Town of Barnstable
Zoning Board of Appeals
May 9, 2007

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday, April 25, 2007 at 7:04 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. A quorum was met. Also present were Arthur Traczyk, Principal Planner and Carol Puckett – Administrative Assistant.

Zoning Board of Appeals Members:
- Gail Nightingale, Chairman
- Ron S. Jansson, Vice Chairman
- Daniel M. Creedon, Clerk
- James R. Hatfield
- Randolph Childs

Zoning Board of Appeals Alternate Members:
- Jeremy Gilmore
- Sheila Geler
- Kelly Kevin Lydon
- John T. Norman

Chairman Nightingale opened the meeting at 7:02 PM and reads the appeals into the record. She informs the public that Bay Point will be continued but will wait until 8:00 PM to continue it.

7:00 PM Appeal 2007-026 - Continued Dugas
Appeal of an Administrative Official
Opened March 21, 2007 Continued to May 9, 2007
No testimony taken - No Members Assigned,

Joseph Dugas et al have appealed the December 29, 2006 issuance of a building permit to Woolard Builders LLC for property located off Offshoot Road in Barnstable Village. The applicant requests that the building permit be revoked for failure of the lot to comply with the frontage requirement on a developed way. The property is addressed as 140 Maushop Avenue, Barnstable, MA and is shown on Assessor’s Map 299 as Parcel 093. It is in a Residence G Zoning District.

Members assigned: Randy Childs, James Hatfield, Gail Nightingale, Kelly Kevin Lydon and John Norman.

Attorney Paul Revere is representing Mr. Joseph Dugas et al.
Attorney Revere gives history of how the appeal resulted. He gives an overview of where the property is located which is at the end of Maushop Road and ends up behind county complex and is a 7.5 acre Parcel.

He indicates that he thinks there is a long complicated history as it was in litigation in land court. He indicates that his clients had asked for the Town of Barnstable to take various enforcement actions and that the only permit that authorized anything by the Town of Barnstable since the late 80’s is this building permit. The building permit appeared, on its face, a misrepresentation of the facts on the ground on the property. He questions that if you can submit an application for a building permit showing 447 feet of frontage on a road that doesn’t exist, hasn’t been built, etc., to show your frontage to build. He indicates that the building permit application by Woollard Builders had a plan submitted, stamped by Arnie Ojala saying that the property had 447 feet of frontage on Offshoot Road. He indicates that Offshoot Road, as it is shown on that plan, does not exist on the ground today. He indicates that what exists is a road from a later subdivision approved by the planning board and appealed. It was put in while the appeal was going on. It is not the road that is shown on the plan at all.

After they filed this appeal he indicates that Offshoot Road, that existed, came from a 1978 plan, subdivision # 362 and is also shown on a later plan, subdivision 654. In those plans, a 20 foot roadway was to go down in this area and a number of lots that had never been built on, that were subdivided off of it. The roadway is wholly within property owned by Mr. Woollard.

He indicates that under the zoning bylaw it requires that you have 20 feet of frontage in this area. The application showed 447 feet of frontage and as his clients claims, there is no frontage, there is no road here. The response that the Building Commissioner gave them after this appeal was filed was that he actually has 40 feet of frontage on the end of Maushop Road. Attorney Revere indicates that he wouldn’t disagree with that as a factual matter because he thinks the ZBA knows, in other circumstances, they have allowed frontage on the ends of roads. The problem is this end of a road completely ignores the subdivision approvals of which the land is located on and puts Offshoot Road right over this area. That is, if you look at the plans, Maushop Road comes to an end and Offshoot Road is an extension.

He indicates that the long and short of this is that the building commissioner accepted their position that there wasn’t 447 feet of frontage on Offshoot Road but, rather, the only way he could authorize a permit is to find 20 feet of frontage on the end of Maushop Road. The problem they have is that his conclusion is not the application that was sent to him but what the Building Commissioner did was to ignore the subdivision approval. As he sees it, the Building Commissioner is constrained not to ignore that subdivision approval. He indicates that there is a section of MGL chapter 41 section 81Y that says, in a city or town in which the subdivision control law is in effect, which it is here, the border officer, if any, having the power and duty to issue permits for the erection of buildings, which is our Building Commissioner, shall not issue any permit for the erection of the building until first satisfied that the lot on which the building to be erected is not within a subdivision, which he knows it is as it is in 362 and 654, or that a way furnishing access to such lot as required by the subdivision control law is shown on a plan recorded or entitled to be recorded under section 81X and that any condition endorsed thereon limiting the right to erect buildings on or maintained buildings on such lot has been satisfied or waived by the Planning Board. Attorney Revere comments that in any event, the bottom line is that this provision says if you have a property that is in a subdivision, the subdivision road has to be built or there has to be an assurance that it will be built in some manner, way, shape or form for the Building Commissioner to issue a building permit on that lot. Here we have a property in a subdivision and the decision to ignore the existence of Offshoot.
Road which is shown on Assessor’s maps and, at least on 2 plans filed at the registry of deeds, is something that the Building Commissioner cannot do. He cannot waive the existence of this road for purposes and find frontage at the end of Maushop.

He has photos of the 7.5 acres of which, he indicates, is closer to 5 acres that cut clear. He indicates that it has been re-graded and that a roadway has been cut into it which is not Offshoot Road. In summary, he doesn’t think that the Building Commissioner had the authority to issue the building permit under these circumstances. He notes that Attorney Ford who represents Woollard Builders as well as the owner are present and would like to point out that just this afternoon, at 3:45 PM, Attorney Ford had filed with the Registry of Deeds, the new subdivision plan, a covenant, although it is not signed by all the owners of properties which abut the road, a development agreement, and a decision. Besides the obvious facts that all owners who have abutted the road have not signed the covenant but are in the process of, it was represented previously that it was to be done. He indicates that the point of the matter is, the filing of those documents has potential if they are all correctly done but still has some questions about some of the procedures for them. Certainly, when this building permit was issued in December of 2006, none of these documents were filed and if they are filed, the building permit application needs to be amended so that is it clearly shown what frontage is given to this building permit and this building.

Kelly Lydon asks for clarification about the addressing of 140 Maushop Road.

Randy Childs inquires as to what harm is going to come of the placing of a 3600 square foot house on a 7.5 acre piece of land.

Attorney Revere indicates it is a 3600 square foot home which has resulted in the clearing of 5 acres of land and brings traffic onto their road, car lights and that the construction has the ability to diminish their privacy. Therefore, has the potential to rise to the level of aggrievement.

John Norman asks if this issue before the Board is to appeal the decision to issue a permit for a single family home which is listed on the building permit as being granted to a single family home developed as lot 1, 140 Maushop Avenue, yet you concede it does meet the requirements of minimum frontage as it is stated on the building permit.

Attorney Revere indicates no. He indicates that the building permit application has always said 447 feet on Offshoot Road and that no-one considered or mentioned frontage on Maushop at any one time until it was brought up. His concession is, if this was just a lot sitting at the end of Maushop Road, not within a subdivision, that the Board has consistently interpreted the ability to have frontage on a road end.

John Norman asks what Attorney Revere thinks that the Building Commissioner did not do specifically.

Attorney Revere indicates that what the Building Commissioner, or whoever looked at it, did was to indicate that they had a plan stamped by an engineer telling them that they had 447 feet of frontage. When asked on it said, well, you know it actually has 20 feet of frontage also off Maushop which was after this appeal was filed.
John Norman asks for clarification and comments that this issue is to ask this board to rescind the issuing a permit for a single family home in a zoning district that requires 20 feet of frontage where he has determined has 40 feet off Maushop?

Attorney Revere then hands out copies of 41 81Y to the Board members and comments that what this says is that the Building Commissioner cannot ignore this road. He gives an example.

John Norman asks Attorney Revere to clarify again why the Board should rescind.

Attorney Revere indicates that because of 81Y, the Building Commissioner cannot ignore that road, the only person who can modify the requirement to make that road is either through the Planning Board process or the Planning Board of Appeals can actually issue a permit. The Building Commissioner in 81Y does not have authority to ignore the decision of the Planning Board.

John Norman asks if he acknowledges that this lot has frontage on Maushop.

Attorney Revere indicates that he believes that he owns property that abuts Maushop but believes he does not have frontage because Offshoot road exists. Because Offshoot road is there, his frontage on Maushop, his abutting portion of his property that goes to Maushop he cannot use. His choices are either build Offshoot Road according to an approved plan which an approved plan is a 20 foot wide road and there is only 16 foot road there, or, ask the Planning Board of Appeals to issue him a building permit. What the Building Commissioner did here is basically overrule the Planning Board and that is what the problem is what was done.

Kelly Lydon asks again if 140 Maushop exists. Attorney Revere indicates it was issued for postal addresses by the DPW.

Kelly Lydon asks when the Building Commissioner issued the permit to what address was it issued to.

Attorney Revere indicates that on the application, Offshoot Road was crossed out and 140 was written in.

Gail Nightingale asks if there is anyone here that would like to speak either in favor or opposition.

Attorney Michael Ford indicates that he is representing Mr. and Mrs. Woollard in their capacity as Trustees of Nominee Trust. He indicates that the Planning Board did approve a 4 lot subdivision of this property on two occasions. First, which was appealed to the Land Court and then a modified plan which was also appealed to the Land Court which is now the subject of a settlement agreement signed by Mr. Ford on behalf of the Woollards and also by Attorney Revere on behalf of the many clients he has in this particular area. It provides that the second plan needs to be recorded as well as the covenant, development agreement and decision. He indicates that all has been done with the exception of 3 of the lot owners who have yet to sign the covenant because they had frontage on Offshoot Road which Attorney Revere has been informed of. Since the covenant hasn’t been recorded, he will address just the question before the board tonight which is Mr. Perry’s decision. As he understands it, Mr. Woollard having been held up for nearly a couple of years on the appeal in Land Court regarding the
subdivision, went into the building department and applied for a permit on the one lot, lot 7 as opposed to the subdivided parcel.

He was informed by Mr. Woollard, who met with Mr. Perry, that from the beginning it was Mr. Woollard’s position that his frontage was on Maushop because the Land Court appeal of his subdivision was still pending and therefore he didn’t have status with Offshoot Road which had been revised by the Planning Board but not finalized by the Land Court.

He doesn’t see, given Mr. Revere’s presentation and acknowledgement on the record that there is frontage on Maushop, how the Building Commissioner erred. He gives the zoning requirements which included frontage of 20 feet and it was determined that the frontage was on Maushop. Attorney Ford indicates that the Building Commissioner probably did so because the same people appealing were the same people who had held up the subdivision so he couldn’t use the individual lots. The reference to 41-81 respectfully, is misplaced. In Barnstable, we have a zoning ordinance and the Building Commissioner has a right in the first instance as the interpreter of the bylaw to make decisions with respect to whether the lot needs the dimensional requirement of the ordinance. What constitutes frontage is a decision in the first instance of the Building Commissioner. He goes over what the lack of a definition of frontage has been. He goes on to indicate that Mr. Woollard was given the 140 Maushop address with the building permit and that the addresses will be off Maushop along with the 3 lots that will be created pursuant to the subdivision plan that has now been agreed to by the settlement agreement. He asks to have this decision by the Building Commissioner to be upheld.

Gail Nightingale asks when the covenant will be signed. Attorney Ford indicates that the Woollard’s need to sign it as well as the other 3 lot owners. Today he had arranged for a conference call to assure Attorney Revere that it is in the process and that it will be recorded.

Gail Nightingale asks if once the covenant is filed and signed, this whole situation will not be necessary?
Attorney Ford: indicates that is correct.

Gail Nightingale then asks if there is anyone else present either in favor or opposition.

Lou Cataldo from Maushop Avenue indicates that he is opposed due to excessive future building, construction noise and ongoing increased traffic flow. He shows pictures to the Board.

Jim Rogers lives on 21 Dorcas Drive which is off Maushop Road indicates that he is also concerned with safety issues

Marcy Dugas of 45 Dorcas Drive is in opposition and asks the Board to revoke the permit because there is no such thing as 140 Maushop Road. She asks that a letter from John Fields and Kristen Burke be read into the record. Gail Nightingale indicates that it is in the file and believes that there are 2 letters. She reads the second letter which is in opposition. She indicates that there is also a letter from Lou Cataldo and James Rogers in the file. She reads another letter in opposition from John Fields and Kristen Burke that was sent previously.
John Ehrit of 104 Maushop Avenue indicates that Mr. Woollard indicated he would put land in a land trust and do landscaping which has not happened and claims he no longer has any privacy.

Attorney Revere re-addresses the signing of the completion of the signing of the covenants and the amendments of the building permit. He then clarifies that the reason he is doing this knowing that it might be moot

Randy Childs does findings.

In Appeal 2007-026 the appellant is Joseph Dugas et al, property address is 140 Maushop Avenue, Barnstable Mass, Assessor’s Map 299, Parcel 93 in a Residence G zoning district.

On December 29, 2006 the Building Commissioner issued building permit 2006-5061 for the development of a 3,630 square foot, three bedroom, single family dwelling. The subject locus is a 7.5 acre lot shown as lot 1 on a 1975 plan recorded at the Barnstable Registry of Deeds in Plan Book 336, page 13.

The building permit was issued to Woollard Builders, LLC., Howard Woollard. Mr. Woollard is one of two trustees of the Four Acre Realty Trust who owns the property.

On January 10, 2007 a letter was received by the building division from Attorney Paul Revere III requesting that the building permit be revoked. The purported reason was regarding frontage and access to a developed way.

On January 31, 2007, Building Commissioner, Tom Perry, responded to Mr. Revere’s letter and in summary states that the lot conforms to the 65,000 square foot minimum lot area requirement for the RG district and conforms to the minimum frontage requirement consisting of 20 feet as it has 40 feet of frontage on Maushop Avenue. Maushop being developed satisfied the access requirement. The plans are for one, single family dwelling that conforms to the principal permitted use in the district and is to be located in conformity to all bulk requirements.

On January 29, 2007, Attorney Paul Revere on behalf of Joseph Dugas et al, filed an appeal to the Zoning board regarding the building permit issued on December 29, 2006. MGL chapter 40A section 15 required an appeal of this nature to be filed within 30 days. Although that period counts to 30 days, the 29th day fell on a Sunday and therefore, the filing on that Monday appears to conform.

That appeal was filed with the Town Clerk and a copy submitted to the Zoning Board of Appeals office.

John Norman seconds.

Vote:
AYE: James Hatfield, Randy Childs, Gail Nightingale, John Norman
NAY: Kelly Lydon
Motion to uphold the Building Commissioner issued building permit of 2006-5061 for the development of a 3,630 square foot, three bedroom, single family dwelling at 140 Maushop Avenue in Barnstable.

James Hatfield seconds.

Vote:
AYE: James Hatfield, Randy Childs, John Norman, Gail Nightingale
NAY: Kelly Lydon

Kelly Lydon indicates that the reason he voted in the negative is because you can’t vote for an address that doesn’t exist and sets a negative precedent.

Vote is 4 to 1 to uphold the Building Commissioner’s decision.

7:15 PM Appeal 2007-032 - New Scatambuli Variance to Family Apartments

Roberto C. Scatambuli has petitioned for a Variance to Section 240-47.1.A(3) Family Apartments. The petitioner seeks to establish a family apartment in an existing detached accessory structure located on the property when the Zoning Ordinance requires family apartments to be attached to or within the principle dwelling. The property is addressed 77 Kelley Road, Hyannis, MA and is shown on Assessor’s Map 292 as Parcel 192. It is in a Residence B Zoning District.

Assigned members: James Hatfield, Randy Childs, Dan Creedon, Ron Jansson, Gail Nightingale

Roberto Scatambuli indicates that he has someone here that will speak for him as he does not speak English well. Helio Roche speaks for Mr. Scatambuli. Mr. Roche indicates that Mr. Scatambuli has applied to transform an apartment for his father-in-law and other members of his family. He did everything in that apartment as the Town has asked in order to transform it into a family apartment.

Ron Jansson asks if this property is on Town sewer or septic. Mr. Roche indicates that it is septic and he had talked with the Town regarding the septic and was told it was okay.

Ron Jansson asks if the applicant understands the requirements for a family apartment. Mr. Roche translates and indicates that the applicant is aware of the requirements.

Ron Jansson indicates that there is a problem as the application is in Mr. Scatambuli’s name and has been signed by him but the deed is in Mrs. Scatambuli’s name and it needs to be re-advertised in her name as the permit will be issued to her. He is advised to withdraw without prejudice in order to re-apply with the correct information.

Dan Creedon indicates that he also needs an engineered plan along with the correct information on a new application.
The applicant asks to withdraw without prejudice.

Motion is made to withdraw without prejudice.

Motion seconded.

Vote:
AYE: James Hatfield, Randy Childs, Dan Creedon, Ron Jansson, Gail Nightingale
NAY: None.

Withdrawn without Prejudice.

7:30 PM  Appeal 2007-024 - Continued  Russo
Expansion of a Nonconforming Structure

Opened March 21, 2007, continued to May 9, 2007
Continued to allow for search of permitting record, and site visit.

Members; Randolph Childs, Ron S. Jansson, Kelly Kevin Lydon, Sheila Geiler, Gail C. Nightingale

John Russo has applied for a Special Permit pursuant to Section 240-92 Nonconforming Buildings or Structures Used as Single and Two-Family Residences. The applicants seek to expand and alter a nonconforming structure with the addition of a second floor dormer that encroaches into a 10-foot rear setback. The subject property is located as shown on Assessor’s Map 047 as Parcel 112, addressed as 126 Cinderella Terrace, Marstons Mills, MA in a Residence F Zoning District.

John Russo is here representing himself. Gail Nightingale asks about any changes since the last hearing. Mr. Russo indicates that he believes the Board has the changes. Gail Nightingale asks if they have changed the windows on the rear. Mr. Russo indicates that he tried to meet with the abutters, the Beckwiths, and suggested to them that he would make the windows smaller and higher as he knows their issue was privacy. Mr. Russo indicated that he had found the smallest awning windows so that he would have cross ventilation and some light on the back side of the house. The glass would start at approximately 5’9” and he indicates that at that height you can’t see the abutter’s house. He nailed plywood (shows pictures to the Board) of what you can see from the inside of the house. He tried to meet and compromise with the neighbor but he would only compromise to the one window in the bathroom. He tried to compromise with the smaller windows and height. The neighbor emailed him with a restriction request on his deed and asked him to sign it. He is uncomfortable doing so.

Gail Nightingale informs Mr. Russo that when the Board makes a decision it will have conditions that must be recorded with the Barnstable Registry of Deeds to be recorded with his deed.

Kelly Lydon asks for clarification regarding the address as it was shown on the legal ad as 126 and should be 162 Cinderella Terrace.
Gail Nightingale indicates that because it was not addressed correctly in the legal ad it is advisable for Mr. Russo to request to withdraw without prejudice and re-apply.

Ron Jansson also informs Mr. Russo that when applying he should consult an attorney and perhaps apply for both a variance and a special permit as it is not a legal pre-existing nonconforming structure.

Randy Childs asks about the statute of limitation and the history of the property.

Gail Nightingale suggests they withdraw without prejudice.

Art Traczyk indicates that they could waive the application fee but don’t have money in the fund for advertising.

Motion to withdraw without prejudice

Motion seconded.

Vote:
AYE: James Hatfield, Randy Childs, Kelly Lydon, Sheila Geiler, Ron Jansson
NAY: None

Withdrawn without prejudice.

7:45 PM Appeal 2007-042 - New Irving Avenue Nominee Trust Special Permit Nonconforming Two Family

The Irving Avenue Nominee Trust has petitioned for a Special Permit pursuant to Sections 240-92.B and 240-91.H, Nonconforming Building and Structures used as a Single and Two Family Residences Dwelling and Developed Lot Protection Demolition and Rebuilding on Nonconforming Lots. The petitioner seeks to raze and replace one of two single-family dwellings located on the property and rebuild one of the single-family dwellings in a new location on the lot. The property is addressed as 111 Irving Avenue, Hyannisport, MA and is shown on Assessor’s Map 287 as Parcel 065. It is in a Residence F-1 Zoning District.

7:45 PM Appeal 2007-041 - New Irving Avenue Nominee Trust Bulk Variance Minimum Lot Size Requirement

The Irving Avenue Nominee Trust has applied for a Variance to Section 240-13.E - Bulk Regulations - Minimum Lot Size Requirement. The applicant seeks to divide a lot upon which two single-family dwellings now exist, into two new nonconforming lots each of which will contain one single-family dwelling. The existing lot consists of two lots which have merged into one lot under zoning. The property is addressed as 111 Irving Avenue, Hyannisport, MA and is shown of Assessor’s Map 287 as Parcel 065. It is in a Residence F-1 Zoning District.

Members assigned: James Hatfield, Randy Childs, Dan Creedon, Ron Jansson, Gail Nightingale
Alternatives assigned: John Norman, Sheila Geiler, Kelly Lydon

Attorney Michael Ford is representing the applicant.

Attorney Ford hands out plans to the Board. He indicates that Mr. Patrick Ahern who is the architect is also present. Attorney Ford gives the history of the property and indicates that it has been in the Kennedy family since 1956. He indicates that the property has two structures on it currently consisting of a nine bedroom dwelling and a 5 bedroom dwelling. In researching the property he indicates that can take the 9 bedroom dwelling back to 1925 which has historical significance. The second dwelling shows up on the Assessor’s record in 1962 but there were other dwellings prior to that according to aerial photos dating back to around 1930. He hands out a chronological sheet to the Board. He indicates that the property has been in the Kennedy family since 1956 and has been used by that family since then.

The proposal is to raze the back dwelling, the 5 bedroom cottage and to construct a new dwelling in an area of the lot that was in fact, a vacant lot for a long period of time until it merged with the other lot in the 70’s. one. Attorney Ford hands out copy of deeds to the Board. He indicates that there are two lots, one on the corner of Scudder and Irving Avenue and one fronting just on Irving Avenue. However, given the changes in zoning and the fact that these properties were held in common title throughout, they have merged and those lots no longer exist. He did have a surveyor take a look at where those parcels would be on the ground and they end up virtually identical to the property lines that he is requesting that the Board create in the petitions for the special permit and variance. Because there are two dwellings on the property which predated the adoption of subdivision control it was eligible under MGL 81L and they did appear before the planning board last month which had endorsed the 81L plan. He shows the plan to the Board and indicates that under 81L each lot has to have a structure that predated subdivision control and thus the lot lines created as they were on the ANR plan. He indicates that what is proposed is to return it to its historical lot lines as described in the deed as parcels 1 and 2 which would be the line down the center. The advantages of not rebuilding in this location are that there is a series of large trees with about an 8 foot diameter next to the cottage. This area of the lot is a vacant area of grass where no trees would be removed if there is a house built there. Reconstruction in this location would create problems regarding these trees which they would like to save and the fact that it is on the national register. There is no contention to convey outside of the family as of yet but they would like to establish the new lot line as opposed to and 81L line that was more irregular.

Dan Creedon asks the purpose of the 81L. Attorney Ford indicates that it was to make sure that the Planning Board agreed under 81L and was eligible for a division under 81L and to simply show that this could be divided under subdivision and was an exercise he thought they should go through.

Attorney Ford goes on to indicate that the new dwelling would meet all the setback requirements even with the new lot line along with all fire requirements and would meet lot coverage requirements for raze and replace. It would be located in an area of the lot that is currently a vacant yard and not necessitate the removal of trees. It is proposed to have screening with fencing along Scudder and along Irving with the exception of the driveways. The 9 bedroom will stay as is with the same driveway access and the mature trees and that setting would remain the same except for the cottage being moved over. He shows an aerial photo and points out the 9 bedroom house to the Board.
He indicates that the new house is proposed to be 5 bedrooms and would have 2330 square feet on the footprint and with the upstairs would have a total of approximately 4200 square feet of living area. It will have the same style as the 1925 house and will be in keeping with the neighborhood itself in this area.

Gail Nightingale asks what would be on the 3rd floor. Attorney Ford consults with the architect who indicates that it is just attic space. Attorney Ford indicates that is not proposed to be living area and would agree to a condition pertaining to that.

Attorney Ford then goes over the zoning relief for which they have filed. However, he wanted to show that regarding the findings. He indicates that the current setbacks for the second dwelling would be made more conforming as to the southerly abutting property. He also indicates that with the new lot line, they fall under the floor area ration and the maximum lot coverage. The new portion of the lot would provide good access and ingress from Scudder and Irving Avenues and again meet all the requirements. He indicates that the proposed style, location and size fits in nicely with the historic houses in that particular area and is located on the lot within its historical boundaries.

Attorney Ford then suggests that one of the driving factors is the setting, in particular, the trees which could relate to soil conditions which drive the house to be relocated and the historical lot line where they could observe the trees and provide separate settings for each dwelling.

He indicates that the plans were provided to the neighborhood and that they liked the plan and the style.

Ron Jansson asks for clarification on the number of bedrooms in each structure and if they are on town sewer. Attorney Ford indicates that they have separate Title 5 septic systems. Ron then asks if they will be getting a new Title V to which Attorney Ford answers yes. Ron asks if it will be with a variance from the Board of Health. Attorney Ford indicates that they are not increasing bedrooms and doesn’t think it would need a variance from the Board of Health and notes that it is not in the Resource Protection Overlay District.

Ron Jansson then asks if the cottage has historical significance that needs to be addressed. Attorney Ford indicates that he would go through the usual channels but doesn’t think it has significance.

Ron then asks about the variance regarding the tree line and if they have it staked out to which Attorney Ford answers that they don’t describe by the tree line but instead by metes and bounds and indicates that they don’t have it staked out.

Gail Nightingale comments that they trees are large and that it would be a shame to take them down.

Ron Jansson then asks Attorney Ford if the re-subdivision will have an effect on the historical significance of the lot as it is. Attorney Ford indicates that the Kennedy’s think that this will be an improvement.

Ron Jansson and Attorney Ford then discuss the 81L option and Attorney Ford indicates that in this case it would make little sense. Ron then asks if it would’ve been easier to just ask for a variance. Attorney Ford indicates yes and that they have put in for both.
John Norman asks if they have consulted with the Historic Board. Attorney Ford indicates that as of yet they have not but that they will. John then asks if they intend to put a gate at the circular drive to which Attorney Ford indicates that they are planning to do so.

Ron Jansson asks for clarification of any encroachments and if it the property will be maintained for year-round residency. Attorney Ford indicates that it will be as it has been and that they also do not intend or desire to be commercial and it is not a precursor to a commercial use.

Ron Jansson reads a letter into the file from Henry and Margaret Erbe supporting this appeal. Ron Jansson then asks if there is anyone here either in favor or in opposition. No-one spoke either in favor or opposition

Ron Jansson does findings:

1. In Appeal 2007-041, the locus is addressed 111 Irving Avenue, Hyannis Port, MA as shown on Assessor's Map 287 as Parcel 065. It is in a Residence F-1 Zoning District. The applicant is the Irving Avenue Nominee Trust seeking a Variance to Section 240-13.E - Bulk Regulations - Minimum Lot Size Requirement.

2. The property was formerly the home of President John F. Kennedy. It was previously two lots that now are merged into one lot under zoning. As presently configured, it has two dwelling structures on the single zoning lot. The main dwelling is a nine-bedroom, 4,810 sq.ft., 1.5-story structure that dates back to 1925. That structure is a national designated landmark as it was President Kennedy’s home. A second dwelling is a five-bedroom, 1,196 sq.ft., one-story structure. Although the Assessor's record cites the year built as 1962 evidence presented shows that this structure existed on the property in the 1930’s.

3. The applicant seeks to divide the lot upon which the two single-family dwellings now exist into two new nonconforming lots and to demolish the five-bedroom dwelling and rebuild it to another area of the lot in a manner so that each lot will contain one single-family dwelling.

4. A plan entitled “Illustrated Site Plan” for the division of the lot has been submitted with the architectural drawing. That plan shows Lot A to be 23,095 sq.ft. with approximately 125 feet frontage on Irving Avenue and 182 feet on Scudder Avenue. Lot B is shown as 40,075 sq.ft. fronting approximately 192 feet on Irving Avenue. Neither lot contains the minimum lot area required in the district but both do have the minimum lot frontage required. The area calculations are based on that land area contained within the ways and will be less when properly surveyed.

5. The larger lot is to retain the main historic dwelling, the former President’s home, and is not proposed to be altered in this proposal. The smaller lot is to contain the relocated and rebuilt five bedroom dwelling.

6. Circumstances relating to topographical features of the buildings and of the land exist as two buildings do exist on the lot and the land is separated by a tree line defining two lots. The land feature is that of the mature tree line that causes the lot to be divided into two parts, one developed with two dwellings and the other a vacant yard area. This feature generally is not found in this area as most lots in the immediate neighborhood are much smaller. This site and building are also unique in that they are designated landmarks.

7. An enforcement of the provisions of the zoning in this instance would be a hardship in that the most optimum use of the property for which it is zoned would be one single-family
dwelling on one lot which could not be achievable or fully realized by division based upon existing structure location. That structure location does not respect the historic pattern of land division and development in the neighborhood.

This relief may be granted without substantial detriment to the public good and neighborhood and without derogating from the intent or purpose of the zoning ordinance as this area is not within the Resource Protection Overlay District and is not subject to Groundwater Protection

**Vote:**

**AYE:** Ron Jansson, Randy Childs, James Hatfield, Dan Creedon, Gail Nightingale

**NAY:** None

Motion made and seconded to grant the bulk variance requested subject to the following terms and conditions.

1. This variance is granted to divide the subject lot, 111 Irving Avenue, Hyannis Port, MA - Assessor's Map 287 Parcel 065 - into two undersized lots approximately as shown on a plan entitled: “Irving Avenue Nominee Trust Hyannis Port, Massachusetts - Illustrative Site Plan” as drafted by Ahearn-Schopfer and Associates P.C., dated March 21, 2007. That plan shows the division of the lot into two lots. Lot A being approximately 23,095 sq.ft. in area and Lot B being approximately 40,075 sq.ft. in area. The applicant shall cause a new plan to be drawn by a certified land surveyor or engineer to those requirements and standards of an Approval Not Required (ANR) Plan. That Plan shall accurately identify the lot's areas as measured from the edge of the ways and for frontage of each lot. The plan shall be initialed by the Chairman of the Board of Appeals and reference this variance and copies shall be submitted to the file of the Zoning Board of Appeals and to the Planning Board for endorsement.

2. Both the Approval Not Required Plan and this variance shall be recorded at the Barnstable Registry of Deeds. A copy of that recorded plan and variance shall be submitted to the office of the Zoning Board of Appeals for this variance to be in effect and for any building permit to be issued for that Lot A shown on the plan. If this variance and Approval Not Required Plan have not been recorded at the Barnstable Registry of Deeds within one year from the date of issue of this variance, this variance shall expire.

3. The alteration and expansion of the structures shall be in accordance with plans consisting of 6 sheets presented to the Board entitled “Irving Avenue Nominee Trust Hyannis Port, Massachusetts Design Development” dated March 21, 2007 as drawn by Ahearn-Schopfer and Associates P.C. and consisting of a Title Sheet, Illustrative Site Plan, First and Second Floor Layouts, four sheets of elevations and two sheets showing the layout and elevations of the detached “Carriage House”

4. The rebuilt and relocated structure shall not exceed 5 bedrooms. The total area of the dwelling shall not exceed 4,200 sq.ft. as represented on the drawings. The third level - the half story - shall not be used as habitable area.

5. The detached “Carriage House” is limited to a 1.75-story garage structure consisting of 1,200 sq.ft. The first floor is limited to that of a two-bay garage/storage area, workshop and
bathroom. The second floor area of the structure shall not be finished as habitable area. It shall only be used for storage.

6. No building permit shall be issued for the rebuilding of the relocated dwelling until the lot has been reconfigured. This building permit shall only be issued in combination with a demolition permit for the existing second dwelling located on the property.

7. If any historic review is required, that review shall be completed prior to the issuance of a building permit.

8. During all stages in the demolition and reconstruction of the dwelling, all vehicles, equipment and materials associated with the demolition/reconstruction shall be required to be located on the property owned by the applicant and off the right of ways of Irving and Scudder Avenues except as may be required to install utilities and to landscape, and then only on a temporary basis.

9. The on-site septic system shall meet all requirements of Title 5 and the local Board of Health without variance. All construction shall conform to all applicable building codes, fire regulations, and health requirements.

10. All equipment associated with the dwelling (electrical generators, air conditioning units, etc…) shall be located and conform to all district setback requirements and shall be screened from neighbor’s view.

11. Upon completion of the proposed dwelling and carriage house as submitted in this decision, the structures shall not be further expanded in footprint or in gross area, and no accessory building shall be permitted as that will be considered full build out of the property.

12. The line of mature trees that are on the property and the reason for the granting of this variance shall be maintained. They are not to be removed.

The vote was as follows:
AYE: Daniel M. Creedon, Randolph Childs, James R. Hatfield, Ron S. Jansson, Gail C. Nightingale
NAY: None

**Appeal 2007-041 Granted with Conditions.**

Attorney Ford requests a withdrawal without prejudice regarding Appeal 2007-042 which is the Special Permit.

Motion made and seconded to Withdraw without Prejudice.

Vote:
AYE: Daniel M. Creedon, Randolph Childs, James R. Hatfield, Ron S. Jansson, Gail C. Nightingale
NAY: None

**Appeal 2007-042 Withdrawn without Prejudice.**
Open: Comprehensive Permit 2005-082 Cotuit Equitable Housing, LLC
Subdivision Plan Endorsement

In accordance with Condition 7 of Comprehensive Permit 2005-82 the subdivision plan has been submitted for endorsement by the Board. That plan is for property located at Falmouth Road (Route 28) and Noisy Hole Road owned by Cotuit Equitable Housing, LLC.

The subdivision plan shows 124 single-family lots and 6 open space/common lots on 50.44 acres. The plan is prepared in accordance with the Planning Board’s Subdivision Rules and Regulations and the conditions and waivers of the Comprehensive Permit. The subdivision plan as well as the roadway construction plans, drainage, and proposed utilities have been reviewed and approved by the Engineering Division and Growth Management Department.

Dan Creedon takes over the Chair as he had chaired it originally.

Dan Creedon reads narrative of the appeal into the record as above. He indicates that there are plans SV-1 through SV-7 and confirms that the Board members have reviewed them. Dan indicates that it need not be voted on, just endorsed .

Dan Creedon then turns the chair back to Gail Nightingale.

Open Variance 2006-054 Butch
Request for 6 Month Extension of Variances

By letter received May 8, 2007, Ms. Barbara J. Butch is requesting a 6 month extension for a variance issued to her for property addressed as 104 Melbourne Road, Hyannis, MA. The subject lot is shown on Assessor’s Map 268 as Parcel 228. The variance was issued to permit two undersized adjoining lots that had merged due to common ownership to be considered independent legal buildable lots under zoning.

Board discusses briefly.

Motion to grant 6 month extension:
James Hatfield moves
Kelly Lydon seconds.

Vote:
AYE: Gail Nightingale, James Hatfield, Randy Childs, Ron Jansson, Dan Creedon
NAY: None

Appeal 2006-054 Request for 6 Month Extension Granted.

Open Variance 2006-057 Cleary
Request for 6 Month Extension of Variances
By letter received May 8, 2007, Raymond J. Cleary is requesting a 6 month extension for a variance issued to him for property addressed as Part of 119 Oakmont Road, Barnstable, MA. The subject lot is shown on Assessor’s Map 349 as Parcel 014. The variance was issued in order to create a buildable lot from an ANR Plan for which the lot exceeded the maximum lot shape factor of 22 and did not meet the minimum lot width required under zoning.

Motion is made to grant the request for 6 month extension of time on this variance.
Motion seconded.

Vote:
AYE: James Hatfield, Randy Childs, Dan Creedon, Gail Nightingale.
NAY: Ron Jansson

Ron Jansson explains that he has voted in the negative as it was his original vote when previously heard.

Appeal 2006-057 Request for 6 Month Extension Granted

8:00 P.M. Appeal 2005-100 - Continued Bay Point
MGL Chapter 40B Comprehensive Permit

Members Assigned: Sheila Geiler, Randolph Childs, James Hatfield, Daniel Creedon, Gail Nightingale


Continued for:
• Update of groundwater report by Horsley Witten Group based upon revised plan dated April 5, 2007.
• Update on affordable housing needs in terms of one-bedroom units.

Attorney Michael Ford’s April 5, 2007 brief on the issues of groundwater and Ch. 40B was previously distributed.

At the May 9th hearing, the Board voted to accept an addition $2,800 in contribution to the groundwater study. Horsley Witten review dated April 30, 2007 is enclosed.

Based upon the number of changes in the on-site septic system, the Health Department, has noted that the plans will still have to be re-reviewed by the Board of Health. This is scheduled for May 23.

Plan copies distributed to Cotuit Fire Department and Engineering Division for comment.

Bay Point, LLC, Stuart A. Bomstein, Manager has applied for a Comprehensive Permit under the General Laws of the Commonwealth, Chapter 40B “Affordable Housing” to allow the construction of 11, multi-family units to be located on 2.38 acres. Three of the units are to be dedicated as affordable and sold to low and moderate income housing. The property is shown
on Assessor's Map 036 as Parcel 015, addressed 671 Main Street, Cotuit, MA, in a Residence F Zoning District.

The applicant has submitted a letter requesting a continuance of this hearing to allow for the Board of Health review and input.

Gail Nightingale informs the public that the Board has a request for a continuance as Bay Point has not gone before the Board of Health as of yet.

**Continued to July 25, 2007 at 8:00 PM**

Open Chairman's Discussion

They have agreed to view Peckham's property individually.

Greg Milne is identified in the audience and speaks about his ZBA liaison with Town Council. He indicates that Councilor Rugo is the other liaison.

Ron Jansson and Mr. Milne discuss wind towers.

Motion to adjourn.
Meeting adjourned at 10:10 PM