

Town of Barnstable
Zoning Board of Appeals
Agenda
July 8, 2009

All hearings are scheduled for 7:00 P.M.

Draft as of 06-29-09

Appeal No. 2009-004 – Continued

Kohler
Appeal of Building Commissioner & Seeks Enforcement

Opened January 28, 2009, continued April 1, 2009, May 20, 2009, and to July 8, 2009.

Members Assigned: William H. Newton, Michael T. Hersey, Alex Rodolakis, Brian Florence, Laura F. Shufelt - Associates Members Present: Nikolas J. Atsalis, George T. Zevitas

This Appeal was continued for additional information including an engineered site plan of existing conditions.

Peter and Rose Kohler have appealed the decision of the Building Commissioner issued September 22, 2008 regarding EAC Disposal d/b/a Cape Resources Company. The appellants are appealing the Building Commissioner's determination that no enforcement action is needed with respects to the activities being carried on by Cape Resources Company at 280 Old Falmouth Road, Marstons Mills, MA. The property at issue is shown on Assessor's Map 100 as parcel 008. The appeal is being made pursuant to MGL Chapter 40A, Section 15 and is seeking the enforcement of the terms and conditions of the Zoning Board of Appeals Decision issued in Appeal No. 1996-014. The subject property is in a Residence F Zoning District and a GP Groundwater Protection Overlay District.

Continued Appeals

Cotuit Oyster Co., Inc.

Opened May 6, 2009 continued to June 10, 2009, and to July 8, 2009

Members Assigned; James F. McGillen, William H. Newton, Craig G. Larson, Brian Florence, Laura F. Shufelt Associates Present; Nikolas J. Atsalis, Alex M. Rodolakis, George T. Zevitas

Continued for further review and input, including:

- Brief by Attorney J. Douglas Murphy, who represents the Estate of Janet W. Haseck, a direct abutter at 22 Little River Road, in opposition.
- Preparation of Possible Draft Findings and Conditions (for review by Board Members and Applicant) on:
 - Nonconforming Use Alterations & Expansion (part of Remand Appeal No. 2004-075),
 - Setback Variance for proposed building (part of Remand Appeal No. 2003-094), and
 - Special Permit for reduction in Parking (Appeal No. 2009-031).

Follow-up Staff Report on Draft Findings and Conditions enclosed.

Remand Appeal No. 2003-094

Cotuit Oyster Co., Inc.
Bulk and Parking Variances

By a Stipulation for Remand and Stay, Barnstable Superior Court has remanded to the Zoning Board of Appeals for a new and full public hearing of Appeal No. 2003-094. In that appeal Cotuit Oyster Co., Inc., had applied for variances to Section 3-1.4(5) Bulk Regulations Minimum Setback Requirements (today's Section 240-14.E), and Section 4-2.9 Schedule of Off-Site Parking Requirements (today's Section 240-56). The relief is sought for construction of a pile supported one-story work building and a pier not in conformance to the 15-foot minimum side yard setback for the district, and for a reduction in the

required on-site parking. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

Remand Appeal No. 2003-110

**Cotuit Oyster Co., Inc.
Exempt Use Modification Permit**

By a Stipulation for Remand and Stay, Barnstable Superior Court has remanded to the Zoning Board of Appeals for a new and full public hearing of Appeal No. 2003-110. In that appeal Cotuit Oyster Co., Inc., had applied for a Modification Permit in accordance with Section 2-4.3(B) Exempt Uses (today's Section 240-8.A(3)). The modification permit is sought to allow for the construction of a building and a pier not in conformance to the minimum yard setbacks and for a reduction in required on-site parking. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

Remand Appeal No. 2003-137

**Cotuit Oyster Co., Inc.
Variance to Exempt Use Provisions**

By a Stipulation for Remand and Stay, Barnstable Superior Court has remanded to the Zoning Board of Appeals for a new and full public hearing of Appeal No. 2003-137. In that appeal, Cotuit Oyster Co., Inc. had applied for variances to provision (B) and the last paragraph of Section 2-4.4, Exempt Uses (today's Section 240-8.A(4)(b) and 240-8.B). Those variances are to allow for an aquaculture use to employ up to 5 persons and to construct a building and pier within the required 25-foot yard setback imposed by the exempt use section of the Ordinance. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

Remand Appeal No. 2004-075

**Cotuit Oyster Co., Inc.
Special Permits for Nonconformities**

By a Stipulation for Remand and Stay, Barnstable Superior Court has remanded to the Zoning Board of Appeals for a new and full public hearing of Appeal No. 2004-075. In that appeal, Cotuit Oyster Company, Inc., had applied for Special Permits in accordance with Section 4-4.4(2) Expansion of a Pre-existing Nonconforming Building or Structure Not Used as Single or Two-Family Dwelling (today's Section 240-93.B), Section 4-4.5(2) Expansion of a Pre-Existing Nonconforming Use (today's Section 240-94.B), and Section 4-4.6(1) Re-Establishment of Damaged or Destroyed Nonconforming Use or Building or Structure (today's Section 240-95). The applicant seeks to locate, expand and alter the shellfish harvesting business including the construction of a pile-supported work building and a pier not in conformity to the districts required setbacks. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

Appeal No. 2009-031

**Cotuit Oyster Co., Inc.
Special Permit Reduction in Parking**

Cotuit Oyster Company, Inc., had applied for a Special Permit pursuant to Section 240-57 Circumstances Warranting Reduction of [Parking] Requirements. The applicant seeks a reduction in the required on-site parking due to factors that reduce the need for that parking. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

Appeal No. 2009-032

**Cotuit Oyster Co., Inc.
Use Variance**

Cotuit Oyster Company, Inc., had applied for a Variance to Section 240-14.A, Principal Permitted Uses in the Residence F Zoning District. In this appeal, the applicant seeks authorization to use the property for a commercial shellfish business, the Cotuit Oyster Company. This use variance application is made in the alternative to that part of the Remand of Appeal No. 2004-075 that seeks an Expansion of a Pre-Existing

Nonconforming Use. The property is addressed 26 Little River Road, Cotuit, MA, and is shown on Assessor's Map 053 as parcel 009. It is in a Residential F Zoning District.

Appeal No. 2009-038 - New

**Wilson/The 155 Irving Avenue Realty Trust
Modification of Variance No. 2008-038**

Staff Report, Application and Supporting materials submitted are enclosed.

John B. Wilson and Leslie Q. Wilson, Trustees of The 155 Irving Avenue Realty Trust have petitioned for a modification of Variance No. 2008-038. The applicants seek to modify Conditions No. 7 and 8 of the variance to eliminate the requirement to record the Approval Not Required (ANR) plan within 1 year of the date of issuance. The property is addressed 151 Irving Avenue, Hyannis Port, MA, and is shown on Assessor's Map 287 as parcel 068. It is in a Residence F-1 Zoning District.

Appeal No. 2009-040 - New

**Kohler
Appeal of Building Commissioner**

Staff Report and Application material submitted are enclosed.

Peter and Rose Kohler have appealed the decision of the Building Commissioner issued May 15, 2009 regarding EAC Disposal d/b/a Cape Resources Company. The appellants are appealing the Building Commissioner's determination that no enforcement action is needed with respects to the delivery and off-loading of mulch to the Company at 280 Old Falmouth Road, Marstons Mills, MA. The letter cites that the importing of mulch to the site for mixing and blending with on-site products is allowed under Condition 5 of Variance No. 1996-014. The property at issue is shown on Assessor's Map 100 as parcel 008. The appeal is being made pursuant to MGL Chapter 40A, Section 15. The subject property is in a Residence F Zoning District and a GP Groundwater Protection Overlay District.

Variance No. 2008-046

Request for 6-Month Extension of Variances

Staff Report, request letter, and copy of previous variance enclosed.

Extension of a variance is provided for in MGL Chapter 40A, Section 10. That section authorizes the Zoning Board of Appeals to grant one extension of a variance for up to 6 months without public notice or a public hearing.

By letter received June 29, 2009, Mark C. and Jennifer A Curley as new owners of the property have requested a 6-month extension of Variance No. 2008-046 issued to Steven M. and Nancy M. Costello. The subject property is addressed 40 Woodland Avenue, Osterville, MA, and is shown on Assessor's Map 140 as parcel 136. It is in a Residence C Zoning District.

Open

Chairman's Discussion
