



Town of Barnstable Zoning Board of Appeals



Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek - Clerk
Jacob Dewey – Regular Member
Paul Pinard – Associate Member Kyle Evancoe – Associate Member Todd Walantis – Associate Member Mark Hansen – Associate Member
James Tinsley – Town Council Liaison

Staff Support

Elizabeth Jenkins – Director - elizabeth.jenkins@town.barnstable.ma.us
Anna Brigham – Principal Planner – anna.brigham@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, April 10, 2019

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

19 SEP 24 PM 2:05

BARNSTABLE
TOWN CLERK

Alex Rodolakis - Chair	Present
David Hirsch – Vice Chair	Absent
Herbert Bodensiek – Clerk	Present
Jacob Dewey – Regular Member	Present
Paul Pinard – Regular Member	Present
Todd Walantis – Associate Member	Present
Mark Hansen – Associate Member	Present
Vacant	
Vacant	

Also present were Elizabeth Jenkins – Director of Planning & Development, Anna Brigham – Principal Planner and Carol Puckett – Administrative Assistant

As a quorum has been met, Alex Rodolakis opens the hearing at 7:02 pm

Call to Order

Introduction of Board Members – *All members present introduce themselves*

Alex 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.

Alex reads the following into the record:

Comprehensive Permit Requests

7:00 PM Comprehensive Permit No. 2016-025 Habitat for Humanity of Cape Cod, Inc.

Habitat for Humanity of Cape Cod, Inc. is requesting approval of a request to hold performance security (Form O) for remaining work and to release all four lots under covenant (Form G) for the 40B River Road Community Housing on Dickinson Drive, Marstons Mills.

Representative: Elizabeth Wade – Land Acquisition and Permitting Manager for Habitat for Humanity.

Members assigned: Alex Rodolakis, Herbert Bodensiek, Jake Dewey, Paul Pinard, Todd Walantis

Ms. Wade explains that they are here to ask for the release of the covenants so that they may sell and make them available to the families. They have recently had an issue with washout of the drainage and have worked with the town's engineer and their own engineer J. O'Reilly to create a plan which the town engineer approved. She asks for questions from the board.

Alex asks if all the houses are built. Ms. Wade says yes and that the dedication was yesterday and that they are hoping that perhaps as soon as next week to make the homes available for sale. Alex asks what that process is. Ms. Wade explains that there is an application process, selection of available families and out of that pool, there is a lottery.

Elizabeth Jenkins explains that the typical subdivision gets handled through the Planning Board. However, because it was a comprehensive permit, the ZBA is the authority. It would also take two votes as noted in bold from the staff memo to accept the performance security and the amount recommended to be held in escrow and to release the covenants for all four (4) lots.

Alex asks for public comment. No one speaks.

Jake Dewey clarifies that the amount of \$20,450 is to be held in escrow for the drainage. Ms. Wade says yes, and that they are hoping to begin as soon as Monday of next week.

Alex makes a motion to accept the \$20,450 in performance security to be held in an escrow account for additional site work subject to final approval by the town attorney.

Seconded by Paul Pinard

Alex takes a roll call vote:

AYE: Herb Bodensiek, Jake Dewey, Paul Pinard, Todd Walantis, Alex Rodolakis

NAY: None

Motion to vote to grant the request to release the lots secured by covenant dated September 8, 2016 recorded at the Barnstable Registry of Deeds in Book 30022, Page 64 for lots shown on a plan entitled "Subdivision Plan of Land of 536 River Road, Barnstable, Massachusetts – Habitat for Humanity Cape Cod, Inc., dated September 6, 2016 and recorded in the Registry of Deeds in Plan Book 29897 Page 138 are hereby released from the restrictions specified in said covenant Form G

Seconded by Herb Bodensiek

Vote:

All in favor

Alex reads the following into the record:

7:05 PM Appeal No. 2019-017

MPG Corporation and 1617 Falmouth Road Series of PB&C LLC.

MPG Corporation and 1617 Falmouth Road Series of PB&C, LLC., as co-applicants, have applied for a Modification of Special Permit 2018-007 in order to modify the site plan from the prior Special Permit in accordance with Section 240-93, Section 240-94 and Section 240-53. The modification includes moving the building back further on the lot, reducing the building size by approximately 400 square feet, adding additional parking spaces and adding a fifth fuel pump island. The subject property is located at 1617 Falmouth Road, Centerville, MA as shown on Assessor's Map 209 as parcel 085. It is located in the Highway Office (HO) and Residence C (RC) Zoning Districts.

Members assigned: Alex Rodolakis, Jake Dewey, Paul Pinard, Herbert Bodensiek, Mark Hansen

Representative: Matthew Eddy, Professional Engineer with Baxter & Nye Engineering is representing the applicant. Mr. Eddy explains that approximately one year ago they received special permit approval from this board and the reason they are here is to reconfigure the site for the elimination of the drive-through. He explains that the building will be moved back, slightly smaller in square footage, parking spaces will be increased to 30, and a fifth (5th) fuel pump island added in order to make better use of the property. He has prior plans that were approved by this board should any members want to view it. Mr. Eddy explains the reconfigured site with curb cuts.

Jake Dewey asks why the pumps are now aligned differently. Mr. Eddy explains that the orientation provides for better flow and access for the accommodation of the 5th pump.

Herb notices that on the suggested condition #4, there is still a provision regarding a drive through. Mr. Eddy explains that there could be potential for a drive-through but that it might not happen.

Mark clarifies that the building is smaller because of the design. Matt answers yes. Matt also clarifies that they previously had 21 parking spaces on the previous approval not including parking at the pump stations and now have 30 parking spaces not including the parking at the pumps.

Jake asks if the only sign proposed is on the building. Matt points out the ground mounted sign on the easterly end but will comply with the sign ordinance.

Alex asks for public comment. No one speaks.

The board deliberates.

Mark asks how many pumps on each island. Matt states one.

Alex and Todd both think that five fuel pumps makes the site look tight. Matt states that for the applicant it would be more viable and economical to add another pump will be a great enhancement, and meets zoning aspects.

Herb Bodensiek makes findings:

Special Permit Findings

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit.
Under Section 240-94 B, a preexisting nonconforming use may be expanded/intensified by special permit from the Zoning Board of Appeals.
2. 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.
3. A site plan has been reviewed and found approvable (see letter dated November 16, 2017).
Section 240-94 B. requires the Board to find:
4. The proposed expansion of the dwelling will not be substantially more detrimental to the neighborhood than the existing building or structure. AND:
5. Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties.
6. The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.
7. The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.
8. At the discretion of the Zoning Board of Appeals, improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:
 - (a) Greater conformance of signage to the requirements;
 - (b) The addition of off-street parking and loading facilities;
 - (c) Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;
 - (d) Increase of open space or vegetated buffers and screening along adjoining lots and roadways;
 - (e) Accessory uses or structures to the principal nonconforming use may be required to be brought into substantial conformance with the present zoning.

Vote:
All in favor

Alex notes that perhaps they don't need Condition #4.

Elizabeth Jenkins suggests that the decision should comply with the Site Plan Review approval dated December 21st.

Alex asks Mr. Eddy if he has seen the staff memo and if he is okay with the conditions. Mr. Eddy is okay with the conditions.

Motion is made by Herb Bodensiek to grant relief being sought with the following conditions:

Conditions

1. Special Permit No. 2019-017 is granted to MPG Corporation and 1617 Falmouth Rd Series of PB&C LLC, as co-applicants, to allow the modification of Special Permit 2018-007 for redevelopment of the site at 1617 Falmouth Road, Centerville, MA.
2. The proposed alterations will be in substantial conformance with the plan entitled "Centerville Convenience Center" prepared for MPG Corporation dated October 31, 2017, with the last revision date of November 2, 2018 drawn and stamped by Matthew W. Eddy of Baxter Nye Engineering & Surveying.
3. This alteration shall represent full build-out of the lot. No increase in building coverage or gross square footage shall be permitted without prior approval of this Board.
4. The Applicant must comply with all conditions set forth in the Site Plan Review approval letter dated December 21, 2018.
5. This decision shall be recorded at the Barnstable County Registry of Deeds and copies filed with the Zoning Board of Appeals and Building Division. The rights authorized by this special permit must be exercised within two years, unless extended.

Vote:
All in favor

GRANTED WITH CONDITIONS

At 7:32, Alex reads the following into the record:

7:06 PM **Appeal No. 2019-018** **Stratil/Waterhouse**

Mark S. Stratil and Molly T. Waterhouse have applied for a Special Permit pursuant to Section 240-47.1.B(4) – Family Apartments. The applicants are requesting relief in order to convert the existing garage to a one-bedroom 860 square foot family apartment. The subject property is located at 146 Cobble Stone Road, Barnstable, MA as shown on Assessor’s Map 316 as Parcel 064-001. It is located in the Residence F-1 Zoning District.

Members assigned: Alex Rodolakis, Jake Dewey, Herbert Bodensiek, Paul Pinard, Todd Walantis

Molly Waterhouse moved here from Colorado, bought the property on Cobblestone and is asking to convert the existing garage into a family apartment for her parents. Alex asks if she is aware of the regulations which he explains.

Alex asks if she has discussed this with any neighbors. Ms. Waterhouse states that she has spoken with one of the closest neighbor who was supportive of the plan.

Alex asks if there is anyone from the public who would like to speak. No one speaks.

Jake Dewey makes findings:

Special Permit Findings

1. **The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-47.1. B. allows a Special Permit for a Family Apartment in a detached structure.**
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.**

The Board is also asked to find that:

4. **The proposed family apartment above the detached garage would not be substantially more detrimental to the neighborhood than the existing dwelling.**
5. **The single-family nature of the property and of the accessory nature of the detached structure are preserved.**

Vote:

All in favor

Alex asks Ms. Waterhouse if she has seen the conditions. She says no and is handed a copy to review.

Jake Dewey makes a motion to grant the relief being sought with the following conditions:

Conditions

1. Special Permit No. 2019-018 is granted to Mark S. Stratil and Molly T. Waterhouse, to convert an existing garage to a one-bedroom family apartment at 146 Cobble Stone Road, Barnstable, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled “Proposed Garage Conversion, Molly Waterhouse” by ARC Designs, LLC dated February 16, 2019.
3. The proposed development 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.
4. The Applicant must comply with the restrictions in Section 240-47.1 Family Apartments C. Conditions and Procedural Requirements 1-4 of the Ordinance (see above).
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 the issuance of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:07 PM

Appeal No. 2019-019

Crocker/Sylvan Lane Realty Trust

James H. Crocker, Jr./Sylvan Lane Realty Trust has petitioned for a Modification of Variance No. 1979-054 which allowed a conversion of a residence and photography studio to a residence and medical office. The petitioner is also proposing to include the use of professional or general office use and to allow a decrease in the number of spaces required from twelve (12) to eight (8). The subject property is located at 949 Falmouth Road, Centerville, MA as shown on Assessor's Map 189 as Parcel 003-000. It is located in the Residence C (RC) Zoning District

Members assigned: Alex Rodolakis, Jake Dewey, Paul Pinard, Herbert Bodensiek, Mark Hansen

Representative: Mike Ford, Esq.

Attorney Ford gives history of ownership from Dr. Berry which includes mixed uses of the property. He states that there was a variance granted in 1971 for a photography studio and residence and another in 1979 when Dr. Berry bought it for a change of use which was for a residence and medical offices and has been used as such since.

The reason they are here is because a mixed use building with medical offices has been difficult to rent. As a result they are seeking the board's discretion to change the medical office use to general or professional office use but want to keep it as a mixed use as there is still a resident currently. What is sought is for the board to amend the 1979 variance to add after medical office, professional or general office use and to amend it to reduce the required number of 12 spaces to 8 (6 and 2) with handicapped spaces. He states that the Building Commissioner did not feel this had to go through Site Plan Review because there were no changes to the premises except for the demarcation of the handicapped parking spaces. He reiterates that they are seeking a modification of the variance and doesn't think that this will be more detrimental to the public use than what already exists.

Mark Hansen asks if the petitioner is asking to subdivide the office space or if they are looking for it to be a single office space. Attorney Ford states that they are looking to be a single office space and hands in the floor plan (Exhibit A) and will agree to a condition that this not be further subdivided into separate office spaces if need be.

Jake Dewey asks when Dr. Berry's business ceased. Attorney Ford believes that he was still doing business up until 2017 when the sale in August was made to Mr. Crocker. Jake Dewey asks if there is proof of continued use. Attorney Ford doesn't think that a variance lapses with abandonment like a special permit does.

Alex asks for public comment. No one speaks.

Attorney Ford also notes that the septic system was upgraded in 2008.

Paul Pinard makes findings:

Variance Findings:

To grant a modification of the variance, the Board may wish to confirm that, through the issuance of Variance No. 1979-054, the site has been shown to meet the statutory requirements of MGL Chapter 40A, Section 10 for granting a 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; and
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner.

And, the Board should find that the proposed amendment to that use variance to allow a residence and medical, professional and general office:

1. 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.

Alex would add that the alteration to allow professional office use is a minor modification to the variance and therefore would not cause substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.

Jake Dewey clarifies that they are not eliminating medical office use, just adding professional office use.

Vote:

All in favor

Alex asks Attorney Ford if he has seen the conditions. He has and is okay with them.

Paul Pinard makes a motion to grant with the following conditions:

Variance Conditions

Page 5 of 12

1. Appeal No. 2019-019 is granted to James H. Crocker, Jr/Sylvan Lane Realty Trust to modify Variance No. 1979-54 for 1949 Falmouth Road, Centerville, MA to allow for use of the property as a residence and for medical, professional or general office use.
2. Condition No. 1 of Variance No. 1979-54 shall be modified to read: The petitioner shall meet the parking requirements for all uses on the site.
3. All other conditions of Variance No. 1979-54 shall remain in full force and effect:
 - a. The existing sign which measures 18 inches x 24 inches may be maintained.
 - b. There shall be no change to the exterior of the building which shall change its dimensions or architectural design.
4. The site shall be in substantial conformance with the plan entitled "Layout and Materials Plan", dated March 8, 2019 drawn and stamped by Matthew Eddy, Baxter Nye Engineering & Surveying. Any substantial modification of the site or expansion of the structure shall require review and approval of this Board.
5. 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

Exhibit A = Floor Plan of 1947 Falmouth Road, Centerville, MA 02632 as submitted by Attorney Michael Ford. See corresponding ZBA file for document.

Alex reads the following into the record:

Old Business

7:01PM

Appeal No. 2019-013

Clough

Deborah Clough has petitioned for a Variance in accordance with Section 240-11 minimum lot area requirements in the RD-1 Residential District and Section 240-36 - Resource Protection Overlay District (RPOD). The Petitioner seeks to transfer approximately 553 square feet to an abutting lot to establish a new, nonconforming lot. The subject property is located at 633 South Main Street, Centerville, MA as shown on Assessors Map 186 as Parcel 061. It is located in the RD-1 and Resource Protection Overlay District (RPOD).

Continued from March 13, 2019. No members assigned, no testimony taken.

Members assigned: Alex Rodolakis, Jake Dewey, Herbert Bodensiek, Paul Pinard, Todd Walantis

Representative: Mark Boudreau, Esq., who wants to take two small properties reconfigure in order to improve traffic for the commercial property and is also here to modify the existing Special Permit. There are two properties that were owned from 1903 to 1962 by Mr. Kelly as a garage and gas station. He has provided a historical background and plan in his memo (Exhibit A). He states Mr. Kelly had then given the properties to his sisters who were aunts of Vivian Nault of Vivian's Real Estate. What they are looking to do is to take away retail sales/manufacturing and limit it to real estate sales. The perspective buyer, Ms. Tilley, is also here tonight. As for the two variances, there is uniqueness in the topography of the buildings. One structure at 627 South Main Street was built in 1750 and pretty much encompasses one lot. The prior owner, Vivian, ran the real estate business and did a lot of rentals in the summer and with permission of her aunts used the property next door. He states that the hardship would be that the business doesn't work currently and that the properties should've been kept together. Both lots are less than 10,000 square feet. By adding in the six foot strip, it would provide for parking and he would suggest the matter of exact parking requirements be left up to the Building Commissioner as he might want to dictate the flow of traffic.

Alex asks what would happen to the properties if they couldn't get the relief requested. Attorney Boudreau explains that they could not be condominiums because the same issue would exist, that the real estate office would have to operate with 2.5 parking spaces and it wouldn't work, and that the only way it could function is with the property next door. They (lots) were split for a number of years and then put back together in 1976. There are also septic problems and this site can only take a tight tank and could not be used as a residence because it is so small.

Jake Dewey asks if what they wanted to do could be handled with an easement. Attorney Boudreau explains that they wouldn't be able to use the residential property for business purposes.

Paul Pinard states that after looking at the Site Plan Review report that there would still be a lot of things left that they would have to do in order to make this doable.

Elizabeth Jenkins asks what transpired at Site Plan Review. Attorney Boudreau states that they did get formal Site Plan Review approval from the April 4th hearing. Jenkins asks if there are conditions on the SPR that this board should be made aware of. Attorney Boudreau explains that the parking plan still needs to be reviewed and approved by the Building Commissioner who wanted to revisit this once completed at the

ZBA. He further explains that there is no room for landscaping and where to put handicapped spots and potentially what the flow of the traffic will be.

Jake Dewey asks that if they grant the division of the lots couldn't they then use the easement. Attorney Boudreau states that the idea is to separate them and clean up any issues and if the locus was sold as a whole that there would still be the issue of parking.

Alex Rodolakis asks for public comment.

Herbert Minkle of 42 Coddington Road, Centerville has a copy of the schematic drawing that is proposed. He hands them in to the board (Exhibit B). He has also marked them as exhibits a, b & c. First is the photograph of the South Main Street side. He comments that there is actually another parking space that is not in the schematic because it is adjacent to the park. However, but for the restriction of having a parking space easement on a residential property, there would actually be room for four parking spaces. He notes that if you look at exhibit b (photo) you will see where one space is in the back of the building and exhibit c is the back of the building (photo) which will show that space. What is being proposed is the land from that pink stake. The problem is that the area in the corner of the building in exhibit c is only 13' feet wide. He hands in other photos (exhibit d, e & f) one of which is a view down to the town landing. One of the problems is that in the busy season there is a great deal of traffic to the town landing and has to be approached up Coddington Road and down to the town landing. The corner of South Main Street and Hayward Road is not navigable once you leave the town landing (exhibit g, h & i). South Main Street has a posted speed limit of 30 mph and states that if come from the town landing and drive down Hayward to South Main Street there is blindness to both the right and left and you cannot safely go out onto South Main Street and make a left-hand turn going towards Oosterville. If you are towing a boat, it is not possible, given the amount of traffic on South Main Street, to approach it that way. Thus, all the traffic goes up and down Coddington Road past the structures which are the subject of this hearing. The difficulty is that the proposal is to create a parking lot for cars to back out onto Coddington Road which has a lot of boat traffic. He would hope that something needs to take place that would not create a safety problem. He points out that there is a structure on South Main Street which is in the background of the pictures (he hands in exhibit j & k). For these reason he would hope that this would be sent back to the drawing board or this board would not grant the easement request with respect to facilitate the creation of these parking spaces that would create a significant problem on Coddington Road.

Mark Hansen asks Mr. Minkle if his concern is the traffic flow or how much traffic. Mr. Minkle states that he did not understand the use was to be restricted to a real estate office that would employ only 2 people.

Attorney Boudreau notes that they don't have the legal right to use the space on the town park and the nature of the real estate business is that all of the research is done on the internet and then the parties would come back to this property to sign an offer with potential buyers. They are not looking to make this a rental office and that the plan was to fit as many cars as they could under the parking regulations. He would be happy to have the traffic come out on South Main Street and put signage as necessary. Mr. Minkle clarifies that what Attorney Boudreau is proposing is that cars could come from Coddington Road into that area marked with the three cars but would have to exit onto South Main Street. Mr., Minkle is satisfied with that restriction.

Alex clarifies that it would be one commercial tenant. Elizabeth Jenkins states that the retail component will be gone.

They discuss if the number of parking spaces is what is needed for this type of business and what the Building Commissioner would approve.

Alex would feel more comfortable with granting with reduced parking spaces

Alex asks if there is anyone else from public who would like to speak. No one speaks.

Todd likes the idea that they are cleaning up the parcel and doesn't see a lot on the downside. Alex likes the proposal with the exception of the drive-through parking. Jake asks if they are comfortable with the variance particulars. They board discusses whether they can approve and how to approve without knowing what the Building Commissioner (BC) will say about the parking.

Herb thinks that it should be up to the BC to see what direction the traffic will flow and has questions about the retaining wall.

Elizabeth Jenkins reminds the board that their obligation is to make a finding that this would not be a detriment to the neighborhood that the board can condition it and that it wouldn't be any more detrimental to the public good or the neighborhood affected and that if they can make that finding to defer that issue, it is in their authority.

Attorney Boudreau is okay with a condition that the traffic flow coming from Coddington back out to South Main Street and makes a lot of sense to the neighborhood.

Todd Walantis makes findings for 2019-013:

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

Todd Walantis makes a motion to grant the relief being sought with the following conditions:

Variance Conditions

1. Variance No. 2019-013 is granted to Deborah Clough for a Variance pursuant to Section 240-11 – Residence RD-1 Minimum Lot Area requirements and 240-36.D Resource Protection Overlay (RPOD) District regulations. The petitioner is proposing to transfer approximately 553 square feet to an abutting lot to create two new nonconforming lots.
2. The lot line alteration shall be in substantial conformance with the site plan entitled “Draft Lot Lines Reconfiguration Plan at 627 and 633 South Main Street, Centerville, MA” prepared for Debbie Clough by JC Engineering, Inc., dated February 15, 2019.
3. 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

2019-013 GRANTED WITH CONDITIONS

7:02 PM

Appeal No. 2019-014

Clough

Deborah Clough has petitioned for a Variance in accordance with Section 240-11 minimum lot area requirements in the RD-1 Residential District and Section 240-36 - Resource Protection Overlay District (RPOD). The Petitioner seeks to add approximately 553 square feet to lot from an abutting lot in order to establish a new, nonconforming lot. The subject property is located at 627 South Main Street, Centerville, MA as shown on Assessors Map 186 as Parcel 062. It is located in the RD-1 and Resource Protection Overlay District (RPOD).

Continued from March 13, 2019. No members assigned, no testimony taken.

Todd makes findings:

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:

4. 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;
5. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
6. 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

Todd makes a motion to grant with the following conditions:

Variance Conditions

1. Variance No. 2019-014 is granted to Deborah Clough for a Variance pursuant to Section 240-11 – Residence RD-1 Minimum Lot Area requirements and 240-36.D Resource Protection Overlay (RPOD) District regulations. The petitioner is proposing to transfer approximately 553 square feet to an abutting lot to create two new nonconforming lots.

2. The lot line alteration shall be in substantial conformance with the site plan entitled "Draft Lot Lines Reconfiguration Plan at 627 and 633 South Main Street, Centerville, MA" prepared for Debbie Clough by JC Engineering, Inc., dated February 15, 2019.
3. 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

2019-014 GRANTED WITH CONDITIONS

7:03 PM

Appeal No. 2019-015

Clough

Deborah Clough has applied for a Special Permit in accordance with Chapter 240-94.B – Nonconforming Use. The applicant is proposing to expand a nonconforming use in conjunction with other Variance applications which proposes to move an existing lot line between 633 and 627 South Main Street, Centerville, MA. Currently, 627 South Main Street houses that nonconforming use. The subject property of this application is 627 South Main Street, Centerville, MA as shown on Assessor's Map 186 as parcel 062. It is located in the Residence D-1 (RD-1) and the Resource Protection Overlay (RPOD) Zoning Districts.

Paul Pinard 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.**

Under Section 240-94 B, a preexisting nonconforming use may be expanded/intensified by special permit from the Zoning Board of Appeals.

2. **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.**

3. **A site plan has been reviewed and found approvable** (See report dated April 3, 2019).

Section 240-94 B. requires the Board to find:

4. **The proposed expansion of the dwelling will not be substantially more detrimental to the neighborhood than the existing building or structure. AND:**

5. **Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties.**

6. **The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.**

7. **The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.**

8. **At the discretion of the Zoning Board of Appeals, improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:**

(a) Greater conformance of signage to the requirements;

(b) The addition of off-street parking and loading facilities;

(c) Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;

(d) Increase of open space or vegetated buffers and screening along adjoining lots and roadways;

(e) Accessory uses or structures to the principal nonconforming use may be required to be brought into substantial conformance with the present zoning.

Vote:

All in favor

Paul Pinard makes a motion to grant with the following conditions:

Conditions

1. Special Permit No. 2019-015 is granted to Deborah Clough, to allow for the extension of the preexisting nonconforming use of the property as a real estate office to an additional six foot strip of land added through a lot area variance at 627 South Main Street, Centerville, MA.
2. The proposed alterations will be in substantial conformance with the plan entitled "Lot Lines Reconfiguration Plan" prepared for Deborah Clough dated February 15, 2019, drawn by JC Engineering, Inc. and Parking and Drainage Plan at 627 South Main Street, Centerville, MA dated March 26, 2019. Substantial alteration of the site plan shall require the review and approval of the Zoning Board.
3. The number of commercial tenants on the property shall be limited to one.
4. The Applicant shall comply with the conditions of the Site Plan Approval Letter dated April 3, 2019 which incorporated by reference herein.
5. This decision shall be recorded at the Barnstable County Registry of Deeds and copies filed with the Zoning Board of Appeals and Building Division. The rights authorized by this special permit must be exercised within two years, unless extended.

Alex suggests that the modification to Condition #3 be that the number of tenants be limited to one and the commercial use should be restricted to a real estate office unless otherwise approved by this board.

Attorney Boudreau accepts that condition.

Jake suggests a condition pertaining to the parking flow.

Elizabeth Jenkins clarifies and suggests that the board would like to add two conditions:

- **that the three (3) parking spaces south of the structure would be for employee parking**
- **the parking and flow of traffic would be one way with a final parking circulation plan to be approved by the Building Commissioner**

Attorney Boudreau accepts those conditions.

Vote:

All in favor

2019-015 GRANTED WITH CONDITIONS

Exhibit A = Memo regarding Historical Background from Attorney Mark Boudreau received 04-10-19 and a revised one received 04-12-19

Exhibits a, b, c, d, e, f, g, h, i, j and k submitted tonight, April 10, 2019, from Herbert Minkle of 42 Coddington Road, Centerville, MA

See corresponding ZBA file for document.

Alex Rodolakis and Jake Dewey recuse themselves from the following appeal and leave the dais. Herb Bodensiek takes over as Chair.

7:04 PM Appeal No. 2019-016 Hyannisport Club, LLC.

Hyannisport Club, LLC., has applied for a Modification of Special Permit No. 2018-065 Conditions #1 and #2 in order to construct a larger addition/expansion for a second floor lounge and office space to the existing Clubhouse in accordance with Section 240-93. The subject property is located at 2 Irving Avenue, Hyannis, MA as shown on Assessor's Map 266 as Parcel 031. It is located in the Residence B (RB) and Residence F-1 (RF-1) Zoning Districts.

Members assigned: Herbert Bodensiek, Paul Pinard, Mark Hansen, Todd Walantis

Representative: Mark Boudreau, Esq.,

Attorney Boudreau gives history of relief that was previously granted and that this request is to add approximately 800 square feet to the employee lounge. They previously added some second floor space for employee lounge and office space but are now seeking relief for that added 800 square feet. The only abutting property that will be able to view this addition is St. Andrew's church which has also submitted a letter of support. He states that the additional space will refine the roof line and make it more attractive. He explains why relief is requested and that the site is over 156 acres and that this structure is within the setbacks and designed as such approximately 80 years ago.

Herb Bodensiek asks the board if they have any questions. No one speaks.

Herb Bodensiek asks for public comment. No one speaks.

Herb makes findings:

Proposal & Relief Requested

Hyannisport Club, LLC., has applied for a Modification of Special Permit No. 2018-065 Conditions #1 and #2 in order to construct a larger addition/expansion for a second floor lounge and office space to the existing Clubhouse in accordance with Section 240-93.

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. The existing use is pre-existing nonconforming and any expansion/alteration is allowed under Section 240-93.**
2. **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.**
3. **A Site Plan has been reviewed and found approvable with conditions (See letter dated March 12, 2019 and signed March 22, 2019).**

Further, Section 240-93 B. requires the Board to find that:

4. **The proposed repairs, alterations and/or expansion are not substantially more detrimental to the surrounding neighborhood.**

Vote:

All in favor

Herb makes a motion to grant with the following conditions:

Conditions

1. Special Permit No. 2019-016 is granted to the Hyannisport Club, Inc. for an approximately 1,500 square foot addition/expansion for a second floor lounge and office space to the existing Clubhouse. The property is located at 2 Irving Avenue, Hyannisport (Hyannis) MA.
2. The improvements shall be in substantial conformance with the plan entitled "Hyannisport Club, 2 Irving Avenue Hyannisport, MA by Paul F. Weber Architect dated November 13, 2018.
3. The Applicant is required to attain all required permits, approvals, and licenses for the proposed new expansion/alteration.
4. Site Plan Review conditions of approval are hereby incorporated into this Decision.
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.

Vote:

All in favor

Herb also notes that the letter of support from the General Manger of the Hyannisport Club was received and is in the file.

Correspondence

Matters Not reasonably Anticipated by the Chair

Upcoming Meetings

April 24, 2019, May 8, 2019, May 22, 2019

Adjournment

Motion to adjourn is made by Todd Walantis and seconded by Paul Pinard

Vote:

All in favor