



Town of Barnstable Zoning Board of Appeals



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BARNSTABLE
TOWN CLERK

Board Members:
Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek - Clerk
Jacob Dewey – Regular Member Paul Pinard – Regular Member
Todd Walantis – Associate Member Mark Hansen – Associate Member Robert Twiss – 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, August 7, 2019

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

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

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

As a quorum has been met, Alex calls the hearing to order at 7:03 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:

7:00 PM

Appeal No. 2019-038

Shoestring Properties

Stuart Bornstein, Shoestring Properties, has appealed the Building Commissioner’s determination that vehicles parked on a vacant lot at 53 South Street are not an allowed use as a matter of right. The Appellant has also requested zoning relief. The subject property is located at 53 South Street, Hyannis, MA as shown on Assessor’s Map 326 as Parcel 125. It is located in the Harbor District (HD) Zoning District.

Members assigned tonight: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Bob Twiss

Representative: Jeffrey Johnson, Esq. Also with him tonight is the applicant, Stuart and Aaron Bornstein

Attorney Johnson states that the staff report, in discussing the history, is flawed in the analysis of the court decision of 1993. The motel was owned by Lewis Bay Properties with an inn on one side and hotel on the other. The Dockside restaurant on the bottom of the hill was relocated to the top of the hill. He states that in 1993, Walter Hedlund sought a special permit for a paid parking lot and the board voted against that special permit but in the findings of that case (in his memo, page 8 – Exhibit A), the judge specifically found in regards to abandonment, that Lewis Bay had not intended to abandon their pre-existing rights. Part of their pre-existing rights, handled the overflow parking from the restaurant and is and continually has taken care of the overflow parking from the Dockside restaurant. Shoestring Properties has owned this since 1996 and has rented out the restaurant to various people/tenants. In 2012 and 2014 there was a problem with attempts to collect money for parking which was stopped. Recently, the restaurant was having problems and Mr. Bornstein, for one season, tried to fence off the parking lot so that people wouldn’t illegally park there. However, the restaurant had a falling off of business so

the following season the fence came down. So, to have abandonment you have to have an intent to abandon and have to stop doing something. The local bylaw uses the term abandonment for non-use for three years and there has not been abandonment for three years. The Dockside Restaurant itself has 30 regular and 4 handicapped parking spaces. The restaurant is licensed for 50 seats inside and 75 seats outside and has been that way for some time. If you look at the bylaw you will see that the parking is inadequate. The business has fallen off and right now there are signs saying that it is parking for the Dockside Restaurant only and that others will be towed after 9:00 pm. He talked to the manager who watches the parking area but can't police it all the time. The position of the applicants is that there is a right to park there and that it is a pre-existing non-conforming use that has been continued throughout and in the alternative, the parking bylaw allows that any parking that is needed for one property can be used on any property within 300 feet. He would suggest that it has been going on for some time and that situation has continually been used as such. Alex Rodolakis notes that they had only received Attorney Johnson's memo today. Attorney Johnson notes that there is a lot of info and is okay with a continuance if needed.

Paul Pinard asks for clarification of what was asked of the board in the 1993 request. Attorney Johnson explains that Mr. Hedlund wanted a special permit for a change of a non-conforming use to another in order to use the lot for paid parking. He notes about a change of use without abandonment. Attorney Johnson clarifies that what his client is asking for is that this be an overflow parking lot and not a paid parking lot.

Board member Bob Twiss asks if it was ever a paid parking lot. Attorney Johnson states no but that a tenant at the restaurant attempted to collect money for parking recently which was stopped. Stuart Bornstein states that a husband/wife couple rented the restaurant and while the wife was on vacation, the husband collected money for parking. The police cited them and gave them a fine. He thinks that it lasted for about 2 or 3 weeks. The owners asked to put up a fence. He took the fence down, they are not charging for parking, the police put tickets and then he had a difference of opinion and a lot of the information from the town was not correct. They never lost the right to use it as an overflow parking lot. They just want to use their rights for an overflow parking lot and the restaurant is seasonal. They have put signs for 2 hour limit and no overnight parking.

Jake Dewey asks what happened on May 24th. Mr. Bornstein says that they took the fence down 4 or 5 days before and people were parking in the parking lot. The restaurant had opened approximately two weeks before. They were sent a fine for having cars parked there so they put signs up for no parking. Jake asks if the dockside parking lot on May 24th was full and then cars were parked in the overflow parking lot? Bornstein explains that the restaurant parking lot was not full but that there were some cars in the overflow parking lot.

Herb Bodensiek asks when the motel was demolished. Attorney Johnson states that it was in 1991.

Alex Rodolakis asks if there was a denial from another board. Mr. Bornstein states that he went to Site Plan Review and was asked to file to use the lot but he has the rights already and didn't think they had to compromise on something they already had. Alex thinks that maybe a continuance makes sense and they discuss the continued use.

Alex asks for public comment. No one speaks.

A motion is made by Alex Rodolakis and seconded by Herb Bodensiek to continue this matter to September 11, 2019 at 7:00 PM.

Vote:

All in favor

CONTINUED TO SEPTEMBER 11, 2019 AT 7:00 PM

Old Business

7:01 PM

Appeal No. 2019-034

Tardanico

Charles Tardanico, Trustee of the Construction Associates Realty Trust, has petitioned for a Variance in accordance with Section 240-91.H(1)(b)[1] – Developed Lot Protection, Demolition and Rebuilding on Nonconforming Lot. The Petitioner is requesting relief from the maximum 20% lot coverage in order to construct a 16 foot by 36 foot pool resulting in a lot coverage of 21.6%. The property is located at 158 Parker Road, Osterville, MA as shown on Assessor's Map 116 as Parcel 037. It is located in the Residence C Zoning District.

No members assigned, no testimony taken.

Continued from July 10, 2019 and July 24, 2019. Members assigned 07-10-19: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Mark Hansen

Members assigned tonight: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Mark Hansen

Representative: Michael Schulz, Esq.

To provide evidence for the hardship and the inability to sell the property by letter dated 07-20-19 from Bernard W. Klotz, real estate broker in Osterville for Kinlin Grover (Exhibit A) would've bought the house except for the lack of the size of the pool. They are here requesting that variance. The board could make a finding by the board, even though they don't meet all the tests for a variance but there is an appeal period should any abutter object.

Board member Mark Hansen asks if there was a Purchase and Sales (P&S) with a contingency for the pool. Attorney Schulz consults with his clients who are in the audience and states that it never got to that point. Attorney Schulz also wants to note that there is a letter of support which was submitted at the previous hearing from the Holdens.

Alex polls the board but states that he still has issues with the request and would still be opposed. Jake Dewey is having a hard time with it and doesn't think there is a hardship about selling the property without the pool. Mark Hansen feels the same and that there is/was no purchase and sales agreement pending. Herb Bodensiek would be in favor and thinks it would be a small infringement. Attorney Schulz asks if the board would be okay with a small increase. David Hirsch was in favor the last time until he read the letter where there was no P&S.. how would they know that it would be a problem.. he doesn't see it as a hardship but he would like to see it be withdrawn and if there is a sale falls through because of the size of the pool let the builder and buyer come before this board to ask for a bigger pool. Schulz explains that the letter from Klotz refers to a buyer who was going to buy the house but ended up buying another house in Osterville with a pool. Schulz asks if they pulled it back to .8 would that change their mind to a de minimis variance. Alex would still have a problem with it because it still wouldn't be at the requirement and elements that are necessary. He suggests a continuance until they get a buyer? Schulz would like to confer with the clients. Bob Twiss suggests perhaps going with a 12 X 32 versus a 16X36.

Attorney Schulz confers with his clients. Attorney Schulz would like to ask to withdraw without prejudice.

Motion is made by Alex Rodolakis and seconded by Mark Hansen to allow the applicant to withdraw without prejudice.

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

New Business

Alex reads the following into the record:

7:01 PM

Appeal No. 2019-044

Shannon Collins

Shannon Collins has applied for a Special Permit in accordance with Section 240-44 – Accessory Uses. The Applicant is requesting a Special Permit in order to construct an accessory structure, a garage approximately 24 feet by 60 feet, on an adjoining lot on which the principal structure and use it serves. The properties are located at 0 Putnam Avenue and 55 Putnam Avenue, Cotuit, MA as shown on Assessor's Map 036 as Parcels 041-002 and 045. They are located in the Residence F (RF) Zoning District.

Members assigned tonight: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard

Representative: Michael Schulz, Esq.

Attorney Schulz explains the relief being requested. He states that the applicant has purposely proposed the structure be put in a hollow which will be naturally screened as not to bother the abutters. David Hirsch asks about the abutters. Attorney Schulz explains that the applicant has been in touch with the abutters who are in support after discussion of the project. Mark Hansen confirms that this is a large lot with lots of screening. Jake Dewey asks how the garage will be accessed. Paul Pinard, who visited the site today explains that there is a shell driveway leading to the proposed site. Attorney Schulz confirms that there will be no additional curb cuts.

Alex asks for public comment. No one speaks.

Alex notes that because of the size of the lot(s) that he is okay with removing suggested Condition #3 which would've prohibited full buildout without further relief from this board.

Paul Pinard makes findings:

Proposal & Relief Requested

Shannon Collins is requesting a Special Permit in order to construct an accessory structure, a garage approximately 24 feet by 60 feet, on an adjoining lot on which the principal structure and use it serves. The properties are located at 0 Putnam Avenue and 55 Putnam Avenue, Cotuit, MA as shown on Assessor's Map 036 as Parcels 041-002 and 045. They are both located in the Residence F (RF) Zoning District.

Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Under Section 240-44, a Special Permit is required for an accessory use immediately opposite and across a road from the lot on which the principal use it serves is located.

- 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.
- Site Plan Review is not required for single family residential dwellings.

VOTE:
All in favor

Special Permit Conditions

1. Special Permit No. 2019-044 is granted to Shannon Collins, in accordance with Section 240-44 – Accessory Use Permitted with Special Permit at “0” Putnam Avenue, Cotuit and shown on Assessors Map 036, Parcel 041-002.
2. The improvements shall be in substantial conformance with the site plan entitled “Plan of Land” Location #59 Putnam Avenue Cotuit Massachusetts” by Baxter Nye Holmgren, Inc dated March 17, 2000 with a revision date of March 26, 2000.
3. ~~Other than improvements specified herein, additional accessory structures may be prohibited unless approved by the Board.~~
4. Both lots shall be retained in identical ownership with respect to both fee and non-fee interests as “0” Putnam Ave as shown on Assessors Map 036 as Parcel 041-002 and 55 Putnam Ave as shown on Assessors Map 036 as parcel 045.
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 Special Permit must be exercised within two years, unless extended.

Vote:
All in favor

GRANTED WITH CONDITIONS

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

August 21, September 11, September 25

Adjournment

Motion is made by David Hirsch and seconded by Herb Bodensiek to adjourn

Vote:
All in favor