



Town of Barnstable Zoning Board of Appeals



19 DEC 13 AMO:00

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 21, 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 | Absent |
| Todd Walantis – Associate Member | Present |
| Mark Hansen – Associate Member | Present |
| Robert Twiss – Associate Member | Present |
| Vacant | |

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

As a quorum has been met, Alex opens the hearing at 7:01 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.

Minutes

June 12, 2019, June 26, 2019, July 10, 2019

Motion to approve the June 12, 2019 minutes is made by David Hirsch

Seconded by Mark Hansen

Vote:

All in favor

Motion to approve the June 26, 2019 minutes as amended is made by Herb Bodensiek

Seconded by Mark Hansen

Vote:

All in favor

Motion to approve the July 10, 2019 minutes is made by David Hirsch

Seconded by: Paul Pinard

Vote:

All in favor

Old Business

Alex reads the following into the record:

New Business

7:00 PM

Appeal No. 2019-042

Fernandes, Trustee

Hernique A. Fernandes, Trustee, has petitioned for a Variance pursuant to Chapter 240.11 – Principal Permitted Uses. The Petitioner is proposing to construct a one-story 1,440 square foot duplex structure in a zoning district which does not allow for them as-of-right nor as a conditional use. The subject property is located at 50 Fresh Holes Road, Hyannis, MA as shown on Assessor's Map 292 as Parcel 175. It is located in the Residence B Zoning District.

7:01 PM

Appeal No. 2019-043

Fernandes, Trustee

Hernique A. Fernandes, Trustee, has petitioned for a Variance pursuant to Chapter 240.11.E – Bulk Regulations. The Petitioner is proposing to construct a one-story 1,440 square foot duplex structure approximately seven (7) feet from the side yard setback where ten (10) feet is required in the zoning district in which it is located. The subject property is located at 50 Fresh Holes Road, Hyannis, MA as shown on Assessor's Map 292 as Parcel 175. It is located in the Residence B Zoning District.

Alex notes that a letter from Attorney Mark Boudreau dated August 19, 2019 has been received asking that these matters be continued to September 11, 2019 (Exhibit A).

Motion to continue to September 11, 2019 at 7:00 PM is made by Paul Pinard and seconded by Mark Hansen

Vote:

All in favor

CONTINUED TO SEPTEMBER 11, 2019 AT 7:00 PM

Alex reads the following into the record:

7:03 PM

Appeal No. 2019-046

Harbor Health Services, Inc.

Harbor Health Services, Inc., has petitioned for a Variance pursuant to Section 240.33.F – Special Screening Standards in the IND Zoning District. The Petitioner is proposing to expand the existing parking lot by constructing approximately twenty-six (26) new parking spaces in the northeast corner of the lot for employee use. The proposed parking spaces require relief from the required fifty (50) foot front and thirty (30) foot side buffer strip depths. The subject property is located at 735 Attucks Lane, Hyannis, MA as shown on Assessor's Map 295 as Parcel 017. It is located in the Industrial (IND) Zoning District.

Alex notes that a letter dated today, August 21, 2019, asking for a continuance to September 25, 2019 at 7:00 PM has been submitted by Attorney John Kenney in order to work out issues with abutters (Exhibit A).

Motion to continue to September 25, 2019 at 7:00 PM is made by Herb Bodensiek and seconded by Mark Hansen

Vote:

All in favor

CONTINUED TO SEPTEMBER 25, 2019 AT 7:00 PM

Alex reads the following into the record:

7:02 PM

Appeal No. 2019-045

Hunt & Bogan

Heather Hunt and David Bogan, as Appellants, are appealing the Building Commissioner's decision not to pursue enforcement actions against Scudder Bay Investment Corporation for violations of the Barnstable Zoning Ordinance. The Appellants are claiming that Scudder Bay Investment Corporation has been operating a commercial rental operation within the Residence C (RC) Zoning District and that only single-family residential uses are allowed within the District. The subject property is located at 438 Main Street, Osterville, MA as shown on Assessor's Map 164 as Parcel 001. It is located in the Residence C (RC) Zoning District.

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

Representative: Dan Bailey, Esq., with the Boston law firm of Pierce/Atwood and is here representing Heather Hunt and David Bogan. With him also tonight is Heather Hunt. Attorney Bailey explains that this is an appeal of zoning enforcement and is a very simple issue: Scudder Bay Investment Corporation which owns the property adjacent to his client is operating 438 Main Street as a full time AirB&B/VRBO in violation of the Barnstable zoning bylaw. He explains that he will read the ordinance for the zoning district in which this property is located, will explain why they think this is a violation, and then Ms. Hunt will describe what she has been seeing and the use that have been occurring there over the past 6 or 7 months. Alex Rodolakis states that typically a staff report is done explaining the appeal and various issues addressing it but in this case they have not received one. He states that Elizabeth Jenkins is here tonight to ask for additional time to prepare a staff report. Elizabeth Jenkins states that staff typically likes to do a report with comprehensive analysis and position and does not have that prepared for the board tonight. She did call the applicant asking for additional time and thought they reached a compromise position and would like a continuance to the next hearing.

Alex states that the next hearing on September 11th might be a problem since several board members will not be here. Elizabeth asks if this is amenable to the applicant, that they can continue this. Alex doesn't know how the regular members feel about not having a staff report. Alex doesn't have a problem without a staff report and thinks that the applicant has done a good job with the brief. They discuss if they will hear testimony and then maybe continue this.

Attorney Bailey states that he had talked to Elizabeth Jenkins and had declined the invitation to continue and wants to be heard tonight since this has been going on since March. Also, his client has been trying to get an answer on this for some time and is why they filed for lack of zoning enforcement. Attorney Bailey understands the process and is hoping to convince the board that they don't need a staff report. He states that this is a single-family house that's being used full-time for transient residents and being rented out in a single family residential district in which the only allowed use is a detached single family residence. By contrast there are other zoning districts that quite specifically allow different types of rental accommodations. What that tells us is that the renting of rooms in the Town of Barnstable is quite common but he submits that this particular use, full-time, transient, the type of use that no one would want in a single family neighborhood, is exactly what you don't want. Part of the pushback from the Town was that they were being told that the town was working on regulations. This property is being rented over the internet, has no on-site supervision, no on-site staff, no on-site ownership and is purely commercial and asks if that is allowed in a single-family district. He would like Ms. Hunt to speak on what she has seen and experienced.

Heather Hunt lives at 424 Main Street and states that the question tonight is the same question presented to the Town in March in writing and verbally to the Town in February. Nothing has changed and does not know what the staff report would accomplish. Her and her husband bought their property in 2016 and knows Osterville well as other family members also live in Osterville. Three years later Scudder Bay Investment Corporation bought the house next door to her and is the second home in Barnstable taken out of the permanent housing stock and converted into a de facto hotel which has been life altering for her. A steady stream of strangers pays Scudder Bay on a per night basis like the Motel 6. Familiarity, the thing that gives you a sense of security in your home and neighborhood is gone. Her picture window overlooks Scudder Bay's commercial enterprise and would have to work really hard not to see what goes on there. The activity that started to look more like a motel rather than a single family home is what prompted her to start to record her observations back in February which she shared with the Town of Barnstable's Town Attorney who thought it was a good idea.

This property is used by multiple families and large groups and is rare to see it being used as a single family home. It is frequently used for events, some of which who use large vans and limos for transport. When she sees a bar being set up on the deck outside her picture window and the alcohol starts to flow and the volume rises she understands why. One group has used the property for a staff retreat and is very popular for bachelorette parties, the most recent included a three foot inflatable penis right outside her picture window. One night, multiple families brought a portable fire place and lit a fire on the wooden deck close to the home and close to a propane stove. She has seen three different groups engage what she believes to be illegal drug use and is not talking about marijuana, has watched over time tall glass pipes being handed around. She has to risk access before going out her yard with her dog and whether it is safe to be out there. She is nervous in her home and nervous in her yard and has to think what door to exit with her dog.

In between these guests there also has been quiet guests, 3 or 4 days. When this started about 6 months ago it was like living next to the Motel 6. Both Motel 6 and Scudder Bay Investment Corp. are in the business of providing overnight accommodations to transient guests in exchange for payment. However, it is different; Motel 6 at least has occupancy limits and 438 Main Street violates occupancy limits at all time. Motel 6 takes your license or Government issued ID when you check-in. The reservations services that Scudder Bay uses say that the specifically not responsible for not knowing who the transient guests actually are. Motel 6 has on-site management, for 438 Main Street, she is the closest thing to on-site management. Motel 6 doesn't give guests an expectation of privacy around the property that keeps law enforcement at bay. At 438 Main Street, if you want to relax in the back yard with your friends and a pipe full of drugs you have an expectation of privacy. She's learned that if given a choice to live next to Motel 6 or 438 Main Street, you would choose Motel 6.

For the past 6 months the Town has worked hard to avoid them over the question about the use of the single family house next door. The town manager didn't even acknowledge receipt of her complaint. She had to forward to the Town Clerk to get a receipt. She is a lawyer, married to a lawyer and had to hire a lawyer to get a zoning answer that every non-lawyer resident homeowner in Barnstable deserves as a matter of right without cost and within a time certain.

What she has gotten from the town are 2 pieces of advice, one from an elected official who told her to be careful talking about her home because if she wanted to sell it she might have to disclose the issue to potential buyers. She has ignored that advise. She was also told by the building inspector and Town Attorney to be careful about approaching the drug use. The town owned them a decision back in March and have sat patiently for months and months and has changed what it is like to be home and has taken a financial toll because she has had to pay to get a decision that the Town owes them as a matter of right without cost in a time certain. She bought a home next to a home and is asking to require that the home be used as a home. She hands in photos from the events at 438 Main Street and a letter from a neighbor, John MacVarish (Exhibit A & B).

Attorney Bailey states that on the website advertisement for 438 Main Street it states that it is a 4 bedroom house that accommodates 10 people by contract, the Town's Assessor's information lists it as a 2 bedroom house. Also, in the materials he had submitted there are two cases from the Land Court, one from Hull where someone was renting a single family house on AIRBNB and found that it was unlawful in a single family residence zone.

Paul Pinard asks for clarification as to what the Building Commissioner has done. Alex and Attorney Bailey explain that the Building Commissioner did not make a ruling. Attorney Bailey explains that what the statute says is that if the building inspector does not make a ruling within a certain amount of time then the person seeking zoning enforcement can appeal to this board. Ms. Hunt explains that what the building inspector did was not to act. However, the building inspector sent an email that expressed an intent to act, then didn't act, which she feels blocks her ability to take another step. She refreshed her request to the Town Manager in June for zoning enforcement and a cease and desist order and has received nothing, not even an acknowledgement of receipt.

Board Member David Hirsch asks what the enforcement was in the Hull case. Attorney Bailey states that the person was ordered to cease and desist the use by the Building Commissioner.

Paul Pinard asks for clarification as to what they are seeking. Attorney Bailey states that this is a request to enforce the zoning by-law and order that the unlawful use is to desist.

Jake Dewey asks if the police have been called. Ms. Hunt says they were in February or March after two incidents of what she believed to be hard drug use and asked the police what she should do. She was concerned that these people will know who she is and where she lives and is fearful and remains fearful but she did go to the police who agreed to do additional drive-bys. Subsequent to that she called the police at which time a detective shared with her about not disclosing her identify. She is fearful when she sees those kinds of things. Jake Dewey asks if there were any noise issues. Ms. Hunt says yes, there was a group of drunk teens at one time in close proximity on the deck. She did call the police. Also, at another time when there were multiple families on-site she saw a two-foot flame on the deck and called the fire department. She has tried to be judicious about using the town resources and the police. Jake Dewey asks if she had seen any paid employees on-site. Ms. Hunt says cleaning staff and occasionally, one man who she believes is the manager. Jake Dewey asks if there are transactions done on-site. Ms. Hunt is not sure how they execute their payments.

Mark Hansen states that he remembers a recent case before this ZBA on Bumps River Road. They discuss. Elizabeth Jenkins states that it was a Bed & Breakfast that was being run. Ms. Hunt states that she had read that case and as soon as it was discovered that the woman was serving muffins the town could shut it down.

Alex asks for public comment:

Kathleen Holcomb lives at 61 Fox Run in Centerville which is in a private association. She has lived there for 34 years with her husband and has retired there. In the spring of 2018, Scudder Bay Investment bought the house next to her and her life has been changed forever. She says ditto to everything that Heather Hunt has said. She wants everyone to think of what it is like to live in your own home and have this going on next door and never ever know whether it will be a predator or drug dealer. This corporation advertises this on the web as an extremely private location and is shaking with rage and distress and that this has altered her life. She has written to the Building Commissioner on July 17th and never received a reply or acknowledged receipt of her letter. She joins Heather in asking the board to make a decision. This is an absolute violation in the RC district and violation of health codes. There have been way more than the maximum # of occupants.

Alex reads the letter from John MacVarish of 23 Spice Lane in Osterville (Exhibit B) which is in support of having a cease and desist.

Bob Malone, owner, lives at 165 Scudder Bay states that he operates these two houses and has been doing so for over a year now. He states that he is not renting rooms but that the house is being rented to families and groups of people. These are short term rental. He has registered with the town, state and the Board of Health who has also inspected them. They are very well maintained. He states that there have been no complaints until July. He states that Attorney Bailey had stated that he was copied but he never received notice of this until he received advertisement on this. These are short term rentals and there are hundreds of short term rentals in Barnstable. He believes that the town is putting together some ordinance to deal with Air BNB's and thinks it makes sense instead of having a Boston law firm telling them what the zoning codes means. He states that short term rentals are allowed to a group or family as long as you are not renting out individual rooms which he has never done. He would also like to see a report from the Building Commissioner. He has not had one complaint yet and that they are screened by Air BNB. He thinks that this is being exaggerated and made up. Right now he is abiding by the town rules.

Herb asks if he is aware of how this has impacted the abutters. Mr. Malone states that the only issue the abutters have is that this is being done next door to them but is within the zoning codes.

Kathy Holcomb, the abutter, leaves the hearing.

David Hirsch notes when he came here tonight that he didn't know that Mr. Malone owned both properties and knows that Kathy Holcomb has complained numerous times to either Mr. Malone or his partner(s). Mr. Malone states that she is complaining because it is next to her and does not have a specific complaint and has not called the police and states that they can check the police record for both properties. David Hirsch asks if he personally registers them. Mr. Malone states that it is done through the website but doesn't have total control of who would be there.

Paul Pinard asks if he has records on who has rented the premises. Mr. Malone says yes. Mr. Malone doesn't think that to occupy a house that everyone needs to be related or a family. Pinard asks if he is sure of many people stay overnight. Malone says no and can't be sure how many people stay overnight. Ms. Hunt states that she counts how many people she sees and has records from February 4th.

Heather Hunt states that she has called the police and gone to the police numerous times as well as contacting the fire department. She doesn't call the police to ask for dispatch in real-time.

Jake Dewey asks if the Town has a problem property ordinance. Elizabeth Jenkins clarifies that the Town does but that it is in regards to maintenance. Narrowing the focus of this board is important to zoning/health issues.

Ms. Hunt states that this is a single-family district and has requested occupancy enforcement to no end. There are groups, this is a single-family residential dwelling district. She is here tonight on the narrow issue of permissible zoning in that home. Attorney Bailey reads §240-130.2 from the town's ordinance.

Ms. Hunt notes that the Town's family apartment requirements are an annual affidavit requiring that the people occupying the premises are related.

Alex closes public comment.

Jake Dewey doesn't think there is any commercial use going on here, they are not selling anything, they are not making financial transactions here, there are no employees on-site collecting paychecks. Alex found the arguments compelling, this type of rental has been going on continuously but technology has updated how rentals are done. He is concerned that whatever they do today has to be balanced. Perhaps this will move the Town towards making regulations. Perhaps this is a nuisance/troubled house and that this could spur the town to put regulations for short term rentals in place. He doesn't think that this is fair to the applicant to have this continued until they get a staff report and get regulations in that period of time. They discuss short term rental zoning by-law in the Hull case.

Mark Hansen thinks there are a lot of factors going on there. Hansen asks if he occupies this home at all. Mr. Malone states no, he does not.

Ms. Hunt says no one called her before this was turned into a de facto hotel. She also understands that she was the person who prompted the inspection by the Board of Health and it was her complaint that triggered the inspections.

Elizabeth Jenkins states that there are some regulations regulating rooms/lodgers and health restrictions. She thinks there is a difference in renting the whole house out. The Building Commissioner (BC) has responded to the regulations in place but the thing she is struggling with is that he has not formally responded to Ms. Hunt's request for zoning enforcement. It removes jurisdiction from this board if you do not have a decision. She doesn't think that there is an appealable decision of the BC at this point.

Bob Twiss asks: isn't the BC deemed to have responded if a certain period of time goes by without issuing a formal decision? Jenkins states that in the Elio vs Town of Barnstable case (55 Mass. App. Ct. 424), no, even though the time frame for requisite response under the ordinance has elapsed. He still has to issue an appealable decision.

Attorney Bailey rebuts and responds as to whether this board has the authority and reads Chapter 40A, Section 8. He states the same situation would be if someone applies for a building permit and it doesn't get issued after 30 days. The other thing, just to go back to this, is that the distinction here is that this is a single-family residence and that this house is not being used as a single-family residence. It is being rented out to transient short-term rentals for 2, 3 or 4 days with no management and that this is the problem.

Ms. Hunt understands that some homes have been rented by people who live in them year-round or seasonally, she doesn't think her request raises that question. This is a full-time, 365 day a year business where no one lives in that home ever and the purpose of its acquisition was to put it into commerce and the only reason the folks are in the house is because of a financial transaction. She doesn't think that this brings up the question whether people, from time to time, can rent their homes. She also doesn't know the Elio case, but understands that what the Town of Barnstable is doing is blocking her legal rights from February forward.

The board discusses. David Hirsch sees this going to a higher authority than to the Town of Barnstable ZBA. From the information alone, he would vote to overrule the Building Commissioner. Jake Dewey states that they are not here to police the drug use, etc., and thinks it should be off the table. Herb Bodensiek thinks that what is not addressed in zoning is the length of time for rentals. Mark Hansen thinks that is also in choosing the tenant and agrees that this is a nuisance property.

Alex makes a motion that they don't have jurisdiction because there is no underlying order from the zoning enforcement officer by which to appeal. Part of his thinking is that it does not end this and if they were not to enforce this it closes the door for the applicant and this will give the applicant the opportunity and/or the town to address this.

Seconded by Paul Pinard

AYE: Jake Dewey, Alex Rodolakis, Paul Pinard
NAY: David Hirsch
ABSTAINED: Herb Bodensiek

Alex states that the vote is 3 to 2 and because this is not an appeal of the BC this does not require a 4 to 1 vote. Elizabeth Jenkins agrees and that a majority vote of the board and the motion carries because it is about jurisdiction.

Ms. Hunt asks when she can expect a decision for the BC on the request that was made in March. Elizabeth Jenkins does not have that information.

Ms. Hunt asks if there is way for her to get that decision from the Building Commissioner within a reasonable period of time. Elizabeth Jenkins states that she does not have that information.

Alex closes the matter

Alex reads the following into the record:

7:04 PM Appeal No. 2019-047

600 Yarmouth Road, LLC.

600 Yarmouth Road, LLC., has applied for a Special Permit in accordance with Section 240-94.A – Nonconforming Use. The Applicant is proposing to demolish an existing car dealership and construct a carwash on site consisting of eight (8) detail bays, a drive/wash tunnel, office and reception area. Because of the size of the site, the Applicant is also proposing to designate part of the existing paved parking area for vehicle inventory storage to be used in conjunction with the Applicant's dealerships. The subject properties are located at 600 Yarmouth Road and 93 Rosary Lane, Hyannis, MA as shown on Assessor's Map 345 as Parcel 021-002 and 029. They are located in the Business (B) and the Wellhead (WP) Overlay Protection Zoning Districts.

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

Representative: Michael Ford, Esq. Also with him tonight are Richard Tabczynski, Professional Engineer from Atlantic Design Engineers and Nick Laham, his son, as Joe Laham could not be here tonight.

Attorney Ford gives summary of relief being sought. Attorney Ford states that this site housed GMC, Cadillac and Buick dealerships. Mr. Laham purchased this property in 2016 and used it as part of Class 1 license for Premier which includes Jeep and Dodge and inventory. In 2016 he also applied to Site Plan Review, and was approved, for a new dealership. Mr. Tabczynski shows the plan on the easel. So far Mr. Laham has not proceeded with the construction of that dealership. Mr. Laham had also applied to the Planning Board for a car wash in another area of Hyannis on Stevens Street. That site did not have the prohibition that makes automobile service and car washes prohibited uses but is in a zoning area which did not allow for car washes as-of-right or by special permit. They applied for a regulatory agreement with the Planning Board and worked with Town staff as to how they could move forward. However, there was stiff resistance by the neighborhood. As a result, a Planning Board member suggested at looking at this site. Attorney Ford told the Planning Board that he knew that it was in a WP (Wellhead Protection Overlay District) and that he would review it. They were encouraged to go forward and seek the necessary permit. This board would have to make the ultimate finding that the proposed change in nonconforming use would not be more substantially more detrimental to the neighborhood than the proposed use. Since it was in the WP they had to think through the reasons why a car wash was prohibited in the WP and what precautions they could take in their proposal. One of the groups that played a central role on Stevens Street was the Greater Hyannis Civic Association who they communicated with. They are pleased to report that they felt comfortable with this and are supporting this. They also met with the Water Commissioners on the Water Board yesterday. He shows a plan of what is being proposed. The plan is demolish the dealership and to discontinue the automobile repair and service. They will devote about 80% of the use to the car wash. There is a portion of the lot to be reserved for inventory parking for the abutting dealership. About 95% of this site is impervious and one of the requirements of the WP is that they try to get close to 50%. However, they are reducing the impervious by about 20%. They were encouraged to do that at Site Plan Review. There will be three (3) stacking lanes that go into one tunnel which Rich Tabczynski points out. There will be plenty of room for stacking of vehicles during busy times. In the plan they were proposing eight (8) bays but have reduced it to four (4) from a traffic standpoint as a result of a trip generation study. They have filed a revised plan to that effect. Randy Hart – Traffic Engineer from VHB is also here to answer any traffic questions from the traffic generation report.

Attorney Ford then goes over the groundwater issues which were brought up at Site Plan Review (SPR). At SPR, suggestions were made and a request for more information on drainage and stormwater. As part of the filing for SPR, there was a submittal with drainage calculations that did include a stormwater maintenance plan which has now been made a proposed condition of granting this and has no problem with that being a condition should the board grant this relief. He goes over the septic system details and notes there isn't any sewer there as of yet and thinks that it is important to the future of this area of Yarmouth Road which is located in the WP district. The other water use is the car wash and one of the suggested recommendations is to keep track of the domestic/car wash water use which they are happy to do. They are proposing a state-of-the-art recycling/restoration water system which he explains. There is another memo from Mr. Cambareri, consultant for the water division, which he received a copy today (Exhibit A). In that memo, recommendations/conditions were given which his client has no problem with and are agreeable to having those conditions as part of the decision.

Attorney Ford that talks about the legal test before this board tonight. He did work with staff on some of these findings and reads them with notations from the staff report dated August 21, 2019 (Exhibit B) given tonight by Elizabeth Jenkins.

As for the hours of operation, in the past, dealerships were open seven (7) days a week, 7:00 am to 7:00 pm. The car wash will be open seven (7) days a week from 7:30 am to 7:00 pm and will employ approximately six (6) to nine (9) employees. Two (2) to three (3) of those employees will be in the tunnel operation.

As for the sewer, is the issue of getting sewer in this area and thinks it is critical. They met with DPW and this is in a phase 1 area due to be done within the next 10 years. There isn't a final plan of this area and his client will be willing, as a condition in proceeding with the car wash, be willing to make an investment in the sewer for \$200,000 and are willing to have that as a condition.

There is a question that was raised at the water board by a citizen about cleaners and chemicals. They are willing to seek out waxes and soaps that are not hazardous and that anything that is hazardous will abide by the restrictions from the water division in their letter.

David Hirsch asks if the \$200,000 would relieve Mr. Laham from paying betterment. Mr. Hirsch would like to see, if approved, to have the \$200,000 just relative to this property. Attorney Ford says there has been no discussion of that and has no problem with restrictive language but is not where Mr. Laham is coming from. Also, Mr. Laham intends to fix part of Rosary Lane pavement with a Memorandum of Understanding (MOU) with DPW.

Dewey asks about the second use and asks why they didn't merge. Ford says they didn't have time at this point but it might happen in the future and thought they they needed to show it. Ford clarifies that this will just be for the overflow inventory.

Alex asks where the vacuum station will be located and about fencing along Yarmouth Road. Rich Tabczynski with Atlantic Designs says there will be a grass strip and beyond that will be street trees as required by the bylaw. Alex would like to see fencing or screening along Yarmouth Road. Attorney Ford thinks they can do some screening.

Jake Dewey asks about drainage. Rich Tabczynski states that the stormwater basin is sized to handle the runoff and will pitch towards the basin on site. Jake Dewey asks about new car storage. Attorney Ford explains that in Class 1 license, they also have used cars and could not live with a condition that it be just for new cars. However, they can live with a condition that there be no auto repair and service.

Alex asks for public comment – states that there are letters from the Water Board (Exhibit C) and an email from Sue Phelan & Steve Seymour (Exhibit D).

Alex asks if there is anyone from the public who would like to speak.

- **Laura Cronin from greater Hyannis Civic Association reads a letter dated August 14, 2019 in support (Exhibit E).**
- **Stuart Bornstein speaks. Thinks this is a great use of the property and is support. Will not add to the traffic on that road, is a good looking building, and is the right place for this. Thinks that someone should look at the overlay districts.**
- **Hans Keijser from DPW Water Department reads the letter from Hyannis water Board dated August 21, 2019 in support (Exhibit C).**
- **Tim Cambareri of 62 Joan Road knows about the overlay district and thinks they are very important to water resources. The wells have been impacted and suggests that they implement the stormwater plan. He would also suggest that the project have a monitoring operation for a period of time and has suggested the number of times as outlined in his letter (Exhibit A).**

Alex confirms with Attorney Ford that it will be four (4) detail bays. Attorney Ford agrees.

Special Permit Findings

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-94 Nonconforming use allows a change of a nonconforming use to another nonconforming use with a Special Permit. A car wash and a car dealership are both permitted uses in the "B" Business District; however, vehicle service and "motor vehicle cleaning" are both prohibited uses in the Wellhead Protection Overlay District. The Special Permit relief requested is to change the nonconforming automobile service use to the nonconforming use of the property for a car wash.
2. Site Plan Review approval was issued for the proposed redevelopment on August 1, 2019 with a copy of the letter in the file.
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. This will be less intense than an automobile dealership with service use.
4. The applicant has received all necessary approvals from the Board of Health. The Health Division participated in the Site Plan Review and approval of the proposed redevelopment and customary permitting is underway for the septic system. The tight tank is subject to approval by the Massachusetts Department of Environmental Protection.
5. The proposed use requires no more parking than the previous use. The car wash requires 34 spaces, which combines with the 86 spaces for abutting dealership vehicle display for a total of 120 spaces. The existing dealership has in excess of 309 spaces per the Class 1 license.

6. The proposed use does not generate more traffic than the previous use, as measured by the Institute of Transportation Engineers Trip Generation Handbook or other sources acceptable to the Zoning Board of Appeals, nor does it cause Town expenditures to address traffic mitigation measures. The Trip Generation Memorandum prepared by VHB, dated August 14, 2019, utilizing Institute of Transportation Engineers (ITE) publication Trip Generation Manual, 10th Edition, concludes that the proposed carwash will generate less daily vehicle trips on both weekdays and typical Saturdays than the potential use as a car dealership and auto repair facility.
7. The proposed use does not result in an increase of on-site and off-site noise, dust, and odors. The car wash and vehicle display uses will not result in an increase of on-site and/or off-site noise, dust or odors.
8. The proposed use does not result in an increase in the hours of operation or in the number of tenants or employees.
The prior Dealership was operated 7 days a week from approx. 7am to 7pm.
The car wash will also be open 7 days a week from 7:30 am to 7pm.
The car wash use will require approximately ten (10) employees and 1 employee will be managing vehicle display area for adjoining lot. The existing dealership had in excess of 25 employees.
9. The proposed use does not expand the gross floor area of the nonconforming use, nor does it increase the number of nonconforming uses on a site.

The proposed car wash is 11,030 sq. ft.
The existing Dealership is 13,703 sq. ft.
The permitted Dealership is 22,376 sq. ft.
10. The proposed use is on the same lot as occupied by the nonconforming use on the date it became nonconforming. The automobile dealership and car wash redevelopment are both proposed for 600 Yarmouth Road, as shown on Assessors Map 345 as Parcels 021-002 and 029.
11. The proposed use is not expanded beyond the zoning district in existence on the date it became nonconforming. The proposed nonconforming motor vehicle washing use is proposed within the boundaries of the Wellhead Protection zoning district as they existed upon adoption.

Vote:

All in favor

Conditions

1. Special Permit No. 2019-047 is granted to 600 Yarmouth Road LLC/Laham Management & Leasing Inc. to replace the existing car dealership with a car wash with automobile detail bays are four (4) at 600 Yarmouth Road, Hyannis, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Proposed Site Plans for Proposed Car Wash at 600 Yarmouth Road" prepared by Atlantic Design Engineers, Inc., Sheets 1-2 and 4-10 dated July 18, 2019 with a revision date of July 31, 2019, and Sheet 3 with a revision date of August 8, 2019.
3. Septic system installation shall be approved and permitted by the Health Division. Industrial waste holding tanks shall be permitted through the Massachusetts Department of Environmental Protection.
4. The redevelopment shall comply with the conditions of the Site Plan Review approval letter dated August 1, 2019, which shall be attached to and incorporated in the conditions of this decision.
5. The proposed redevelopment design shall be in compliance with the building rendering submitted to Site Plan Review Committee (file dated June 24, 2019).
6. Use of the site for automobile service and/or repair shall be permanently discontinued upon exercise of this Special Permit.
7. In support of connecting the property to municipal sewer, the Applicant shall install sewer improvements on Rosary Lane to be accepted by the Town as part of the municipal wastewater collection system.
 - a. Prior to issuance of a building permit for the car wash facility, the Applicant shall execute a Memorandum of Understanding with the Town for installation and acceptance of the sewer improvements.
 - b. Applicants shall not be required to expend more than \$200,000 under this Condition, for all costs including without limitation plans and cost of construction.
8. The Applicant shall repave portions of Rosary Lane as required by the Site Plan Review approval letter dated August 1, 2019 and shall coordinate with and receive any necessary Town approvals from the Director of the Department of Public Works prior to commencement of paving work.
 - a. The Applicant intends to demolish the existing structure in Fall 2019 and commence construction of the car wash Spring 2020. The repaving of Rosary Lane and the installation of the sewer lines as required by Condition 8 shall occur at the same time the new car wash facility is constructed, unless an alternate time frame is approved by the Department of Public Works as part of a

Memorandum of Understanding. The final construction schedule for the sewer and roadway work shall be submitted to the Zoning Board of Appeals.

9. The car wash shall utilize a "Bio Complete water restoration system" to recycle used car wash water through settling tanks, an aeration chamber, cyclonic treatment, bio media chamber, and clarification chamber prior to water's reuse in the car wash. Bacteria and waste from the restoration system shall be pumped to the holding tank, or "tight tank" pursuant to Condition #10.
10. The Applicant shall install, operate, and discharge wastewater resulting from the car wash operation into a holding tank/"tight tank" as shown on the approved Site Plan. The Applicant shall maintain the tight tank system until such time as the car wash is connected to municipal sewer. The Applicant shall submit to the Director of the Public Works Department records of monitoring reports "monitoring reports be submitted on 6-month intervals for first 3 years then annually for 2 additional years when the need for the "monitoring" plan will be reviewed, modified and/or suspended.
 - a. The volume of cleaning water used.
 - b. The number of times wash water is recycled.
 - c. An annual water quality test of tight tank water for volatile organic compounds.
 - d. The volume and rate of cleaning water accumulated in the tight tanks.
 - e. The volume of tight tank water removed for each occurrence.
 - f. Identification of the waste facility where it is disposed.
11. A stormwater management operations and maintenance plan shall be submitted to the Department of Public Works that includes the following:
 - a. The party or parties responsible for operation and maintenance;
 - b. The routine and non-routine maintenance tasks to be undertaken after construction is complete and a schedule for implementing those tasks;
 - c. A plan that is drawn to scale and shows the location of all stormwater BMPs in each treatment train along with the discharge point;
 - d. An estimated operations and maintenance budget.
12. The applicant shall submit a listing of cleaning products used in the car wash and available for use by customers at the site to the Hyannis Water Division and Health Division. The cumulative amount of any identified hazardous materials shall be less than that specified by §240-35(G)(2)(e) "Any use which uses, generates or stores, including racking for resale, toxic or hazardous substances, totaling at any one time more than 50 gallons liquid volume or 25 pounds dry weight."
 - a. Any hazardous materials on site shall be registered with the Health Division.
13. Upon availability of a municipal sewer connection, design of the sewer connection shall be coordinated with and approved by the Director of the Department of Public Works.
14. 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 the building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Vote:
All in favor

Elizabeth Jenkins notes that there were two conditions proposed during deliberations: one relative to sewer mitigation contribution and another for financial obligations for sewer connections on other properties that were not the subject part of this application and another condition pertaining to screening in front of the proposed landscaped area.

Alex amends 7b to change "Applicants" to "Applicant". Also, screening could be worked out with staff. Attorney Ford agrees that the applicant can work the screening of the vacuum area out with staff.

Vote:
All in favor

GRANTED WITH CONDITIONS

Correspondence

Received August 8, 2019 – 773 South Main Street, Centerville, MA - Chapter 91 – Pier Application for a state license to permit and maintain a proposed pier, ramp, floats and piles on the Centerville River.

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

September 11, September 25, October 16

Adjournment

Motion to adjourn is made by Paul Pinard and seconded by David Hirsch

Vote:

All in favor

Approved