



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 – Regular Member
Todd Walantis – Associate Member Mark Hansen – Associate Member Robert Twiss – Associate Member
David Bogan – 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, January 8, 2020

Selectman’s Conference Room – 2nd Floor – 367 Main Street, Hyannis, MA

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

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

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BARNSTABLE
TOWN CLERK

As a quorum has been met, Alex Rodolakis calls the hearing to order

Call to Order

Introduction of Board Members – all members present introduce themselves

Alex reads the following into the record 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.

Old Business

None

Alex reads the following into the record:

New Business

7:00 PM Appeal No. 2020-001

Wood

Charles A. and Rebecca L. Wood have applied for a Special Permit in accordance with Section 240-47.1 – Family Apartments. The Applicants are seeking relief in order to construct a detached, 1 bedroom, 26 foot by 22 foot family apartment. The subject property is located at 483 Maple Street, West Barnstable, MA as shown on Assessor’s Map 108 as Parcel 006. It is located in the Residence F (RF) Zoning District.

Members assigned tonight: Alex Rodolakis, David Hirsch, Paul Pinard, Jake, Dewey, Mark Hansen

Representative: Attorney Christopher Kirrane who is representing the applicants and RW Anderson seeking a special permit in order to allow the proposed family apartment to be built detached from the main dwelling. Mrs. Wood’s father is 79, lives in Harwich by himself, has medical issues and is looking to occupy the family apartment. Attorney Kirrane will answer all questions from the board.

Alex Rodolakis asks if board has any questions. Paul Pinard explains the affidavit and building permit which needs to be applied for through the Building Department. Attorney Kirrane states that there will be applying for a building permit and that the applicants will sign a yearly affidavit.

**Alex asks if there is anyone from the public who would like to speak.
Amy Britton of 500 Maple Street, West Barnstable speaks in support of the project.**

Alex asks Attorney Kirrane if he has seen the staff report and if he is agreeable to the proposed conditions. Attorney Kirrane states that he has seen the staff report and is okay with the conditions.

Mark Hansen makes findings:

Proposal & Relief Requested

The Applicants are proposing to construct a new 1-bedroom detached accessory dwelling that will serve as the family apartment. The detached family apartment requires a Special Permit pursuant to Section 240-47.1, Subsection B. The subject property is located at 483 Maple Street, West Barnstable, MA.

Section 240-47.1 B. By special permit. The Zoning Board of Appeals may allow by special permit if:

- (1) A family apartment unit greater than 50% of the square footage of the dwelling.
- (2) A family apartment unit with more than two bedrooms.
- (3) Occupancy of a family apartment unit by greater than two adult family members.
- (4) A family apartment unit within a detached structure, with a finding that the single-family nature of the property and of the accessory nature of the detached structure are preserved.

Section 240-47.1 C. Conditions and procedural requirements. Prior to the creation of a family apartment, the owner of the property shall make application for a building permit with the Building Commissioner providing any and all information deemed necessary to assure compliance with this section, including, but not limited to, scaled plans of any proposed remodeling or addition to accommodate the apartment, signed and recorded affidavits reciting the names and family relationship among the parties, and a signed family apartment accessory use restriction document.

- (1) Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection of the apartment unit and the single-family dwelling for regulatory compliance and a copy of the family apartment accessory use restriction document recorded at the Barnstable Registry of Deeds is submitted to the Building Division.
- (2) Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that there shall be no rental of the principal dwelling or family apartment unit to any non-family members, shall be signed and submitted to the Building Division.
- (3) At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment shall only be occupied by those persons listed on the recorded affidavit, which affidavit shall be amended when a change in the family member occupying either unit occurs.
- (4) When the family apartment is vacated, or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use as an apartment shall be terminated. All necessary permit(s) must be obtained to remove either the cooking or bathing facilities (tub or shower) from the family apartment, and the water and gas service of the utilities removed, capped and placed behind a finished wall surface; or a building permit must be obtained to incorporate the floor plan of the apartment unit back into the principal structure.

Proposed Special Permit Findings

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

1. **The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-47.1. 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. It is a large lot.**

The Board is also asked to find that:

4. **The proposed family apartment 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

Mark Hansen makes a motion to grant the relief being sought with the following conditions:

Conditions

1. Special Permit No. 2020-001 is granted to Charles A. and Rebecca L. Wood to construct a detached structure to be used as a Family Apartment at 483 Maple Street, West Barnstable, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Proposed Accessory Buildings & Septic Tank 483 Maple Street, West Barnstable, MA" by Engineering Works, Inc. dated November 12, 2019.
3. The proposed development shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures in addition to the family apartment and garage 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 Applicant is required to seek Old Kings Highway (OKH) review.
7. 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:

7:01 PM Appeal No. 2020-002

Stevenson

Curtis Stevenson and Monica W. Stevenson have applied for a Special Permit pursuant to Section 240-91.H (3) – Developed Lot Protection – Demolition and Rebuilding on Nonconforming Lots. The Applicants are proposing to demolish an existing two-story, 1,867 square foot, single-family dwelling with attached deck and construct a two-story, 1,802 square foot, single-family dwelling with attached deck which will maintain a nonconforming side yard setback of 7.8 feet where a minimum of 10 feet is required in the zoning district in which it is located. The subject property is located at 816 South Main Street, Centerville, MA as shown on Assessor's Map 185 as Parcel 059. It is located in the Residence D-1 (RD-1) Zoning District.

Members assigned tonight: Alex Rodolakis, David Hirsch, Paul Pinard, Jake Dewey, Todd Walantis

Representative: Mirjam Rose, Esq.

Attorney Rose gives summary of relief being sought. The applicants are proposing to demolish the existing dwelling and rebuild with an attached deck with shed. The structure will not be more substantially detrimental to the neighborhood. They are trying to create a modest home which is smaller than what is currently there. All other setbacks will be conforming except for the 7.8' setback on the right side. The structure will be 26.5 feet in height and will be elevated which will be about 7 feet higher. This project was also approved by the Conservation Commission (ConComm) and is in character with the neighborhood, no negative change with noise, light or odor or congestion and asks the board to find that this satisfies and will not be more detrimental to the neighborhood. Attorney Rose states that her clients have seen the suggested conditions and are agreeable to them. This will be a modular house and less obtrusive, has had no complaints from the neighbors and has an easement with the neighbors and they have a parking easement.

Mark Hansen asks if there was any view restriction. Attorney Rose states that she hasn't talked directly with the neighbors, but doesn't believe that the abutter has much of a view because of the existing trees and hand out photos. (Exhibit A). Attorney Rose also explains that they will be pouring a new foundation. David Hirsch asks if there will be an interior elevator. Attorney Rose says yes.

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

Todd Walantis makes findings:

Proposal & Relief Requested

Curtis Stevenson and Monica W. Stevenson are seeking a Special Permit to allow the demolition of an existing two-story, 1,867 square foot, single-family dwelling with attached deck and construct a two-story, 1,802 square foot, single-family dwelling with attached deck which will maintain a nonconforming side yard setback of 7.8 feet where a minimum of 10 feet is required in the zoning district in which it is located. The subject property is located at 816 South Main Street, Centerville, MA.

The existing lot coverage is 1,305 square feet (9.2%) and the proposed lot coverage is 1,563 square feet (11.0%), where the maximum allowed is 20%. The existing FAR is 1,710 square feet (0.12) and the proposed FAR is 1,995 (0.14), where the maximum allowed is 0.30. The existing dwelling has a 7.8 foot side yard setback and the proposed dwelling has a 7.8 foot side yard setback which are equal but remain out of compliance with the required side yard setback of 10 feet. Section 240-91(H)(3)(a) requires that the proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building when the proposal does not conform to setback requirements.

Section 240-91(H)(3) requires a special permit for all demolition and rebuilding projects if the proposed demolition and rebuilding cannot satisfy the criteria under Section 240-91(H)(1) "As of Right", but the following criteria must be met:

- Lot Coverage: 11% (20% maximum) – 1,567 square feet (2,850 maximum allowed)
- Floor-Area Ratio: 0.14 (.30 maximum) – 1,995 square feet (4,275 maximum allowed)
- Building Height: 26 (changed to 26.5) feet to top of plate (30 feet maximum)

Special Permit Findings

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

1. **The application falls within a category specifically excepted in the ordinance for a grant of a special permit.** Section 240-91(H)(3) allows for the complete demolition and rebuilding of a residence on a nonconforming lot where the proposed setbacks are equal to or greater than the yard setbacks of the existing building. The existing side yard setback and the proposed side yard setback are both 7.8 feet.
2. **Site Plan Review is not required for single-family residential dwellings.**
3. **After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.**

Further, Section 240-91(H)(3) requires the Board to find that if the proposed demolition and rebuilding cannot satisfy the criteria established in H(1) As-Of-Right, then the Board may allow the demolition and rebuilding by Special Permit provided the Board finds that:

4. **The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building.** The existing side yard setback and the proposed side yard setback are both 7.8 feet.
5. **The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater.** The proposed lot coverage is 11%.
6. **The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished, whichever is greater.** The proposed FAR is .14 or 14%.
7. **The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories.** The proposed height is 26 feet to the top of the plate (30 feet maximum to the plate) and is 2 stories.

The Board is also asked to find that:

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

Vote:
All in favor

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

Conditions

1. Special Permit No. 2020-002 is granted to Curtis Stevenson and Monica W. Stevenson for the demolition of an existing dwelling and construction of a 1,802 gross floor area dwelling at 816 South Main Street, Centerville, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan of 816 South Main Street Centerville, MA" prepared by Down Cape Engineering, dated April 9, 2019 with a last revision date of December 4, 2019.
3. The total lot coverage of all structures on the lot shall not exceed 11% and the floor-area ratio shall not exceed 14%.
4. The proposed redevelopment 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.
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/Land Court 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

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:02 PM Appeal No. 2020-003

Hunt & Bogan

Heather Hunt and David Bogan, as Appellants, have filed an application for Other Powers requesting Enforcement Action. The Appellants are requesting the Board to 1. find Scudder Bay's use of 438 Main Street to be illegal under the Ordinance, and 2. order Scudder Bay to cease and desist its illegal commercial use of the property. 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 which is in violation of Section 240-7 and 240-13. 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.

Alex states that an email dated today, January 8, 2020, was received asking to continue this to January 22, 2020 because of lack of members who can sit on this case. Alex polls the members to who can be here for the January 22nd hearing.

Motion is made by Alex Rodolakis and seconded by Todd Walantis to continue to January 22, 2020 at 7:00 pm.

Vote:

All in favor

CONTINUED TO JANUARY 22, 2020 AT 7:00 PM

Alex reads the following into the record:

7:03 PM Appeal No. 2020-004

West

Maryanne West, as Appellant, is appealing the Building Commissioner's issuance of a demolition permit. The Appellant is claiming that her family owns the dwelling and the demolition will cause undo harm to her family. The Assessor's Office lists the ownership as Sharon and Richard Briansky who purchased it on July 25, 2019. The subject property is 125 Wianno Circle, Osterville, MA as shown on Assessors Map 140 as Parcel 091. It is located in the Residence C (RC) Zoning District

Alex Rodolakis states that, from an email dated January 7, 2020, Ms. West has requested a continuance.

Motion to continue to February 26, 2020 at 7:00 PM is made by Alex Rodolakis and seconded by Paul Pinard

Vote:

All in favor

CONTINUED TO FEBRUARY 26, 2020 AT 7:00 PM

Correspondence

Received December 6, 2019 – Subsidized Housing Inventory Biennial Update dated November 25, 2019

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

January 22, 2020, February 12, 2020 – Paul will not be here February 12,

Adjournment

Motion to adjourn is made by Paul Pinard and seconded by Mark Hansen

Vote:

All in favor

Approved