proposed medical office use. He gives background of the zoning district and also notes that this property is also in the Groundwater Protection Overlay District but will be connected to the municipal sewer. They will be demolishing the building as it is unsafe and are proposing a two-story office building with new curb cut. He points out the existing and proposed curb cut, explains the existing and proposed building location and how the proposed building will be relocated on the lot (see Exhibit A – Memorandum from John W. Kenney, Esq., dated June 28, 2017 and time stamped by ZBA on June 22, 2017). He notes that there are no rights over Earle's Court, will not produce hazardous waste and that the only waste will be needles controlled by Cape Cod Healthcare medical waste contractor. Some of the Cape Cod Healthcare offices will be moved from Hyannis to this proposed building. The lighting will be contained on-site, be on at timer at night and will be a safety security motion light. Hours of operation will be 7:00 am to 5:30 pm and hopes that this will not be a condition of the approval.

Questions from the board:

Robin Young asks about the traffic concern. Attorney Kenney states that there will be forty (40) employees: twenty-five (25) employees on the first floor and fifteen (15) on the second floor. It is also anticipated that the number of patients will be twenty-two (22) patients per hour

for the first floor and twenty (20) patients per hour for the second floor. Attorney Kenney doesn't think the traffic use will be a detriment. Mr. Young asks about left-hand turns going out of the property and if there is any way in which they can deal with the traffic because of the new church and the apartments across the street. Attorney Kenney states that Mass DOT approved the curb cut and right and left hand turns. Public comment. No one speaks.

The board discusses.

Matt Eddy clarifies that when this went to Site Plan Review, there wasn't a request for a traffic study. Brian asks if they spoke with the neighbors. Attorney Kenney stated that he has spoken with Attorney Bailey, representing some abutters, who is here tonight. The abutters are concerned about vegetation and lighting.

Robin Young asks if they had to go to the Cape Cod Commission for a Development of Regional Impact decision. Attorney Kenney states that they only had to get an informal decision from Jonathan Idman stating that this project did not trigger that component.

David Hirsch makes findings:

Special Permit Findings

1. In Application No. 2017-047, Mark McCartin, as Trustee, has sought a Special Permit pursuant to Section 240-25.C(1) – Conditional Uses in the Highway Business (HB) Zoning District. The applicant seeks to establish a medical office use.
2. The property is located at 1030 Falmouth Road, Hyannis, MA, as shown on Assessor's Map 250 as Parcel 065.
3. Section 240-25(C)(1) of the Zoning Ordinance allows any use permitted in the B District with a Conditional Use Special Permit. Medical Offices and any other business uses of a similar nature are permitted in the HB District with a special permit from this Board.
4. 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.
5. The proposed use of the property will not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.

Vote:

All in favor

David Hirsch makes a motion to grant with the following conditions:

Conditions

1. Special Permit No. 2017-047 is granted to Mark McCartin, Trustee of Strawberry Hill Nominee Realty Trust, pursuant to Section 240-25.C(1) – Conditional Uses in the Highway Business (HB) Zoning District. The applicant seeks to establish a medical office use at 1030 Falmouth Road, Hyannis, MA as shown on Assessor's Map 250 as Parcel 065.
2. The improvements shall be in substantial conformance with the site plan entitled "Layout and Dimension Plan dated November 14, 2014 last revised April 13, 2017" by Baxter Nye Engineering & Surveying and design Plans by Medcom dated April 14, 2017.
3. The Applicant shall comply with all conditions of the May 5, 2017 Site Plan Approval; these conditions shall be incorporated as conditions of this Special Permit.
4. 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

Alex Rodolakis comes back to the dais.

Brian Florence reads the following into the record:

7:03 PM Appeal No. 2017-049

McKenna

Bonnie R. McKenna has applied for a Special Permit in accordance with Section 240-91.H(3) – Nonconforming Lot – Developed Lot Protection. The applicant is proposing to demolish an existing 1,178 square foot dwelling with detached garage and build a new, two-story, 4-bedroom,

1,860 square foot dwelling and accessory shed. The property is located at 25 George Street, Barnstable, MA as shown on Assessor's Map 319 as Parcel 064. It is located in the Residence B Zoning District.

Members assigned tonight: Brian Florence, Alex Rodolakis, David Hirsch, Herb Bodensiek, Robin Young
Representative: John Kenney, Esq.

Attorney Kenney states that the applicant, Bonnie McKenna is here with her sister and Bob Racito. Attorney Kenney gives summary of relief being granted. The proposal will change this from a three (3) bedroom to four (4) bedroom dwelling and is smaller than some of the others in the neighborhood. This will meet setback requirements. The floor area ratio (FAR) proposed is 26% and the lot coverage will be 19.9%. Both are just under what is permitted. This lot has two front setbacks because it is a corner lot and the new house will be built according to the ordinance.

Public comment: no one speaks.

Alex asks about the basement. Mr. Racito states that it will be a three (3) foot crawl space. Attorney Kenney would like Condition #3 on the staff report changed to allow for up to 20% on the lot coverage and 30% on the FAR or eliminate that condition as it would be in accordance to the ordinance.

Alex clarifies that the shed is included in the 20%. The board discusses taking condition #3 out.

Herb 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. 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 by Special Permit.**
- 2. Site Plan Review is not required for single-family residential dwellings.**
- 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.**

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:

- 1. The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building. The proposed setbacks will comply with the Ordinance.**
- 2. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 19.9%.**
- 3. The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished, whichever is greater. The proposed FAR is 26%.**
- 4. The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories. The proposed dwelling is 22 feet 7 1/4 inches to top of plate, 28 feet 1 ¼ to the ridge (30 feet maximum) and is 2 stories.**

The Board is also asked to find that:

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

Vote:

All in favor

Herb makes a motion to grant with the following conditions:

Conditions

- 1. Special Permit No. 2017-049 is granted to Bonnie McKenna for the demolition of an existing dwelling and construction of a 1,860 square foot dwelling at 25 George Street, Barnstable, MA.**
- 2. The site development shall be constructed in substantial conformance with the plan entitled "Plan showing New House & Shed at 25 George Street Barnstable, Mass" prepared for Bonnie McKenna dated November 18, 2016 with the last revision date of April 18, 2017 drawn and stamped by Richard R. l'Heureux; and the floor plans and elevations dated May 30, 2017 by Concept Design.**

- ~~3. The total lot coverage of all structures on the lot shall not exceed 19.9% and the floor area ratio shall not exceed 26%.~~
4. *The proposed redevelopment shall represent full build-out of the lot. Further expansion of the dwelling, either the footprint or gross square footage, or construction of additional accessory structures is prohibited without prior approval from the Board.*
 5. *All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.*
 6. *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 David Hirsch

Vote:

All in favor

GRANTED WITH CONDITIONS

Brian Florence revisits the Cassidy appeal. Mr. Cassidy states that his father-in-law is disabled and needs to be able to reside there. Brian calls a five minute recess in order to have applicants collect their reasoning for the variance. Back from recess.

John Kenney, as a resident, suggests that because of the unique shape and topography, because of the fact that the garage is existing and has already been converted with a separate septic system and the fact that they have a family member in need should relate to the three prong test. The previous variance was granted but never recorded.

Public comment. No one speaks.

Robin Young makes findings on the variance.

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:

- **owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;**
- **a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and**
- **desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.**

An application for a variance that has met all three requirements “does not confer ... any legal right to a variance.” The Board still has the discretionary power to grant or not to grant the variance.

Variance Conditions

1. Variance No. 2017-043 is granted to establish a family apartment within a detached accessory cottage at 118 Hopewell Lane, Cotuit. The family apartment shall not exceed 1,100 square feet and shall have no more than two bedrooms.
2. The family apartment shall be maintained in compliance with the requirements of Section 240-47.1.
3. There shall be no renting of rooms (lodging) permitted on the property during the life of this variance.
4. The property shall be in compliance with all requirements of the Building Code, Board of Health, and Title V.
5. When the family apartment is vacated or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use of the family apartment shall be terminated and this variance shall become null and void. At that time, this variance shall cease. The applicant or property owner shall be responsible for the removal of the kitchen, unless the unit is properly permitted under the Accessory Affordable Apartment Program.
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 prior to issuance of a Certificate of Occupancy for the family apartment. The rights authorized by this variance must be exercised within one year, unless extended.

Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C) that support:

- **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

Robin Young makes a motion to grant with the following conditions:

Special Permit Conditions

1. Special Permit 2017-042 is granted to Seth Cassidy to establish a family apartment within a detached accessory structure at 118 Hopewell Lane, Cotuit. The family apartment shall not exceed 1,100 square feet and shall have no more than two bedrooms.
2. The family apartment shall be maintained in compliance with the requirements of Section 240-47.1 and the Conditions of Variance No. 2017-043.
3. 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.

Vote:

All in favor

GRANTED WITH CONDITIONS

Election of officers

Brian Florence nominates Herb Bodensiek as Clerk

Seconded by David Hirsch

Vote:

All in favor

Brian nominates David Hirsch as Vice-Chair

Seconded by Spencer Aaltonen

Vote:

All in favor

Brian nominates Alex Rodolakis as Chair

Seconded by Spencer Aaltonen

Vote:

All in favor

Motion is made by Brian Florence and seconded by Alex Rodolakis to adjourn.

Vote:

All in favor