



Zoning Board of Appeals



Town of Barnstable

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, February 26, 2020

James H Crocker Jr. Hearing Room– 2nd Floor – 367 Main Street, Hyannis, MA

Reminder: David Hirsch, Paul Pinard, Jake Dewey, and Mark Hansen will not be attending.

Alex Rodolakis - Chair	Present
David Hirsch – Vice Chair	Absent
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 Anna Brigham – Principal Planner and Kate Thompson – Administrative Assistant

Call to Order

Introduction of Board Members – Members present introduce themselves
Chair Rodolakis reads the following into the record:

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

October 16, 2019 Chair Rodolakis was absent from hearing, however noticed a typo on page 2. Jake Dewey asks David Hirsch (it should read Attorney Boudreau).

Motion to approve the minutes as corrected is made by Robert Twiss and seconded by Jake Dewey

Vote:

All in favor

Chair Rodolakis is going to recuse himself from the Borrer and VWM Associates matters so he will be taking things out of order.

Old Business

7:00 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.

Continued from January 8, 2020. No members assigned, no testimony taken.

The Staff received, at 5pm today a request, because of an emergency, to continue to either April 8, 2020 or March 25, 2020. Chair Rodolakis set hearing for April 8, 2020 and noting that if she needs an additional continuance she gives 24 hour notice.

Alex makes a motion to continue to April 8, 2020, seconded by Jake Dewey at 7:01 PM

Vote:

All in favor

New Business

7:02 PM

Appeal No. 2020-011

Weinstein

Michael and Jennifer Weinstein have applied for a Special Permit in accordance with Section 240-91.H(3) – Developed Lot Protection. The Applicants are proposing to demolish an existing single-family dwelling and construct a one-story, three-bedroom, single-family dwelling on a lot that contains less than the minimum lot requirement of 10,000 square feet of upland. The subject property is located at 127 Fifth Avenue, Hyannis (Hyannisport), MA as shown on Assessor's Map 245 as Parcel 090. It is located in the Residence B (RB) Zoning District.

Steve Cook from Cotuit Bay Design informs the Board that this project was originally a remodel/demolition. They realized that the condition of the house was so poor that they decided to go with a rebuild as the cost would be the same. They are keeping it all one floor but slightly larger to accommodate the family and its future needs.

Chair Rodolakis asked if there were any questions from the Board or the Public. None.

Robert Twiss reads the Conditions:

Background

Michael and Jennifer Weinstein applied for a Special Permit in accordance with Section 240-91.H(3) – Developed Lot Protection. The Applicants proposed to demolish an existing single-family dwelling and construct a one-story, three-bedroom, single-family dwelling on a lot that contains less than the minimum lot requirement of 10,000 square feet of upland. The subject property is located at 127 Fifth Avenue, Hyannis (Hyannisport), MA as shown on Assessor's Map 245 as Parcel 090. It is located in the Residence B (RB) Zoning District.

The subject lot is 7,952 square feet and developed with a 958 gross square foot dwelling constructed in 1950. The lot has frontage on both Fifth Avenue and Forest Street. Undersized lots appear typical for the area.

The existing dwelling has a front yard setback of 21 feet from Fifth Avenue and 30.1 feet from Forest Street where 20 feet is required. The existing dwelling has a side yard setback of 13.4 feet and 43.3 feet where 10 feet is required. The proposed dwelling will have a front yard setback of 21 feet from Fifth Avenue and 24 feet from Forest Street, and side yard setbacks of 12 feet and 32 feet. The lot size is 7,952 square feet where one acre is required. Under Section 240-91 (H)(3) Special Permit is required for demolition and rebuilding because the lot is under 10,000 square feet and cannot meet the criteria in H(1).

Procedural & Hearing Summary

Special Permit No. 2020-011 for the demolition of an existing single-family dwelling and construct a one-story, three-bedroom, single-family dwelling on a lot that contains less than the minimum lot requirement of 10,000 square feet of upland was filed at the Town Clerk's office and office of the Zoning Board of Appeals on January 31, 2020. A public hearing before the Zoning Board of Appeals was duly advertised and notice sent to all abutters and interested parties in accordance with MGL Chapter 40A. The hearing was opened on February 26, 2020 at which time the Board found to grant the Special Permit subject to conditions. Board Members deciding this appeal were: Alex Rodolakis, Jacob Dewey, Herbert Bodensiek, Mark Hansen, and Robert Twiss.

Steve Cook from Cotuit Bay Design represented the Applicant before the Board. Also present was the Applicant, Michael Weinstein. Mr. Cook reviewed the project and stated the existing dwelling is in poor condition and the cost to renovate the existing dwelling would be high. He stated the reason the Applicant is here is due to the lot being less than 10,000 square feet. He described the proposed dwelling and that it will be 1 story. All other requirements are met except for the lot size.

The Chair requested public comment and no one spoke.

Findings of Fact

At the hearing on February 26, 2020, the Board made the following findings of fact in Special Permit Application No. 2020-011, a request to demolish an existing single-family dwelling and construct a single-family dwelling:

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 lot under 10,000 square 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.
4. The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building. The proposed setbacks will comply with the requirements of the Residence B Zoning District.
5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 19.7%.
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 19.7%.
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 9 feet to the top of the plate and the proposed dwelling is 1 ½ stories.
8. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

The vote to accept the findings was:

YAY: Alex Rodolakis, Jacob Dewey, Herbert Bodensiek, Mark Hansen, and Robert Twiss

NAY: None

Decision

Based on the findings of fact, a motion was duly made and seconded to grant Special Permit No. 2020-011 subject to the following conditions:

1. Special Permit No. 2020-011 is granted to Michael and Jennifer Weinstein for the demolition of an existing dwelling and construction of a 1,569 gross floor area dwelling at 127 Fifth Avenue, Hyannis, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan for Michael & Jennifer Weinstein #127 Fifth Avenue West Hyannisport, MA" prepared by Warwick & Associates Inc., dated January 22, 2020 and design plans by Cotuit Bay Design LLC., dated January 30, 2020.
3. The total lot coverage of all structures on the lot shall not exceed 19.7% and the floor-area ratio shall not exceed 19.7%.
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.

The vote was:

YAY: Alex Rodolakis, Jacob Dewey, Herbert Bodensiek, Mark Hansen, and Robert Twiss
NAY: None

7:03 PM

Appeal No. 2020-012

Forte Fitness Center, LLC.

Forte Fitness Center, LLC., has petitioned for a Variance from Section 240-65(A) – Signs in B, UB, HB, HO, S&D, SD-A and GM Districts to allow the Petitioner to have a total of three signs for its business. The proposed third sign is a freestanding sign that will be approximately six (6) feet tall, at Petitioner's entrance on Attucks Lane. The subject property is located at 865 Attucks Lane, Hyannis, MA as shown on Assessor's Map 294 as Parcel 079. It is located in the Industrial (IND) Zoning District.

Attorney Eliza Cox spoke about the project. The property was acquired year ago. It's a cone shaped lot, 14000 sq. ft. building that used to house Woman's Fitness Center. They filed a variance application and have permits. There are 2 units. The smaller unit is owned by CORD and the larger unit is Forte Fitness which will provide a boxing, ninja and exercise center. Two wall signs are already permitted. They are seeking relief for a third freestanding sign significantly less than allowed. A graphic is submitted to the Board. A third sign would allow easy access to separate businesses.

Mr. Dewey asks why couldn't the two Forte Fitness areas be separate businesses.

Attorney Cox explains it would create a hardship, financial and otherwise.

Chair Rodolakis asks if there are any other questions. None

Background

Forte Fitness Center, LLC., petitioned for a Variance from Section 240-65(A) – Signs in B, UB, HB, HO, S&D, SD-A and GM Districts to allow the Petitioner to have a total of three signs for its business. The proposed third sign is a freestanding sign that will be approximately six (6) feet tall, at Petitioner's entrance on Attucks Lane. The subject property is located at 865 Attucks

Lane, Hyannis, MA as shown on Assessor's Map 294 as Parcel 079. It is located in the Industrial (IND) Zoning District.

The property is located within the Industrial district and is improved with a single, 14,455 +/- square foot building which accommodates two entities: Cape Organization for Rights of the Disabled (CORD) and Forte Fitness Center. Currently Forte Fitness Center has two wall signs, one at each entrance of its building. The Petitioner is seeking to install a third, freestanding sign at its entrance off Attucks Lane.

The sign regulations pertaining to number of signs, as they apply to the Industrial zoning districts and this request, is as follows:

§ 240-65. Signs in B, BA, UB, HB, HO, S&D and SD-1 Districts (referenced from 240-66).

- A. Each business may be allowed a total of two signs.

Proposal & Hearing Summary

Variance Petition No. 2020-012 in accordance with Section 240-65 was filed at the Town Clerk's office and office of the Zoning Board of Appeals on February 3, 2020. A public hearing before the Zoning Board of Appeals was duly advertised and notice sent to all abutters and interested parties in accordance with MGL Chapter 40A. The hearing was opened on February 26, 2020, at which time the Board found to grant the Variance subject to conditions. Board members deciding this petition were Alex Rodolakis, Jacob Dewey, Mark Hansen, Robert Twiss, and Herbert Bodensiek.

Attorney Liza Cox, from Nutter, McClennen & Fish LLP, presenting the Petition before the Board. Also present was Meredith Ruff, owner of Forte Fitness Center, LLC. Attorney Cox reviewed the site issues and the site has 400 feet of frontage along the road. She stated they received approval from the Site Plan Review Committee as well as the Cape Cod Commission. Attorney Cox described the different aspects of the business and each entrance is to a different program under the same umbrella. Both the Ninja Center and the Forte Center have wall signs on the building. The proposed free standing sign will be modest in size and proposed at the entrance to the facility. The total square footage will be less than what is allowed for total signage under the Ordinance. She reviewed the criteria for the grant of the Variance and stated the property is uniquely shaped as it has 400 feet of frontage along the roadway, and this property is the only one in the area with this shape. She also described the need for the third sign as there are two uses and 2 curb cuts and it will limit confusion. Attorney Cox concluded that this proposed third sign will not be a detriment to the public good.

The Board Chair requested public comment. No testimony was given.

Findings of Fact

At the hearing on February 26, 2020, the Board voted and made the following findings of fact in Variance No. 2020-012, a request to allow a third sign to be located at the entrance of 865 Attucks Lane, Hyannis.

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. The Board found that the lot is uniquely shaped and the access into the lot is unusual.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the Petitioner. The requirement of only 2 signs per business is a hardship because it will lead to confusion for customers.

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. The Board found that the free standing sign at the entrance will prevent confusion.

The Board voted to accept the findings as follows:

AYE: Alex Rodolakis, Jacob Dewey, Mark Hansen, Robert Twiss, and Herbert Bodensiek

NAY: None

Decision

The Board voted to grant the requested Variance to the sign regulations with conditions as follows:

1. Variance No. 2020-012 is granted to Forte Fitness Center, LLC for a third, freestanding sign located at their entrance at 865 Attucks Lane, Hyannis, Unit 1.
2. The sign shall be in substantial conformance with the sign specifications by Signarama dated December 2, 2019.
3. The Applicant is required to obtain sign permit(s) from the Building Division prior to installation.
4. 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.

AYE: Alex Rodolakis, Jacob Dewey, Mark Hansen, Robert Twiss, and Herbert Bodensiek

NAY: None

Conditions

5. Variance No. 2020-012 is granted to Forte Fitness Center, LLC for a third, freestanding sign located at their entrance at 865 Attucks Lane, Hyannis.
6. The sign shall be in substantial conformance with the sign specifications by Signarama dated December 2, 2019.
7. The Applicant is required to obtain sign permit(s) from the Building Division prior to installation.
8. 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.

Chair Rodolakis excuses himself.

Mr. Herbert takes the chair.

7:04 PM

Appeal No. 2020-008

Borrer

Ursula K.H. Borrer has petitioned for a Variance pursuant to Section 240-7.C – Lot Size Requirements; 240-7.E – Contiguous Upland Requirement; and 240-14.E – RF Residential District Bulk Regulations and Section 240-36 D. Resource Protection Overlay District. The Petitioner is requesting relief to divide one lot into two lots which will result in one undersized developed lot and one undersized vacant lot. The Petitioner is also requesting relief to allow the undersized vacant lot to become buildable. The subject property is addressed as 724 (a.k.a 744) Old

Falmouth Road, Marstons Mills, MA as shown on Assessor's Map 124 as Parcel 016-001. It is located in the Residential F (RF) and the Resource Protection Overlay District (RPOD) Zoning Districts.

Continued from February 12, 2020. No members assigned, no testimony taken.

Attorney John Kinney addresses the Board.

He speaks about the appeal being related to the growth of wetlands. The owner can recoup the investment in her home. The house has mold conditions and inhabitable. In 2000, the minimum lot sizes were increased to two acres. Over the years the Skutnik River has overflowed with many downed trees in the river. At this point Attorney Kinney shows pictures. His client's basement filled with water, then mold. She needs the variance in order to sell the two properties in order to pay the mortgage and other bills.

Mr. Hansen asked what the reduction in lot size is.

Attorney Kinney replied that lot 7A is 3127 sq. ft. and lot 8 is 4628 sq. ft. below the required of upland.

Mr. Twiss asked if a variance is needed to divide into two one acre lots.

Attorney Kinney agrees

Mr. Twiss suggests that they are being asked for two variances.

1. Allow sale of two undersized lots.
2. Break a 2 acre lot into two one acre undersized lots.

Who's responsible for the River?

Attorney Kinney replied yes to the variances and that he wasn't sure who was responsible but Ms. Borrer called Mosquito Control and they came and cleaned it once but wouldn't come back as it was not their responsibility.

Mr. Twiss asked if the surrounding lots are closer to one acre.

Attorney Kinney acknowledges they are.

Mr. Dewey asked if Conservation and Health has been approached.

Attorney Kinney replies yes to Conservation and unsure about Health. He doesn't know if the lots have been perked.

Mr. Dewey asked what year the Barn was constructed.

Attorney Kinney replies he doesn't know but it was there before the house and to be removed.

Ms. Borrer introduces herself and states that when she bought the property that she had been told there were once horses but it should be torn down or used for storage. She never used it herself but young kids from the neighborhood trashed it.

Mr. Twiss asked about Wendy Way which isn't shown.

Attorney Kinney replied Wendy Way will be developed by the buyer.

Comments from Public:

Louise Murray, lot six, abutter, states that she has also had flooding and has never seen anyone come to clean it. No one maintains it. She's has seen Mosquito Control once. The water is stagnant. The property is an eyesore. She is fully supportive of Ms. Borrer's appeal. She's the main abutter. She says there were no horses there. That was a very long time ago.

Reads letter from Kameliya and Dimitar Dimitrov opposing the appeal.

Daniel Salvatore, listing broker tells the Board he's had the property for two years now. The property has had buyers but they always fall through. Now she has a buyer that is willing to go through the hoops. There weren't wetlands when she bought the property. He's like to see her move on from this because she is in financial distress.

Mr. Dewey says he opposes this project and would like to poll the other Board members.

He doesn't feel that this can be considered a financial hardship to cut one lot into two.

Attorney Kinney states these are two lots that were changed by the Assessor's office without Ms. Borrer's knowledge. The assessor's office states there were two buildings in 1920. The only reason they merged was the wetlands.

Mr. Bodensiek reads Findings:

Background

Ursula K.H. Borrer petitioned for a Variance pursuant to Section 240-7.C – Lot Size Requirements; 240-7.E – Contiguous Upland Requirement; and 240-14.E – RF Residential District Bulk Regulations and Section 240-36 D. Resource Protection Overlay District. The

Petitioner requested relief to divide one lot into two lots which will result in one undersized developed lot and one undersized vacant lot. The Petitioner also requested relief to allow the undersized vacant lot to become buildable. The subject property is addressed as 724 (a.k.a. 744) Old Falmouth Road, Marstons Mills, MA as shown on Assessor's Map 124 as Parcel 016-001. It is located in the Residential F (RF) and the Resource Protection Overlay District (RPOD) Zoning Districts.

The property addressed as 724 (a.k.a. 744) Old Falmouth Road is 2.4 acres and contains a single family 3-bedroom dwelling constructed in 1920. The property is located within the Residence F Zoning District and the Resource Protection District and complies with the lot size requirement of 2 acres.

The property is the subject of a Subdivision Plan and Approval Not Required (ANR) Plan approved on June 8, 1987. The Subdivision Plan created Lots 6, 7, and 8. The ANR Plan adjusted the lot lines between Lot 6 and 7 to create Lots 6A and 7A. Lot 6A was sold in 1996 and is not the subject of this application. Town of Barnstable Assessor's records show Lots 7A and 8 as a single parcel (124/016-001), which is the subject of this application.

The 1987 plans show Lot 7A as having 43,568 sq.ft of upland and 480 sq.ft. of wetland and Lot 8 as having 44,130 sq. ft. of upland and 890 sq.ft. of wetland. At the time of the subdivision, the minimum lot size in the Residence F district was 43,560 sq.ft.(1 acre) of upland.

The plans show a dead end access from Old Falmouth Road called Wendy Way that has not yet been constructed. Lot 8 remains under covenant as security for the construction of Wendy Way.

The reason for this request is to address a change in the wetland delineation for Lot 7A and Lot 8 from the 1987 plan, and the lots no longer contain one acre of upland. The 2019 site plan included with this application shows Lot 7A as containing 40,433 sq.ft of upland and 3,612 sq.ft of wetland, and Lot 8 as containing 38,932 sq.ft. of upland and 5,344 sq.ft. of wetland.

Proposal & Hearing Summary

Variance Petition No. 2020-008, a request to divide one lot into two nonconforming lots, was filed at the Town Clerk's office and office of the Zoning Board of Appeals on January 3, 2020. A public hearing before the Zoning Board of Appeals was duly advertised and notice sent to all abutters and interested parties in accordance with MGL Chapter 40A. The hearing was opened on February 26, 2020, at which time the Board found to grant the Variance subject to conditions in a 4-1 vote. Board members deciding this petition were Herbert Bodensiek, Mark Hansen, Todd Walantis, Jacob Dewey, and Robert Twiss.

The hearing was opened on February 26, 2020 with Attorney John Kenney representing the property owner. Also present was Petitioner Ursula K. H. Borrer. Attorney Kenney reviewed the matter and stated the house has been condemned and the Petitioner is under financial hardship to pay the taxes and reside at another location. Attorney Kenney described the timeline and the increase in wetlands and the lots do not meet the 1 acre minimum lot size required before the Resource Protection Overlay District (RPOD) went into effect. There was a discussion about the backup of vegetative material blocking the culvert and that is the reason for the increase in wetlands. Attorney Kenney stated that in 1987, there is a certified plot plan that showed 2 lots meeting the requirements at the time. Attorney Kenney submitted photographs of the existing conditions.

The Board discussed the actual square footage of upland of the 2 lots and asked about who is responsible for maintaining the culvert. There was a discussion about the barn/shed that exists on the property. The Board questioned the future of the construction of Wendy Way and that

the Way will be required to meet applicable standards. The Board discussed the financial hardship the petitioner is experiencing and any merger issues.

The Board asked for public comment and abutter Louise Murray of Lot 6 spoke in favor of the Petition but would like the culvert maintained. Listing Broker Dan Salvatore spoke about the difficulty of selling the property.

The Board Chair read a letter in opposition from Kameliya and Dimitar Dimitrov dated February 10, 2020.

Findings of Fact

At the hearing on February 26, 2020, the Board voted and made the following findings of fact in Variance No. 2020-008, a request to divide one lot into two lots which will result in one undersized developed lot and one undersized vacant lot and to also request relief to allow the undersized vacant lot to become buildable.

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. The Board found that due to the blockage of the culvert the condition of the land and dwelling have deteriorated, by the seasonal stream.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner because of the configuration of the existing lot. We have testimony from the broker that the Petitioner will experience a financial hardship if the lot is not divided into two lots. We have testimony from Realtor and abutter. It's not practical to build onto a deteriorated, moldy property. There is no way that she can sell the property without creating a great financial crisis for her unless she can sell it as two lots.
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. The principal permitted use in this area is residential and the surrounding lots are 1 acre.

The Board voted to accept the findings as follows:

AYE: Herbert Bodensiek, Mark Hansen, Todd Walantis, and Robert Twiss

NAY: Jacob Dewey argued that the lot was already developed and the lots have already merged

Decision

The Board voted to grant the requested Variance with conditions as follows:

1. Variance No. 2020-008 is granted to Ursula K. H. Borrer pursuant to Section 240-7.C – Lot Size Requirements; 240-7.E – Contiguous Upland Requirement; and 240-14.E – RF Residential District Bulk Regulations and Section 240-36 D. Resource Protection Overlay District. The Petitioner is requesting relief to divide one lot into two lots which will result in one undersized developed lot and one undersized vacant lot. The Petitioner is also requesting relief to allow the undersized vacant lot to become buildable. The subject property is addressed as 724 (a.k.a 744) Old Falmouth Road, Marstons Mills, MA.
2. The improvements shall be in substantial conformance with the site plan entitled "Site Plan of Lots 7A & 8 AKA #'s 9 and 20 Wendy Way Marstons Mills" by Down Cape Engineering Inc and dated July 26, 2019 with a last revision date of December 19, 2019.
3. The "Way" to be constructed as per Planning Board requirements.
4. Lot 8 is subject to the covenant held by the Barnstable Planning Board recorded in Book 5787, Page 167 at the Barnstable County Registry of Deeds.

5. The undersized vacant lot is deemed buildable for zoning purposes only.
6. This Decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of a building permit. The rights authorized by this variance must be exercised within one year, unless extended.

AYE: Herbert Bodensiek, Mark Hansen, Todd Walantis, and Robert Twiss

NAY: Jacob Dewey argued that the lot was already developed and the lots have already merged.

New Business

7:05 PM

Appeal No. 2020-009

VWM Associates, LLC.

VWM Associates, LLC. has applied for a Special Permit for the alteration of preexisting nonconforming site dimensions and alteration of nonconforming landscape buffers for parking lots per 240-93 and for the reduction of landscape requirements for parking lots and off-street parking requirements per 240-57. Special Permits are sought to alter existing nonconformities regarding impervious area (altering the impervious area from 72.2% to 63.9% of the lot), for the alteration of existing landscape buffer nonconformities between the surfaced area of a parking lot and side and rear lot lines, the reduction of parking lot interior landscape requirements, and the reduction of off-street parking requirements. The Applicant is proposing to demolish the existing structure and construct a new retail/office building of approximately 9,203 square feet with associated site improvements. The subject property is located at 326 West Main Street, Hyannis, MA as shown on Assessor's Map 269 as Parcel 159. It is located in the Highway Business (HB), Residence B (RB) and Wellhead Protection (WP) Overlay Zoning Districts.

Attorney David Lawler introduced himself and Chad Brubaker of Lisciotti Development and Christian Farland of Farland Corporation. Jacob Dewey disclosed that he is an abutter to the subject parcel and Attorney Lawler stated that he did not have a concern and that the application can continue with the members present.

Attorney Lawler presented pictures to the Board while discussing the project. The property will be a variety store. The real relief is in the number of parking spaces. Cars will be parking for about ten minutes. Deliveries will be once a week possibly twice in the summer. The impact is minimal. There will be a six foot stockade fence around property. At present there are three curb cuts

.Mr. Walantis asked if they had considered a smaller size

Attorney Lawler replied yes but they needed storage and retail square footage.

Mr. Twiss asked about landscaping.

Attorney Lawler stated under the plan, the landscape will be manicured and appealing.

Cars can come in and out in a matter of minutes.

This property has been abandoned for years. It will be a huge improvement.

Mr. Dewey asked if everything is compliant with site standards.

Attorney Lawler responded yes.

Mr. Wakrow added that he's also been working with them and a number of modifications have made this compliant.

Mr. Dewey asked if there were sidewalks.

Attorney Lawler replied yes.

Mr. Dewey asked why Pontiac St. can't be used as a curb cut.

Attorney Lawler replied that Pontiac St. is a private residential St. and they're trying to be good neighbors.

Mr. Dewey also asked how many employees will there be.

Attorney Lawler said two or three max.

Mr. Dewey reads Findings:

Background

WWM Associates, LLC., c/o Lisciotti Development, applied for a Special Permit for the alteration of preexisting nonconforming site dimensions and alteration of nonconforming landscape buffers for parking lots per 240-93 and for the reduction of landscape requirements for parking lots and off-street parking requirements per 240-57. Special Permits are sought to alter existing nonconformities regarding impervious area (altering the impervious area from 72.2% to 63.9% of the lot), for the alteration of existing landscape buffer nonconformities between the surfaced area of a parking lot and side and rear lot lines, the reduction of parking lot interior landscape requirements, and the reduction of off-street parking requirements. The Applicant proposed to demolish the existing structure and construct a new retail/office building of approximately 9,203 square feet with associated site improvements. The subject property is located at 326 West Main Street, Hyannis, MA as shown on Assessor's Map 269 as Parcel 159. It is located in the Highway Business (HB), Residence B (RB) and Wellhead Protection (WP) Overlay Zoning Districts.

The subject property is located on West Main Street at the corner of Pontiac Street. The site has 41,668 square feet of area, 192 feet of frontage on West Main and 241 feet of frontage on Pontiac Street. The site contains a Sav-on service station currently closed and partially demolished. The area is a mixture of commercial and residential uses. The Sav-on service station consisted of a 3,644 square foot building and a 1,480 square foot canopy. Both building and canopy were preexisting nonconforming structures. The canopy had a 12 foot setback from West Main Street and the building had a 40 foot setback from Pontiac Street. The site contained three underground fuel storage tanks for a total of 30,000 gallons of fuel that have been removed.

Procedural & Hearing Summary

Special Permit No. 2020-009 to demolish an existing structure and construct a new retail structure with accessory office was filed at the Town Clerk's office and office of the Zoning Board of Appeals on January 28, 2020. A public hearing before the Zoning Board of Appeals was duly advertised and notice sent to all abutters and interested parties in accordance with MGL Chapter 40A. The hearing was opened on February 26, 2020 at which time the Board found to grant the Special Permit subject to conditions. Board Members deciding this appeal were Herbert Bodensiek, Jacob Dewey, Mark Hansen, Todd Walantis, and Robert Twiss.

Attorney David Lawler presented the application before the Board. Also present were Chad Brubaker of Lisciotti Development and Christian Farland of Farland Corporation. Jacob Dewey disclosed that he is an abutter to the subject parcel and Attorney Lawler stated that he did not have a concern and that the application can continue with the members present. Attorney Lawler reviewed the site history and the purpose for the zoning relief requests. He stated the site is an eye sore and this project would be an improvement to the neighborhood and would serve the community. Attorney Lawler reviewed the parking need for this use which is less than what is required for general retail.

The Board discussed the green space along West Main Street and the possibility of reducing the size of the building. The Board also discussed the possible use of Pontiac Street and Attorney Lawler pointed out that Pontiac is a private road and they did not have legal use of the road. The Board asked about number of employees and the Applicant stated the total number would be 8-10 but at any one time there would be 2-3 employees.

The Board Chair asked for public comment. No testimony was given. The Chair read a letter of support from Carol McIlvane dated February 11, 2020.

Findings of Fact

At the hearing on February 26, 2020, the Board unanimously made the following findings of fact in Special Permit Application No. 2020-009, a request to demolish the existing gas station and construct a new retail structure with accessory office:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Under Section 240-93 B., an applicant can seek a Special Permit for alterations or expansions for nonconforming buildings not used as single or two-family dwellings.
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. The Board found this project would be an improvement to the neighborhood.
3. A Site Plan has been reviewed and found approvable with conditions. (See letter dated February 10, 2020).
4. Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.
5. The Building and site design are consistent with Section 240-25.E, District-wide design and performance standards applicable within the Highway Business District.
6. In granting a special permit for the alteration of preexisting nonconforming site dimensions pursuant to Section 240-93.B., the Board finds that that the proposed alterations are not substantially more detrimental to the surrounding area. The Board found this project to be an improvement to the neighborhood.
7. In granting a special permit that reduces the requirements of Article VI of the Zoning Ordinance (Off-Street Parking Regulations) pursuant to 240-57, the Board finds that lesser off-street parking is adequate given special circumstance which include:
 - Age or other characteristics of occupants which reduce auto usage. The Board found that the location of the site near many multi-unit residential complexes and located on the RTA route will assist the many people who do not have vehicles.
 - Characteristics of use invalidating normal methods of calculating parking demand. The Board found that due to the nature of the business, many customers do not have vehicles.

The vote to accept the findings was:

AYE: Herbert Bodensiek, Jacob Dewey, Mark Hansen, Todd Walantis, and Robert Twiss

NAY: None

Decision

Based on the findings of fact, a motion was duly made and seconded to grant Special Permit No. 2020-009 subject to the following conditions:

1. Special Permit No. 2020-009, is granted to VWM Associates, LLC, to construct a 9,203 square foot retail structure with accessory office located at 326 West Main Street, Hyannis, MA.
2. The site development shall be constructed in substantial conformance with the preliminary site plans entitled "Site Plan 326 West Main Street" dated January 21, 2020, drawn and stamped by Farland Corp, and with the elevations entitled "Hyannis, MA Retail Building Conceptual Scheme, 326 W. Main St. Hyannis, Ma" prepared for Lisciotti Development by BKA Architects, dated February 25, 2020.

3. The Applicant must file final engineered site plans with the Site Plan Review Committee for final approval by the Site Plan Review Committee. In the event that the Building Commissioner determines that the final plans approved by the Site Plan Review Committee are not in substantial conformance with the plans filed with this application, the Applicant shall be required to seek a modification of this decision. Fully engineered plans shall include, but are not limited to, a landscape plan, photometric plan, and all required drainage calculations.
4. The project shall comply with the Preliminary Site Plan Review approval dated February 10, 2020, the conditions of which shall be incorporated as conditions of this decision.
5. No further additions or alterations shall be permitted without approval from the Board.
6. This decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of a building permit. The rights authorized by this Special Permit must be exercised within two years, unless extended.

The vote was:

AYE: Herbert Bodensiek, Jacob Dewey, Mark Hansen, Todd Walantis, and Robert Twiss

NAY: None

7:06 PM

Appeal No. 2020-010

VWM Associates, LLC.

VWM Associates, LLC., has petitioned for a Variance, in the alternative to the Special Permit request, pursuant to Section 240-56 – Schedule of Off-Street Parking Requirements. The Petitioner is proposing to demolish the existing structure and construct a new retail/office building of approximately 9,203 square feet with associated site improvements. The Petitioner is requesting relief by a Special Permit. However, should the Special Permit relief requested not be sufficient, the Petitioner is requesting relief by Variance in the alternative. The subject property is located at 326 West Main Street, Hyannis, MA as shown on Assessor's Map 269 as Parcel 159. It is located in the Highway Business (HB), Residence B (RB) and Wellhead Protection (WP) Overlay Zoning Districts.

Attorney Lawler withdraws request for variance.

The vote was:

AYE: Herbert Bodensiek, Jacob Dewey, Mark Hansen, Todd Walantis, and Robert Twiss

NAY: None

Correspondence

Received February 10, 2020 from Cape Cod Commission (CCC) to Attorney David Lawler in reference to 90 Wachusett Avenue, Demolition. CCC has informed Attorney Lawler that this project has been referred to the CCC as a mandatory Development of Regional Impact (DRI) under Section 3 of Chapter A, Code of Cape Cod Commission Regulations, Enabling Regulations Governing Review of Development of Regional Impact.

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

3/11/2020, 3/25/2020, 4/8/2020

Adjournment

Motion is made by Herb Bodensiek and seconded by Bob Twiss to adjourn

Vote:

All in favor

